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Denial through Postponement: An Appraisal of Right to Franchise of Local Government Elections in Sri Lanka

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ABSTRACT

Right to franchise being as fundamental as it can be is a cornerstone of a democratic society and a denial of such a right through postponement could never be circumvented by placing before such institutions such restrictions or constraints that are related to the economy of a country, which in itself indicates the need for changing the government or its people who have brought a country to its knees through such haphazard economic policies which has led to such catastrophic events. This paper endeavors through a qualitative method using a doctrinal approach to evaluate the primary sources of law in the Sri Lankan legal system, inclusive of inter alia. the Constitutional provisions, statutory provisions, and the decided case law. In the discussion, it is both well founded and established that the right to franchise, even at the local governmental level is not really allowed under the existing laws of the country, nor could they be justified under any other presumed disguised pointing out that the severe economic crisis that has occurred.

Keywords: Right to Franchise, Local Government Elections.

I. INTRODUCTION

“Local authorities ha[ve] a long history and it plays an important role at the grassroot[s] level. Its functions are regulation, control and administration of all matters relating to the public health, public utility services and public thoroughfares and generally with the protection and promotion of comfort, convenience and welfare of the people and the amenities of the town/village. It is stated that its activities cove[r] from the cradle to the grave. Some local authorities have maternity clinics and burial grounds/ cemeteries are controlled and administered by the Local Authorities. By delay in holding elections people are deprived of representatives who could have addressed their grievances and attend to their welfare needs.”³

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³ *Mohamed Hussain v. Election Commission of Sri Lanka* SC FR No. 35/2016

The term of the present Local Government Authorities, viz., Municipal Councils (24), Urban Councils (41) and Pradeshiya Sabha (275), was due to expire at the end of March 2022 upon completing their four-year tenure. However, the Minister of Provincial Council and Local Government Affairs, by issuing the extraordinary gazette notification No. 2262/8 and dated 10th January 2022, extended the tenure of the local government authorities by one year until 19th March 2023 without stating any reason for such extension. According to the relevant statutory provisions, the Election Commission is empowered to conduct elections of local authorities within the period of six months preceding the date on which the term of office of the members 'who are to be elected will commence'. According to this provision, if 19th March 2003 is the maximum date until which the government could extend the term of the present local government authorities, the 'preceding six months' commences on the 20th September 2022. Accordingly, the Election Commission recently declared that the commission has the power to fix a date for the election of local government authorities at any time after 20th September 2022. In January of 2023, it was announced that the local government elections in the country will be held on 09.03.2023. However, on 14.02.2023 it was announced that the postal votes scheduled to be cast regarding the above election have been postponed indefinitely citing a shortage of money. The Supreme Court of the country has also decided that the election commission is there to protect the rights of the individuals concerning their right to franchise and that such should not be delayed⁴. Now, there is a public outcry against the postponement of any elections by the government. Several leading political parties, many interested groups, organizations such as PAFERAL and scholars have raised concerns over the same issue in light of its threat to democracy and good governance of the country.

(A) Purpose of the Study

The purpose of this study is to research comprehensively the statutory provisions and the decided cases relating to the conducting of local government elections with the aim to protect the franchise of the people and to ensure that the local government elections throughout the country are held at the proper time without postponement. The study will further analyze what are the methods that the government can resort to for the purpose of postponing local government elections and, If the government wants to use one or more of these methods, how can the people counter them? What are the countermeasures that any legitimate party should adopt?

⁴ At the writing of this paper, the Supreme Court Decision was not made available to the wider public through the website of the Supreme Court.

II. RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

(A) Constitutional Provisions

Article 03 of the 1978 Constitution of the Democratic Socialist Republic of Sri provides that sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights, and the franchise. In the case of *Mohamed Hussain v. Election Commission of Sri Lanka*⁵ the Court in referring to Article 3 of the Constitution, the court held “In the Republic of Sri Lanka sovereignty is in the people and is inalienable. Sovereignty includes the powers of the government, fundamental rights and the franchise”. Franchise is a fundamental right recognized under Article 10 and 14(1) of the Constitution. The failure to hold elections on the due date or postponing is a violation of the fundamental rights of the people.’

