

Prognosis of 'Tax Amnesty' of 2003

It defrauded public revenue, causing extensive loss to the State, was inimical to the 'Rule of Law', and peddled crime, fraud, corruption and terrorism and was violative of the Universal Declaration of Human Rights and International covenant on Civil and Political Rights

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- Appeared in person, at the Supreme Court Hearing, to bring out the perverseness of the provisions of the 'Tax Amnesty' of 2003

The 'infamous' "Tax" Amnesty was craftily introduced as a Law under the deceptive 'guise' of the name – "Inland Revenue (Special Provisions) Act No. 10 of 2003". Therefore, in view of such name, it misled everyone to believe that this was an "Income Tax Amnesty" given under the Inland Revenue Act No. 38 of 2000. Like a "Wolf in Sheep's clothing" this 'infamous' "Income Tax Amnesty Law" of 2003 had a Schedule of several other Laws pertaining to matters other than Income Tax, including the following Laws:

- The Customs Ordinance (Chapter 235).
- The Exchange Control Act, (Chapter 423).
- The Import and Export Control Act, No. 1 of 1969.
- The Excise (Special Provisions) Act, No. 13 of 1989.
- The Excise Ordinance (Chapter 52).

The above Laws are enforced not by the Commissioner General of Inland Revenue, but by the Director General of Customs, the Controller of Exchange, Controller of Imports and Exports, Director General of Excise.

But under the 'infamous' Tax Amnesty Law "Declarations" had to be made only to the Commissioner General of Inland Revenue, who gave a "Receipt", as an acknowledgement of a Declaration, and the other State Authorities were expected to act purely on the mere production of such "Receipt". That is, on the production of such "Receipt", the other State Authorities were required to grant immunity, indemnity and pardon for Offences committed under the above Laws enforced by them. This had no meaning at all, nor any nexus.

In fact, under the Customs Ordinance, several other Laws are enforced by the Customs Department . Some of these Laws enforced by the Customs, *inter-alia*, include the following:

- Firearms Ordinance
- Explosives Act
- Obscene Publications Ordinance
- Poison, Opium and Dangerous Drugs Ordinance
- Food Control Act
- Intellectual Property Act
- Tea Control Act / Rubber Control Act
- Antiquities Ordinance
- Fauna & Flora Protection Ordinance
- Fisheries & Aquatic Resources Act.

No "Taxes" are charged under any of the above Laws. In fact, the above Laws prohibit certain Offences to enforce the 'Rule of Law' and to ensure the proper conduct of society. Some of the Offences under the above Laws would include the following, including criminal Offences punishable under the Penal Code:

- smuggling, including smuggling of restricted / prohibited items, such as drugs and narcotics, firearms and security sensitive equipments.
- violations of the provisions of the Intellectual Property Act enacted to protect consumer interests, inter-alia, preventing unlawful/spurious products and/or 'imitations' in the market
- distilling of illicit brew of liquor such as Kasippu, etc and bootlegging,
- dealing in narcotics, cannabis, opium and cultivating of ganja
- import and/or export of items prohibited in the national or public interest
- Exchange Control violations detrimental to the national economy
- Money laundering in connection with narcotics, drug peddling, human trafficking and terrorism, banned under international conventions / treaties entered into by Sri Lanka.

Some of the above Offences are Non-bailable Offences, punishable with fines and imprisonment. Such offences have nothing to do with the word "Income Tax" or "Tax", in any sense of imagination !

Immunity and indemnity from all investigations and prosecutions and an 'Amnesty' had been granted for all Offences under all the above Laws by fraudulently defining the word "Tax" to include "any tax, levy, penalty, including any penalty in respect of any offence, forfeiture or fine, payable or levied under any of the Laws referred to in the above Schedule, included in the 'infamous' "Income Tax Amnesty Law" of 2003 i.e. namely, the Inland Revenue (Special Provisions) Act No. 10 of 2003.

Therefore, those who have committed Offences, including smuggling of drugs, firearms, counterfeit currency, funding terrorism and terrorist activities, distilling kassippu, etc., have been given a complete immunity, indemnity and pardon under the 'deceptive guise' of an "Income Tax Amnesty", in terms of a craftily titled – 'Inland Revenue (Special Provisions) Act No. 10 of 2003'.

As per Section 3 (3) of the 'infamous' "Income Tax Amnesty Law" foreign exchange transactions and inward remittances after 31.3.2002 up to 31.8.2003 'questionably' have been deemed to have taken place prior to 31.3.2002, thereby having "opened the flood-gates" for terrorist funds to have surreptitiously come into the country, after the Inland Revenue (Special Provisions) Act No. 10 of 2003 had been enacted on 17.3.2003 and kept in force until 31.8.2003

In fact, as per Section 10 of the 'infamous' "Income Tax Amnesty Law" of 2003, ample opportunity had been given for these Offences to be perpetrated even in the future, because if any prosecution is not completed for future offences within a period of 5-years, then no such prosecution for such Offences can be maintained or continued with, and such criminal charges have to be dropped by the State after a period of 5-Years. Would any such cases be completed within 5-Years, including the Appeals upto the Supreme Court ?

The above is against all norms in civilised society and is against the 'Rule of Law'. The perverse Law not only granted pardon for such Offenders, which only the President could grant in terms of Article 34 of the Constitution, but also encouraged the growth of such Offenders and the continued perpetration of such frauds in the future, which would have led the country to be a "Banana Republic", with rampant crime, smuggling, gun running, drug peddling, terrorism, etc.

