

**EXTRACTS FROM NIHAL SRI AMERESEKERE'S FUNDAMENTAL RIGHTS APPLICATION ON THE
'EXPROPRIATION LAW' : PART 1**

Constitutional Mandates and Supreme Court Determinations

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1. If there are so many people there would be so many ideas. Nevertheless, there is only one Constitution.
2. In terms of the Articles 32, 53, 61, 107 and 165 of the Constitution, those who are elected or selected to hold Public Office enter upon such Office, only upon oath / affirmation to uphold and defend the Constitution, which is a 'Fundamental Duty' mandated under Article 28(a) of the Constitution.
3. The 'rule of law' is the very basis of the Constitution, as had been determined by a 7 Member Bench of the Supreme Court in October 2002 – viz:

➤ *"It had been firmly stated in several judgments of this Court that 'rule of law' is the basis of our Constitution".*

Hence, we are ruled by the law and not by the President, Government, Cabinet or any other.

4. A 7 Member Bench of the Supreme Court in October 2002 determined thus:

➤ *"The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution"*

Hence, if any organ of the Government or body established under the Constitution were to exercise unfettered power then the foregoing Supreme Court Determination would be rendered a 'fiction'

The cogent question arises, as to whether not this is really what has happened in the instant matters before the Supreme Court ?

5. A 7 Member Bench of the Supreme Court in October 2002 determined thus:

➤ *"Therefore, shorn of all flourishes of Constitutional Law and of political theory, on a plain interpretation of the relevant Articles of the Constitution, it could be stated that any power that is attributed by the Constitution to one organ of government cannot be transferred to another organ of government or relinquished or removed from that organ of government; and any such transfer, relinquishment or removal would be an "alienation" of sovereignty which is inconsistent with Article 3 read together with Article 4 of the Constitution".*

➤ *"The transfer of a power which attributed by the Constitution to one organ of government to another; or the relinquishment or removal of such power, would be an alienation of sovereignty inconsistent with Article 3 read with Article 4 of the Constitution"*

6. A 7 Member Bench of the Supreme Court in October 2002 also determined thus:

➤ *"If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted*

with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective - (Cited from Indian Judgment)"

As per Article 121 of the Constitution, the Supreme Court is vested with the sole and exclusive jurisdiction to hear and determine any question relating to the interpretation of the Constitution, *and none other.*

7. Article 4(d) of the Constitution mandates that the sovereignty is vested in the people, which is *inalienable* and shall be exercised and enjoyed, *inter-alia*, with the *fundamental rights* enshrined in the Constitution, *being respected, secured and advanced by all organs of the Government* i.e. *executive, legislature and judiciary.*