On the other hand, Article 4 (e) of the Constitution stipulates as to how the Sovereignty of the People shall be exercised, which includes:

(a)...(b)...(c)...(d)...

(e) the franchise shall be exercisable at the election of the President of the Republic and of the Members of Parliament and at every Referendum by every citizen who has attained the age of eighteen years and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors.⁶ Article 12(1) provides that all persons are equal before the law and are entitled to the equal protection of law.⁷ Article 14(1) (a) provides that every citizen is entitled to the freedom of speech and expression (e.g., the citizen’s right to vote includes the right to freely choose his representative, through a genuine election which guarantees the free expression of the will of the electors.⁸ Article 33 (c) provides that The president is vested with power to ensure the creation of proper conditions for the conduct of free and fair elections, at the request of the Election Commission; (This provision was included by the 19th amendment to the constitution and retained by the 20th amendment). Article 103 provides that establishment

⁵ SC FR Application No. 35/2016

⁶ Argument raised in some cases that people’s right to exercise franchise as a right at provincial Councils and Local Authorities elections does not directly come under this article hence any violations of Provincial Council and Local Government elections in any manner from the part of the government cannot be claimed. For and against this argument, see the case study. E.g., “.... It is important to note that Article 4(e) in describing the way right to franchise is to be exercised, lay out the occasions on which this right may be exercised. Taken literally, the right to franchise would be confined to situations that are included under Article 4 (e) which does not include electing members to a Provincial Council or the Local Government Authorities...” *Athukorale v. AG* [1996] 1 Sri L R 14
⁷ (e.g., failure to conduct a poll properly which gave true expression to the will of all the electors and failure to have a just and fair election infringed the right of the petitioners to the equality and equal protection under 12(i), in *Mediwaka and Others v. Dayananda Dissanayake* [2001]1 Sri L R 177.

⁸ Both In *Mediwaka and Others v. Dayananda Dissanayake* [2001] 1 Sri L R 14 and in *Karunathilaka and Deshapriya v. Dayananda Dissanayake* [1999] 1 Sri L R 157, SC held that the freedom of speech and expression guaranteed by the constitution should be broadly construed to include the right of an elector to vote in an election.

of an independent election commission to conduct free and fair elections and Article 104A, B; provides that Powers entrusted with the Election Commission to conduct free and fair election.⁹

(B) Relevant Statutory Provisions

1. Chapter 576 of Municipal Councils Ordinance

Section 10(1) term of office of Councillors -the term of the office of each Councillor elected at the general-election shall expire after completing a four-year period

Section 10(2) (b)- Power of Minister to extend the term of the office

The Minister may by Order published in the Gazette- extend such term specified in the Order and subsequently, time to time, the period can further be extended.... provided, however, that the period by which such term is extended or the aggregate of the periods by which such term is, from time to time, extended shall not exceed twelve months. (*Emphasis added*)

Analysis: This proviso clearly indicates that the power of the Minister to extend the period of Municipal Councillors/Council is limited to one year. No further extension is allowed by law as the proviso is drafted with a mandatory effect.

2. Urban Councils Ordinance (as amended)

Section 10(1) (b): The term of members of an Urban Council shall be 48 months from the date on which such term of office commenced.

Section 10(2) (b) The Minister may by Order published in the Gazette- extend such term specified in the Order and subsequently, time to time, the period can further be extended.... provided, however, that the period by which such term is extended or the aggregate of the periods by which such term is, from time to time, extended shall not exceed twelve months. (*Emphasis added*)

It is clear that the Urban Council Act also emphasizes the fact that the four- year period of the term of The Urban Council can only be extended by a period of 12 months.

