

TO GUARD THE GUARDIANS OF THE 1978 CONSTITUTION OF  
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA;

A STATUTE TO GOVERN IMPEACHMENT PROCESS;

A COMPARATIVE STUDY.

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PERMANENT REFERENCE

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## **ABSRTACT**

The judiciary is responsible for the application and interpretation of the laws, ensuring that justice should not only be done but should manifestly and undoubtedly be seen to be done.

In interpreting laws, there should be consistency, treatment of like cases to be treated alike and inequality of parties not to have a bearing or influence on the outcome of the case. In doing so, the judiciary as a whole or at times, individual Justices could be attacked unnecessarily by other branches of government if and when the decisions are not in favour of the political ideologies or could be under attack by media, interested groups or individuals. Justices should always be able to dispense justice without fear or favour and judgements should be public and reviewable. In delivering especially controversial judgements, against the wishes of the other branches of government or interested parties, national or international, Justices should be free from coercion, duress and especially corruption.

Independent and impartial judiciary is essential for the protection of human rights, rule of law, good governance in a democracy. Security of tenure of Justices (the research is only in respect of the Justices of the Court of Appeal and the Supreme Court of Sri Lanka) is a pre-requisite for furtherance of independence of the judiciary in a democracy where concepts such as separation of powers and rule of law is established for furtherance of good governance. Therefore, Justices may be removed from office only in exceptional cases. In such exceptional circumstances, the removal process must comply with the Constitution of Sri Lanka.

To protect the independence of the judiciary, the security of tenure of Justices are guaranteed by the Constitution of Sri Lanka. The removal of Justices from office is permitted only in respect of proved misbehaviour or incapacity of the Justice concerned.

The application of the prescribed procedure of the Constitution has resulted in number of failed attempts of impeachment proceedings against the Justices in Sri Lanka. In the recent history of the Democratic Socialist Republic of Sri Lanka, there

has been instances where two Chief Justices, Justice Neville Samarakoon Q.C and Chief Justice Dr. (Mrs.) Shirani Bandaranayake were placed under the spotlight of impeachment by the executive through the legislature and two unsuccessful attempts of impeachment against Chief Justice Sarath N Silva P.C.

Hence, a crying need has arisen for the introduction of an Act of Parliament to be introduced to prevent Justices being impeached or threatened to be impeached unnecessarily especially for political reasons and to regularize impeachment proceedings where impeachment is warranted.

Therefore, the objective of this research is to recommend the implementation of an Act of Parliament to secure the tenure of Justices through regularization of impeachment procedure. Further the researcher intends to discuss introduction of an independent institution for investigation of allegations and the adjudication by an independent Commission.