

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of the ordinary exercise of jurisdiction of the Supreme Court under Article 121 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Rule 63 of the Supreme Court Rules of 1978 against the Bill titled “**HOLIDAYS (AMENDMENT)**”.

S.C.S.D.No. 06/2019	Petitioner	Ruchira Arjuna Meeriyagalla, 119/3, Mahawatte, Kundasale.
	Counsel	Canishka G. Witharana with H.M. Tilakarathna and Chandana Botheju
	Intervenient Petitioner	Sandun Senadhipathi No. 164, Alakeshwara Road Ethulkotte.
	Counsel	Dr. Wijedasa Rajapakshe, PC with Rasika Dissanayake, Rakith Rajapakshe, Suraj Walgama, Sandun Senadhipathi , Danuka Lakmal and Rajitha Hathurusinghe instructed by Sanath Wijewardana.
S.C.S.D.No. 07/2019	Petitioner	Dr. Diyaguarachchige Sudath Nikshan De Silva. (alias Sudath diyaguarachchige) No. 48, Maharagama Road, Piliyandala.

Counsel	Canishka G. Witharana with H.M. Tilakarathna and Chandana Botheju
Intervient Petitioner	Malcom Cardinal Ranjith Archbishop of Colombo Archbishop's House Maradana Road Colombo 08.
Counsel	Shammil Perera, PC. with Varuna Senadhira.
	Vs.
Respondent	Hon. Attorney General Attorney General's Dept. Colombo 12.
Counsel	Ms. Indika Demuni De Silva, PC. Additional Solicitor General with Rajitha Perera, SSC and Suren Gnanaraj, SSC.
Before	Jayantha Jayasuriya, PC. CJ P. Padman Surasena, J E.A.G.R. Amarasekara, J

The Court assembled for the hearing on 31.07.2019 and 01.08.2019.

A Bill titled “Holidays (Amendment)” was published in the Gazette on 03rd July 2019 and was placed on the Order Paper of Parliament on 23rd July 2019. This is a Private Members Bill.

The above mentioned petitioners have filed two petitions (SC (SD) No. 06/ 2019 and SC (SD) No. 07/ 2019) invoking the jurisdiction of this Court under Article 121 (1) in respect of the aforementioned Bill. The Petitioners have prayed for a determination under Article 123 of the Constitution as to whether the said Bill or any provision thereof is inconsistent with the Constitution.

These petitions have been filed in the Registry of the Supreme Court on 29th July 2019. Upon receipt of the said petitions this Court issued notice on Hon. The Attorney General as required by Article 134 (1) of the Constitution. Court commenced hearing on 31 July, upon being satisfied that copies of the two petitions have been dispatched to the Speaker under Registered Post on 29th July 2019. The Court allowed the applications by two intervenient parties to intervene in these proceedings.

Thereafter the court proceeded to hear the submissions of the learned counsel for the Petitioners, learned counsel for the intervenient parties and the learned

Additional Solicitor-General representing the Hon. Attorney General. This Court exercising its discretion under Article 134(3) read with Rule 63(iii) of the Rules of the Supreme Court granted permission to Dr Wijedasa Rajapaksa PC, who represented an intervenient party to make submissions before this Court in his capacity as the Member of Parliament who presented this Private Members Bill, in addition to the submissions he made as Counsel for the intervenient party.

The Bill proposes to amend the Holidays Act No. 29 of 1971 through the following two clauses.

1) Clause 2

By insertion of a new section to be added to the principle enactment (Holidays Act No. 29 of 1971) as section 14 A, immediately after its section 14.

The proposed section 14 A reads as follows;

“14 A. No person shall on any Full Moon Poya Day or any Sunday till 3.00 p.m. conduct or caused to be conducted or facilitate for any tuition class for students attending schools at any premises or any location.”

2) Clause 3

To amend the existing section 17 of the principle enactment (Holidays Act No. 29 of 1971) by deleting words “One thousand Rupees” and by substitution therefor of the words “Ten thousand Rupees”.

Two Petitioners in their petitions have alleged that the above two clauses are inconsistent with Articles 3, 4, 12(1), 12(2), 14(1)(g).

All the other parties including the Learned Additional Solicitor General submitted that either of the clauses or the Bill in its entirety do not violate any provision of the Constitution.