This limitation is also further reiterated by the following section of the Ordinance which strongly recommends holding a general election at the expiration of the term of an Urban

⁹ e.g., referring to Articles 103 and 104 of the constitution, in *Karunathilaka* case SC mentioned that Article 103 of the constitution guarantees to the Commissioner of Election (previous position) a high degree of independence to ensure that he may duly exercise- efficiently, impartially and without interference- the important function entrusted to him by Article 104 in regard to the conduct of elections including PCs and Local Governments. In *Mohamed Hussain v. Election Commission of Sri Lanka* SC FR Application No. 35/2016, it was argued that in failing to conduct local government election regularly, the Election Commission violated Article 103(2), 104 B(1) and 104 B(2) of the Constitution and the Petitioners state that the said conduct and /or inaction is arbitrary, unreasonable, illegal, unlawful and is a continuing violation of the Petitioner's rights guaranteed under Article 12(1) of the Constitution.

Council.

Section 11. Where the term of office of the members elected at the first or any subsequent general election of the members of an Urban Council is due to expire under section 10, a general election in accordance with the provisions of written law for the time being applicable in that behalf shall be held for the purposes of electing new members in place of such members. This section also highlights the importance of the continuation of the office of the people's representatives in Urban Councils by holding elections in a timely manner.

3. Pradeshiya Sabha Act, No. 15 of 1987

Section 3. (Functions of the Pradeshiya Sabhas)

The Pradeshiya Sabha constituted for each Pradeshiya Sabha area shall be the local authority within such area and be charged with the regulation, control and administration of all matters relating to public health, public utility services and public thoroughfares and generally with the protection and promotion of the comfort, convenience and welfare of the people and all amenities within such area.

Pradeshiya Sabhas, being the largest section of local government authorities in Sri Lanka, has a direct impact on the day-to-day life of people living in the country. This re-emphasizes the importance of continuing the service provided by Pradeshiya Sabhas through their people's representatives without any intervals/gaps.

Section 5 (1) (b): The term of members of a Pradeshiya Sabha shall be 48 months

Section 5 (2) (b) The Minister may by Order published in the Gazette- extend such term specified in the Order and subsequently, time to time, the period can further be extended.... provided, however, that the period by which such term is extended or the aggregate of the periods by which such term is, from time to time, extended shall not exceed twelve months.

(Emphasis added)

Comment; The term of Municipal Councils, Urban Councils and Pradeshiya Sabha has clearly been determined by law. As court has clearly observed;

".... There is no provision in law to keep on extending the period indefinitely. Franchise would mean right to vote and citizens should not be denied of such right or privilege. Local authorities are elected for fixed terms (4 years). Citizens expect to elect new members at the end of such period. That right should not be denied. In the case in hand as observed above there could be impediments to hold elections and this court is mindful of same but there cannot be an inordinate delay, to hold elections. There is a legitimate expectation of the people to elect

members of local authorities of their choice...” (in *Mohamed Hussain v. Election Commission of Sri Lanka*)

Chapter 262 of Local Authorities Elections Ordinance

Section 25: Date of holding elections. Every general election of the members of a local authority shall be held within a period of six months preceding the date on which the term of office of the members who are to be elected is due to commence.

Court has construed this section which was included as an amendment made to the Ordinance in 1987 as a provision that highlights the importance of continuing the service of people’s representatives.

“In 1987 by Act No 24 of 1987 Parliament introduced an amendment to section 25 of the Local Authorities Ordinance to hold elections within the period of six months preceding the date on which the term of office of the members who are to be elected will commence. **This is to ensure that people will continue to have representatives in the Local Authorities without a break.**”¹⁰

III. ANALYSIS OF JUDICIAL PRONOUNCEMENTS

(A) Right to Franchise and Local Government Elections

The right to franchise is recognized as a core element of the sovereignty of the people embodied in Article 3 of the Constitution. As an integral part of the notion of sovereignty, the right to franchise ensures that people have the power to select representatives who are to govern them, albeit at different levels. It is to be remembered that Article 3 of the Constitution is entrenched in the Constitution, meaning that any change to Article 3 would require the approval of the people at a referendum. Article 4 of the Constitution lays down the way in which the sovereignty of the people is to be exercised and enjoyed. According to Article 4(e) ‘the franchise shall be exercisable at the election of the President of the Republic and of the Members of Parliament and at every Referendum by every citizen who has attained the age of eighteen years and who, being qualified to be an elector as hereinafter provided, has his name entered in the register of electors’. It is important to note that Article 4(e) in describing the way the right to franchise is to be exercised, stipulates the occasions on which this right may be exercised. Taken literally, the right to franchise would be confined to situations that are included under Article 4 (e) which does not include electing members to a Provincial Council or the Local Government

¹⁰ *Mohamed Hussain v. Election Commission of Sri Lanka* SC FR Application No. 35/2016

Authorities. This was discussed in the case of *Athukorale v AG*¹¹ where the Court opined that Article 4 (e) of the constitution explains how the right to franchise is to be exercised which is limited to the election of the President of the Republic and Members of Parliament, and every Referendum. It does not cover the exercise of the franchise at elections pertaining to the Pradeshiya Sabha. If Parliament desires expansion of Article 4(e) by including the franchise exercisable at elections not specified therein, it can be appropriately amended but it is noteworthy that hitherto no such amendment has been affected.

The Court in the above case also went on to note that, even the right to franchise with regard to Provincial Councils has not been specifically recognized under the Constitution and that while the legislature had the opportunity of including such right under Article 4 (e) when it implemented the 13th Amendment to the Constitution, it opted not to and that signifies an intention on the part of the legislature not to include such right within the ambit of 'right to franchise' in Article 4. In arriving at this conclusion, the Court referred to the decision in *In Re Thirteenth Amendment*,¹² where the full bench which decided the case was of the opinion that, Article 4 which is not an entrenched Article in the Constitution, therefore, it could have been amended by a 2/3 majority of the Parliament without having recourse to a referendum, as long as such amendment did not infringe upon the sovereignty of the people as provided under Article 3. However, the Court in the case of *Athukorale v AG* did not go to the extent of discussing whether the inclusion of either Provincial Councils or Pradeshiya Sabha would not have infringed upon the sovereignty of the people as envisaged under Article 3. Further to this, in the case of *Wijesekera and Others v AG*¹³, the Court opined that, '[t]he right to have a Provincial constituted by an election of the members of such Council pertains to the franchise being part of the sovereignty of the People and its denial is a continuing infringement of the right to the equal protection of law guaranteed by law Article 12(1) of the Constitution'. It is evident from this decision of the Court that, the arguments made in the former case do not hold water anymore.

Another point that can be highlighted regarding the arguments put forward in the decision of *Athukorale v AG*¹⁴ is that Article 4 (a) which deals with the exercise of the legislative power of the people only includes 'Parliament, consisting of elected representatives of the People and by the People at a Referendum' and it does not include provincial councils' although Provincial

¹¹ 1996 1 Sri L R 238

¹² 1987 2 Sri L R 312

¹³ 2007 1 Sri L R

¹⁴ 1996 1 Sri L R 238

Councils do exercise legislative power, which is evident from the three separate lists included in the Constitution after the 13th Amendment, where List 1 deals with exclusive subject matter falling within the legislative competencies of the Provincial Councils.

Another argument that may be put forward in support of denying a right to franchise in a Pradeshiya Sabha election is to de-link the fundamental rights from franchise. This is because Article 3 recognizes the right to franchise separately from fundamental rights. One may therefore argue that the right to franchise should be considered as a sui generis right which should stand independently of fundamental rights and a fundamental right to franchise is superfluous if such an independent right exists.