Learned Additional Solicitor-General further submitted that the amendments proposed to the Holidays Act through the Bill are well within the objectives and the legislative scheme of the principal Act. The long title of the Holidays Act No 29 of 1971 reads as “An Act to declare every Full Moon Poya Day and Sunday as Public Holidays; To make special provision for the observance of the Full Moon Poya Day; to repeal the Holidays Act No 17 of 1965: and to make provision in regard to matters connected therewith or incidental thereto”. Section 2 of the Act declares that every Full Moon Poya Day and Sunday as Public and Bank Holidays. Clause 2 of the Bill under consideration proposes to

insert a new section, section 14A to the Part II of the main Act. It was submitted that both “Sun Days and Poya Days” have been clubbed together in the proposed new section and the objective of the proposed amendment is well within the overall objective of the principal Act.

Dr Wijedasa Rajapakse PC as well as the Counsel for His Eminence Malcolm Cardinal Ranjith, Archbishop of Colombo submitted that the amendments proposed through this Bill provide an opportunity for the children to grow in an environment which will enrich them with the cultural and religious practices and teachings that will guide them to be law abiding responsible citizens with due respect to their own culture and religion. Courts attention was drawn to correspondence between His Eminence Archbishop of Colombo and His Excellency the President (which were marked X1 and X2 and attached to the affidavit of His Eminence Arch Bishop of Colombo), focusing on the need to create an opportunity for children to gain full benefit from the guidance and teachings offered by their respective religious dignitaries specially held on Sunday mornings. Mr. Rajapakse further submitted that, Most Venerable Mahanayakes and other religious dignitaries also raised similar and grave concerns, at numerous occasions.

Whether clause 2 is consistent with Article 12(1) of the Constitution

Learned counsel for the Petitioner submitted that there is no justification to prohibit only those who are conducting tuition classes as proposed by clause 2. He further submitted that this discriminates tuition masters against those who are engaged in other professions. It is on that footing that the learned counsel for the Petitioner sought to argue that the proposed amendment in clause 2 (proposed section 14A) is inconsistent with Article 12(1) of the Constitution.

Article 12(1) of the Constitution reads as follows;

“All persons are equal before the law and are entitled to the equal protection of the law”.

This Court, in its determination¹ on the constitutionality of the “Private Medical Institutions (Registration) Bill” observed that, *“equality as enshrined in Article 12 of the Constitution, permits legislation based on a reasonable classification where the criteria for such classification advances its objectives. The Bill undoubtedly subjects Private Medical Institutions to a different legal regime than the one applicable to State Sector Institutions as contended by Counsel for*

¹ “Decisions of the Supreme Court on Parliamentary Bills” Volume VII (1991 – 2003), p 191

Petitioners. But we are of the view that there is a reasonable basis for such classification”.

It would be opportune at this stage to refer to a passage from another special determination² by this Court. In the said determination this Court considered whether the classification of some assets and enterprises for the purpose of “Revival of Underperforming Enterprises and Under Utilized Assets Bill” would make the said provisions inconsistent with Article 12(1) of the Constitution. This Court in that determination stated as follows.

“... Article 12(1) of the Constitution, which refers to the right to equality, clearly states that all persons are equal before the law and are entitled to the equal protection of the law.

Equality, which is a concept based on the firm foundation of the Rule of Law, does not forbid reasonable classification. A classification, which is not arbitrary, could be regarded as valid and permissible and for this purpose it would be necessary for such classification to be founded upon reasonable differentia. As has been stated in the well-known decision of Ram Krishna Dalmia vs Justice

² SC SD No. 02/2011, “Decisions of the Supreme Court on Parliamentary Bills”, Volume X10 (2010 – 2012), page 46

Tendulkar (AIR (1958) SC 538) for a classification to be valid, there are 2 conditions that should be satisfied which could be stipulated as follows;

1. *That the classification must be founded on an intelligible differentia which distinguish persons or things that are grouped together from others who are left out of that group; and*

2. *That the differentia must bear a reasonable, or a rational relation to the objects and effects sought to be achieved by the statute in question.*

Considering the aforementioned conditions, it is abundantly clear as stated in Budhan Chowdhary vs State of Bihar (AIR (1955) SC 191) what is necessary is that there should be nexus between the basis of classification and the object of that enactment that carries such classification.....”