However, there have been instances in which the Supreme Court has utilized fundamental rights provisions in upholding and enhancing the right to franchise. In the case of *Karunathilake and Another v Dayananda Dissanayake, Election Commissioner*¹⁵, the Court opined that '[t]he right to vote at an election is also a part of the right to freedom of expression as guaranteed under article 14 (1) (a) of the Constitution which would be breached by not holding free and fair elections so as to enable the people to exercise their freedom of expression through a ballot paper at the Local Council Elections'. In linking the right to franchise with freedom of speech and expression Justice Fernando opined that, '*The silent and secret expression of a citizen's preference between one candidate and another by casting his vote is no less an exercise of the freedom of speech and expression than the most eloquent speech from a public platform*'. Although the argument was put forward that, a breach of the right to franchise cannot be considered a breach of a fundamental right since the right to franchise does not appear under Chapter III of the Constitution, the Court rejected this contention and declared that, '[c]oncepts such as "equality before the law", "the equal protection of the law", and "freedom of speech and expression, including publication", occurring in a statement of constitutionally entrenched fundamental rights, have to be broadly interpreted in the light of fundamental principles of democracy and the Rule of Law which are the bedrock of the Constitution'. Even if one was to concede that, fundamental rights and the right to franchise should be taken separately, as argued in *Athukorale v AG*¹⁶ if voting in a Pradeshiya Sabha election is not a part of the exercise of the right to franchise as envisaged under Article 4 (e) of the Constitution, it would be irrational to also argue that such voting would not be a part of the freedom of expression and speech. It would be against the notion of Sovereignty not to ascribe any

¹⁵ 1999 1 Sri L R 157

¹⁶ 1996 1 Sri L R 238

importance either in terms of Article 4 (e) or the fundamental rights provisions of the constitution, to the right of an individual to vote and elect members at the local government level, as the representatives so elected, would have a say in the daily affairs of such voters. In the case of *Mediwaka and Others v Dayananda Dissanayake, Commissioner Elections and Others*¹⁷, the Court opined that, '[t]he right to a free, equal, and secret ballot is an integral part of the citizen's freedom of expression, when he exercises that freedom through his right to vote, it makes no difference whether that right is constitutional or statutory. That right is an essential part of the freedom of expression recognized by Article 14(1)(a) of the Constitution, especially in view of Sri Lanka's obligations under Article 25 of the International Covenant on Civil and Political Rights and Article 27(15) of the Constitution'. On a slightly different context in the case of *Premachandra v Montegu Jayawickrama and Others*¹⁸, elaborating the nature of the discretion given to a Governor of a Provincial Council under Article 154 (F) (4) of the Constitution, the Court opined that, '[b]y the exercise of the franchise the people of each Province elect their representatives, for the purpose of administering their affairs.' What is significant about this portion of the judgement is that Court did use the word franchise to denote a right vested in the people to elect their representatives who would make decisions that would affect their rights. It was based on this rationale, that the Governor was prevented from exercising his discretion in an arbitrary manner concerning the appointment of a Chief Minister in a Province. The underlying idea was that, the Governor was trusted with his authority to serve the people as a trustee of the power of the people. The nexus between the concept of public trust and franchise was explained in *Azath Salley v Colombo Municipal Council and Others*¹⁹, where the Court opined that, '[t]he concept of public trust, is an accepted doctrine that the resources of the country belong to the people; Sri Lanka's sovereignty is in the people in terms of Article 3 of the Constitution and is inalienable and includes the powers of the government, fundamental rights and the franchise, and the people have committed the care and preservation of their resources to the organs of the State, which are their guardians or trustees.' This clearly epitomizes the fact that, ensuring the right to franchise is linked to the concept of public trust, in that, the rulers of the country as trustees of the sovereignty that belongs to the people are required to ensure that sovereignty is exercised by the people at an election (at whatever tier it may be) by electing their representatives who would make an impact on the daily affairs of their lives,

¹⁷ 2001 I Sri L R 177

¹⁸ 1994 2 Sri L R 90

¹⁹ 2009 1 Sri L R 365

The Lack of financial resources is one strong argument that could be put forward in the postponement of elections. Even if the right of the people to elect their representatives has been acknowledged as a part of the fundamental rights as shown earlier, it is possible to argue that such a right is curtailed by Article 15 of the Constitution by alluding to the financial difficulties involved in allocating resources for conducting an election – ‘a restriction in the interest of national economy’. However, it is to be noted that if such an argument is to be put forward, the fact that lack of financial resources would constitute a ground for the curtailment of the fundamental rights would have to be prescribed by law according to Article 15 (7) of the Constitution. In simple terms, this would require that there be a specific law that allows the postponement of elections due to a lack of financial resources, and in the absence of such a law, such an argument cannot be sustained.

It is also important to point out that there can be no automatic application of Article 15 (7) as well. In considering whether the measures taken to curtail the fundamental rights which are guaranteed under the Constitution are justifiable, the principle of proportionality should be employed. This was decided in the case of *Sunila Abeyssekera v Ariya Rubasinghe, Competent Authority and Another*²⁰, where Justice Amerasinghe held that, ‘[e]xceptions [to Article 14(1)(a)] must be narrowly and strictly construed for the reason that the freedom of speech constitutes one of the essential foundations of a democratic society’. He further noted that, ‘[p]roportionality is, in my view, inherent in Article 15(7) read with Article 155(2) of the Constitution.’ The importance of this decision lies in the fact that, where the proportionality of a decision is put into question, it would be for the decision maker to establish that the decision is proportionate and not for the claimant to prove that it is disproportionate.

In conclusion, it can be stated that, while a literal reading of Article 3 in conjunction with Article 4 (e) of the Constitution may lead to the conclusion that the right to franchise is not available with regard to electing members to a Provincial Council or the Local Government Authorities since it is not specifically mentioned under Article 4 (e) of the Constitution, there is still scope for judicial activism. The judiciary has a crucial role in such situations as identified in the case of *Omalle Sobhitha Thero and Another v Dayananda Dissanayake and Others*²¹ where the Court held that ‘the judicial act of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the Court would adopt particularly in areas such as constitutional adjudication dealing with social rights - Courts are held as finishers, refiners and polishers of legislatures which gives them a

²⁰ 2000 I Sri L R 314

²¹ 2008 2 Sri L R 121

state requiring varying degrees of further processing.’

IV. CONCLUSIONS

As mentioned in *Mohamed Hussain* case, there is no provision in law to keep on extending the period indefinitely. Hence after 19th March 2023, Local Government Authorities will deem to be declared dissolved. Referring to two and a half-year delay in holding local authorities’ election by the government during 2014-2016 period, the court *in Mohamed Hussain* case raised the following concern:

“.... As a result, for a period of two and a half years the voters were deprived of their right to appoint representatives of their choice and the authorities are managed by Secretaries of the Councils who are public servants....”

Section 9(3) of the Pradeshiya Sabha Act provides that, “Where a Pradeshiya Sabha is unable to discharge its functions by reason of the Chairman and Vice-Chairman ceasing to hold office, the Secretary shall, during any period that elapses between the occurrence of the vacancies in respect of those offices and the filling of those vacancies in accordance with the provisions of the Local Authorities Elections Ordinance, have, exercise perform and discharge all the rights, privilege, powers, duties and functions vested in or conferred or imposed on, the Pradeshiya Sabha, the Chairman or Vice-Chairman by this Act or by any other written law.”

One may argue (on behalf of the government) that this section empowers the Secretary of the Pradeshiya Sabha to perform all duties vested with the Pradeshiya Sabha or the Chairman or the Vice-Chairman of the Pradeshiya Sabha where the Pradeshiya Sabha is ‘unable’ to discharge its functions. Therefore, when a Pradeshiya Sabha is dissolved the functions of Pradeshiya Sabha could be discharged through the Secretary. This argument can further be strengthened by referring to the practice adopted by the government during the 2014 to 2016 period where local government authorities were placed under a public servant for more than two and a half-year period until the electoral reforms of local government initiated by the then government were implemented.

However, as discussed above, it should be noted that the court has thoroughly condemned such inordinate delay in the proper functioning of local government authorities as the intention of the parliament in establishing all three local government authorities is to create institutions at the grassroots level, with delegated power and limited autonomy to be run by the representatives of the people. (e.g. *Mohamad Hussain Case*)

The government may possibly take the stance that Franchise and FR come as separate aspects

under the sovereignty of people recognized by the Constitution (article 03). Therefore, right to vote is not a right coming under FR. It may further argue that the people's right to franchise does not extend to Provincial Council and Local Government elections (Article 4(e)) of the constitution (Arguments raised in *Athukorale* case (See the case study)). Therefore, they would argue that right to vote in local government elections is not a right directly coming under the right to franchise.