This Court in the above determination, has held that Article 12(1) of the constitution does not forbid such classification.

This court also has endorsed the test enunciated by aforesaid Indian Cases on several other occasions.³

³ Palihawadana v Attorney-General & Others, (1978,1979,1980) 1 SLR 65, Tuan Ishan Raban & Others v Members of the Police Commission, (2007) 2 SLR 351, Abeywardane v Inspector General of Police and others. (1991) 2 SLR 349

Admittedly⁴ the objective of the Bill is to place limitations on conducting tuition classes on Sundays and Poya days. The proposed amendment (clause 2) has distinctly identified the group to be banned. What is banned is “any tuition class for students attending schools”. There is no discrimination against any type / category of tuition classes within that classified group. All types of tuition classes for students attending schools are covered. Therefore, this Court is of the view that the classification “any tuition class for students attending schools ” found in clause 2 has been founded on an intelligible differentia which clearly distinguishes the persons in that group, whether they be students or tuition teachers or facilitators of tuition classes, as the case may be, from others who are left out from that group. Further this Court is also of the view that the said differentia is reasonable and rational in relation to the objects and effects sought to be achieved by the proposed amendment. We are of the view, that clause 2 of the proposed Bill is consistent with Article 12(1) of the Constitution.

Whether Clause 2 is consistent with Article 12(2) of the Constitution

It is the position of the Petitioner that this proposed Bill is inconsistent with the Article 12 (2) of the Constitution. The Article 12(2) reads as follows;

⁴ Paragraph 7 (i) of the Petition.

“No Citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or anyone of such grounds.”

(Provisos are not quoted here as they are not relevant.)

As per the proposed clause 2, no tuition teacher is going to be discriminated due to his or her race, religion, language, caste, sex, political opinion, place of birth or anyone of such grounds. On the other hand, its effect is on all the students attending schools, without being discriminated on any of the aforesaid grounds, as no tuition will be available for all the students attending schools, during the time period contemplated in the aforesaid clause.

Both Petitioners have stated in their petitions that the amending Bill imposes an irrational and arbitrary discrimination between students belonging to different religions and communities. The counsel for the petitioner, submits that this proposed amendment deprives Hindu and Muslim Students of their opportunities and serves only the Buddhists and Christian students. However, there was no material placed before the court to show that Hindu and Muslim Students do not have their Sunday Schools or Hindu or Muslim or students who do not follow a religion, cannot use the same time period for the upliftment of their religious or cultural or moral values, as the case may be.

DR. Wijedasa Rajapaksha, in support of the Bill submitted that in a highly competitive environment having tuition classes even on Sundays and Poya days is inimical to the mental and physical well-being of young students and to the contrary the learned Counsel for the Petitioners tried to convince the court that tuition classes are the need of the day for the success in this competitive environment. However, what this court has to consider is whether the clause 2 is in conflict with the Rights guaranteed under Article 12 (2) of the Constitution.

Even if this court, for the sake of argument, considers that access to tuition is a part and parcel of right to education and a necessity today, intended regulation by the Bill causes no discrimination but provides an equal opportunity to have access to it. Otherwise, the students who want to or parents who want their children to attend religious institutions on Sundays and Poya Days have to compromise their right to engage in religious and moral development due to the high competition or lose the opportunity to attend tuition classes, merely because they wish to enjoy a right guaranteed by the Constitution. By regulating the time as proposed by the amendment, everyone including an atheist gets an opportunity to attend tuition as well as allocate time for his mental and physical well-being according to his belief or understanding without compromising his constitutionally accepted Rights. As

such, this court cannot come to the conclusion that the proposed Bill violates Article 12(2) of the constitution.

Whether clause 2 is consistent with Article 14(1)(g) of the Constitution

Article 14(1)(g) of the Constitution reads as follows;

“Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise”.

Learned counsel for the Petitioners submitted that the tuition masters are entitled to engage in conducting tuition classes. Such a right has been guaranteed under Article 14(1)(g) of the Constitution. It is therefore his submission that the prohibition on conducting tuition classes in clause 2 of the Bill violates the provisions in Article 14(1)(g) of the Constitution.

It is important to note that Article 14(1)(g) needs to be read with Article 15 (7) of the Constitution, which is as follows.

Article 15(7)

“the exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13(1), 13(2) and 14 shall be subjected to such restrictions as may be prescribed by law in the interest of national security, public order and the protection of public health or morality or for the purpose of securing due recognition of the rights and freedom of others, or of meeting the just requirements of the general welfare of a Democratic society. For the purposes of this paragraph “law” includes regulations made under the law for the time being relating to public security.”

This Court when it was called upon to determine the constitutionality of the provisions in “Employees’ Pension Benefits Fund Bill” considered the nature of the right guaranteed by Article 14(1)(g). The relevant part from that determination⁵ stated as follows.

“..... accordingly, the right guaranteed in terms of Article 14(1)(g) cannot be taken as a right which is unrestricted in its application as there cannot be absolute or unrestricted rights existing in any modern state. The rights must be reasonably exercised without any conflicts...”

⁵ SC SD No. 91 of 2011, “Decisions of the Supreme Court on Parliamentary Bills” , Volume X10, (2010 – 2012), page 42

Further, it is pertinent to note that Article 28 (c) and 28(e) provide that every person in Sri Lanka has a fundamental duty “*to work conscientiously in his chosen occupation*” and “*to respect the rights and freedoms of the others*”.

We note that the objectives of restrictions to the right recognized under Article 14(1)(g), as provided under Article 15(7) include protection of morality, securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of the general welfare of the democratic society.

“Morality” is defined in Oxford Advance Learners Dictionary, New 9th Edition as “Principles concerning right and wrong or good and bad behavior”.

It is also important to note that Article 27 (1) provides that the Directive Principles of State Policy as recognized in Sub Articles of Article 27 should guide *interalia* the Parliament in the enactment of Laws. Article 27 (13) provides “*The State shall promote with special care the interests of children and youth, so as to ensure their full development, physical, mental, moral, religious and social and to protect them from exploitation and discrimination*”. Further Article 27(2)(g) and Article 27(11) recognizes the importance of “*raising the moral and cultural standards of the People and ensuring the full development of human personality*” and the obligation on the part of the State to “*create the necessary economic and social environment to enable people all religious faiths to make a reality of their religious principles*”. Furthermore, the State shall assist the development of the cultures- vide Article 27(10) of the constitution.

When these provisions are taken together it recognizes the importance of creating an environment for the children to conduct their text book based academic activities without compromising an opportunity to learn how best such knowledge can be utilized when they take up different responsibilities in the society with due sensitivity and respect to the moral, cultural and religious principles.

It is also pertinent to note that, Article 12(4) recognizes that the Fundamental Rights recognized in Articles 12(1) and 12(2) shall *not* “*prevent special provision being made, by law.....for advancement of Children*”.

Counsel for the Petitioner submitted that the Right to Education is a Fundamental Right as recognized by the Supreme Court and therefore should neither be denied nor restricted. It is our view that term Education should not be narrowly interpreted and confine it to textbook related education. Article 29 of the Convention on the Rights of the Child provides as follows:

“State Parties agree that the education of the child shall be directed to:

- a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;*

- b) *The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of United Nations;*
- c) *The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different for his or her own;*
- d) *Preparation of the child for a responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*
- e) *The development of respect for natural environment.”*

Further, Article 26 of the Universal Declaration of Human Rights provides:

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary Education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the Human Personality and to the strengthening of respect of human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the

maintenance of Peace. Parent's have a prior right to choose the kind of education that shall be given to their children".

Any attempt to undermine the overall objective of Education by limiting or restricting or attaching undue prominence to text book related or school curricular exam-oriented education, will not only erode the Right to Education but also will defeat the rationale of Education.

We observe that the proposed amendments do not have an effect of a complete ban on Tuition Classes. Therefore, individuals who are engaged in conducting such classes are not deprived of an opportunity to engage in their chosen field of occupation. As submitted by the Learned Additional Solicitor General what would require is a rescheduling of their classes with a proper management of their schedules.

It is our view, such rescheduling with due respect to the overall development of children with the final objective of providing an opportunity for children to become responsible citizens, would provide an opportunity for tuition masters to engage in their chosen field of occupation, while creating a better environment for children, by giving them an opportunity to grow up, with due

respect to moral, cultural and religious teachings and practices and become responsible citizens.