The government may hence argue that despite the fact that many recent judgements contended that the right to vote at elections and conducting free and fair elections are aspects coming under the rights recognized by Article 12(1) and 14(1); Article 15(7) imposes several restrictions over free enjoyment of these rights such as public order, public, interest of national security "as prescribed by law". Hence fundamental rights as shown earlier can be curtailed by Article 15 of the Constitution by citing the financial difficulties involved in allocating resources for conducting an election which may hinder the vital economic interests of the country. Hence, the right to franchise can also be curtailed in light of the above restrictions.

However, it is to be noted that if such an argument is to be put forward, the fact that lack of financial resources would provide a ground for the curtailment of fundamental rights would have to be prescribed by law according to Article 15 (7) of the Constitution. In simple terms, this would require that there be a specific law that allows the postponement of elections due to a lack of financial resources, and if there is no such prescribed law, such an argument should not succeed.

As there are many criticisms against the electoral system introduced by the 2016 amendment made to the Local Authorities Election Act and some drawbacks of the existing Pradeshiya Sabha system have been identified, the government may suggest some electoral reforms and other changes to purposely postpone the elections. For example, the government has now declared its intention to reduce the number of members in local government authorities from eight thousand (8000/=) to four thousand (4000/=) along with some changes to the powers of the chairman of Pradeshiya Sabha. No doubt this would require several legislative and administrative changes/reforms to the existing system. In case the government commences such actions for electoral reforms, as far as their legislative involvement is concerned, the court would not question such involvement of parliament for electoral reforms as legislative actions are not within the purview of FR jurisdiction. (See as opined in *Mohamed Hussain* Case by Justice Priyasath Dep CJ," ...I find that the legislature by its inaction and the executive including the Minister and others involved in discharging the duties/functions under the Local Authorities (Amendment) Act No. 22 of 2012 have contributed to the delay in holding the

elections. The fundamental rights jurisdiction under Article 126 does not extend to the Legislature...”)

However, as emphasized in the same case, as the state is responsible for upholding fundamental rights of the people, an FR case can be filed against such an initiative of the government on the ground of inordinate delay in conducting the local government election as electoral reforms require a number of *executive* and *administrative* involvements.

Further, the Local Government polls cannot be postponed by the government citing electoral reforms as the law clearly says that Local Government polls cannot be postponed any further once postponed. This means, the Elections Commission is required to announce the dates to hold Local Government polls at any time after September 20th of 2022 as stipulated in the relevant statute.

Election Commission also can take legal action against such a move by the government on the basis of unnecessary delay it causes in conducting elections. Once the election is declared, According to Article 104 of the Constitution, Election Commission has the sole power of conducting the election. Even the other government institutions are under a duty to assist in conducting the election in a free and fair manner. E.g., Article 104B (2)

It shall be the duty of the Commission to secure the enforcement of all laws relating to the holding of any such election or the conduct of Referenda and it shall be the duty of all authorities of the State charged with the enforcement of such laws, to co-operate with the Commission to secure such enforcement.

Moreover, it's the power/duty of the President to ensure that a free and fair election is conducted once an election has been thus declared.

Article [33]. *In addition to the powers and functions expressly conferred on or assigned to him by the Constitution or by any written law, the President shall have the power - (a) to make the Statement of Government Policy in Parliament at the commencement of each session of Parliament; (b) to preside at ceremonial sittings of Parliament; (c) to ensure the creation of proper conditions for the conduct of free and fair elections, at the request of the Election Commission; (emphasis added)*

Parliament would attempt to amend the laws relating to Local Government Authorities by empowering the Minister to postpone the local government election for more than one year period. However, in order to achieve this objective, it is necessary to amend separately the relevant sections of each of the three statutes applicable in this context. Further, certain laws will also have to be passed with retrospective effect! Any act by the Parliament that would

affect the franchise/voting power of the people could easily be challenged at the bill stage under Article 121 of the Constitution. Further, any act by the Parliament that would affect/reduce/change the power vested with the Elections Commission would undoubtedly require a two-thirds majority in the parliament as such an attempt would involve an amendment to the constitution.