We also observe when Article 14 (1)(g) guarantees a citizen's freedom to engage in a lawful occupation, profession, trade, business or enterprise, in the same strength Article 14(1)(e) assures a citizen his freedom to manifest his religion or belief in worship, observance, practice and teaching. When clause 2 of the Bill is considered in the context of these provisions of the Constitution, we are of the view that said clause does not violate Article 14(1)(g) of the Constitution but brings about an equilibrium between aforesaid freedoms.

Whether clause 3 is consistent with Article 12(1) of the Constitution

Clause 3 of the Bill only proposes to amend an existing provision namely section 17 of the Holidays Act No. 29 of 1971. The said proposed amendment only seeks to increase the existing fine of Rs.1000 to Rs. 10,000.

Therefore, we are of the opinion that Clause 3 is not inconsistent with any provision of the Constitution.

Learned counsel for the Petitioner submitted that the word “tuition” and the phrase “students attending schools” in clause 2 are vague. It is therefore his submission, that no citizen would be safe when such law which does not distinctly identify the offence, becomes part of criminal law.

On a close examination of terminology in clause 2 this court is of the view that there is no ambiguity on the type of the act that is prohibited by the proposed amendment. It is the conduct, causing to be conducted or facilitating the conduct of Tuition Classes within a prescribed time period, that has been prohibited. The time period is identified without any ambiguity as up to 3.00 pm on Sundays and Poya Days. The category of persons to whom such classes are conducted is also specifically identified as “students attending schools”.

Therefore, this Court is of the view that no ambiguity exists on the scope of the conduct that is prohibited by this proposed amendment. Public performance or slaughter of animals per se is not a crime unless they or any kind of them are prohibited by some law. However, they have been already criminalized if they were done on Poya Day, i.e. if they were done within a prescribed time period, by the main Act (Holidays Act). As such, the contention of the petitioners counsel that conducting or facilitating tuition class within a prescribed time do not fall within the criteria of criminalization cannot hold water. On the other hand, what should be criminalized or not is basically a matter for the policy

makers in the legislature and what this court should consider is whether the proposed Bill contravenes any of the provisions of the Constitution. This court does not find that criminalization of conducting tuition classes within a prescribed time period contravenes any provisions in the Constitution. Without such criminalization, compliance to the expected amendments may not become a reality.

Mr. Wijedasa Rajapakse President's Counsel addressing this Court agreed that adding "for fees" immediately after the term "tuition class" and adding "under eighteen years of age" immediately after the word "students" to read as "any tuition class for fees" and "students under eighteen years of age attending schools" would bring more clarity to the proposed section.

The learned ASG also has suggested interpretation to certain terms for more clarity as follows:

"tuition class" for the purpose of this section shall mean any class, whether private or otherwise, which provides on payment or for free(*gratis*) any form of instruction, teaching, tutoring, coaching, training or learning to students attending school, but excludes any class conducted in a *Daham Pasala*,

Sunday School or any other similar class conducted by a place of religious teaching or worship.

“class” shall mean one or more students attending school.

“Students attending School” shall mean children between the ages of five and eighteen years.

We agree that such interpretations would bring more clarity. It is also advisable to exclude classes conducted for the upliftment of moral and cultural values of the school attending students who does not follow a religion, from the scope of “tuition class”.

The Counsel for the Petitioners in his submissions while expanding the scope of the application averred in the petitions submitted that the proposed Bill violates of Articles 10, 14(1)(a) and 14(1)(e) of the Constitution.

As we have already held, that the Bill is well within the permissible restrictions stipulated under Article 15(7) of the Constitution we see no merit in this submission. Further, as discussed before, the proposed Bill creates an environment for children to receive the text book related education without compromising their right to receive education focusing on the overall

development including the enjoyment of the right guaranteed under Article 10 of the Constitution.

On the foregoing basis, we make a determination in terms of Article 123(1) of the Constitution, that neither the Bill that seeks to introduce a new section (section 14A) and to amend section 17 of the Holidays Act No. 29 of 1971, nor any provision thereof, is inconsistent with the Constitution.

We place on record our deep appreciation of the assistance given by the learned counsel who appeared for the Petitioners, the learned Counsel who appeared for the intervenient petitioners and the learned Additional Solicitor-General who represented the Attorney-General, in these proceedings.

Jayantha Jayasuriya, PC
Chief Justice

P. Padman Surasena
Judge of the Supreme Court

E.A.G.R. Amarasekara
Judge of the Supreme Court