In addition to the above Laws that do not relate to "Income Tax" at all, the following Laws which relate to 'indirect taxes' collected from the consumer public, have also been Scheduled to the, infamous, "Tax Amnesty Law" of 2003, i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, to grant immunity and indemnity from investigation and prosecution and to grant pardon, and to forego the revenues collected on behalf of the State by unscrupulous businesses.

- Turnover Tax Act, No.69 of 1981.
- National Security Levy Act, No. 52 of 1991.
- Goods and Services Tax Act, No. 34 of 1996.

- Stamp Duty Act, No. 43 of 1982.
- Finance Act, No. 11 of 1963.
- Save the National Contribution Act, No. 5 of 1996.

Under the above Laws, Taxes and Levies are collected from the consumer public to be paid to the Government. Such collected Taxes and Levies belong to the government, and cannot be kept back by those persons, who collected such Taxes and Levies from the consumer public. It would be fraudulent misappropriation of 'public funds' to allow such persons to retain such monies collected from the consumer public, without paying such monies to the State. In short is this not plain and simple misappropriation of public property ?

In addition, the 'infamous' "Income Tax Amnesty Law" of 2003 i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, granted a peculiar 'Tax Amnesty' to write-off Income Tax dues from Tax Payers already in the Books of Accounts of the Government. These are not "undisclosed" or "hidden incomes and/or assets". But these are incomes and/or assets discovered by the Department of Inland Revenue and assessed, and forms a part of public revenue. Under the 'guise' of an 'Income Tax Amnesty' these revenues due to the Government have also been written-off. Surely, these are not 'undisclosed incomes and undisclosed assets' to be brought in to the 'tax net' through an "Income Tax Amnesty" ?

An "Income Tax Amnesty" is granted only to persons, who 'had not disclosed' their 'incomes or assets', and therefore such incomes or assets could not have been known to the Inland Revenue Department, and thus could not have been assessed. To permit the disclosure without any taxation of such hitherto 'undisclosed incomes or assets' is indeed an "Income Tax Amnesty".

None of the above, where criminal Offences are being pardoned, and 'public revenue' in the Books of the Government are written-off, can be described as an "Income Tax Amnesty". Is this not sheer hypocrisy and the people taken for a right royal ride ?

Indirect and direct Taxes defaulted and/or collectable by the Government as at 31.12.2002 had amounted to Rs. 68.7 billion. Customs Duties defaulted to be collected is reckoned to have been Rs. 120 billion. Together with Fines imposed by the Controller of Exchange and the Excise Commissioner, the total dues of public revenue payable to the Government or recoverable by the Government as at 31.12.2002 was reckoned to be over Rs. 200 billion. Surely, this is not "undisclosed" income as referred to above, which have been "declared secretly" ! These are 'disclosed public revenues' in the Books of Accounts of the Government; and would be deemed to be part of the Consolidated Fund.

Former Finance Minister K.N. Choksy told the public that the above public revenues collectable as recorded in the Books of Accounts of the Government cannot be collected. However, the relevant State Authorities i.e. the Commissioner General of Inland Revenue, Controller of Exchange, Director General of Excise, Director General Customs and the Auditor General did not confirm that such colossal sums of public revenue of Rs. 200 billion cannot be collected. This estimate reckoned had not been denied and/or controverted, with the correct amounts being adduced.

In terms of Section 2 of 'infamous' "Income Tax Amnesty Law" of 2003, a person could even amend a Declaration he has already made to any of the Revenue Authorities referred to in the Inland Revenue (Special Provisions) Act No. 10 of 2003, and in terms of Section 7 thereof such a person would be entitled to obtain a refund of payments already made. In fact, under the 'infamous' "Income Tax Amnesty Law" of 2003 considerable payments already made to these State Authorities have already been refunded by the State Authorities. Is this not a crime ?

There would be a shortage of funds in the Treasury because such a large amount of public revenue of Rs. 200 billion due to the Government had been written-off. Even if 10% is collected immediately, that would amount to Rs. 20 billion, with which immediate relief could be given to cushion the rising cost of living due to increases of oil prices, to help the poor masses of the country, grant fertiliser subsidies to farmers, and grant relief to those poor people affected by the severe drought now prevailing in the country.

Whilst writing-off Rs. 200 billion of public revenue by this 'infamous' "Tax Amnesty Law" of 2003, the Government budgeted to borrow Rs. 350 billion in the year 2004. Compare this write-off of Rs. 200 billion with the budgeted Capital Expenditure amounts for the year 2004 for the following:

| | Rs. Billion |
|---|-------------|
| ➤ Education and Health | 16.2 |
| ➤ Housing and Water Supply | 14.0 |
| ➤ Lending to Small and Medium Enterprises | 11.0 |
| ➤ Power and Energy | 9.8 |
| ➤ Agriculture, Irrigation, Fisheries | 9.0 |
| ➤ Un-employed Graduates | 3.0 |
| ➤ Fertilised Subsidy | 3.5 |
| ➤ Paddy Purchase Subsidy | 0.9 |

The above is expenditure for 19 million people. Compare this with the Rs. 200 billion write-off granting 'bonanzas' for a very 'few affluent cronies', wrong-doers, law breakers, drug peddlers, terrorists and fraudsters, perhaps of course "lackeys" of the politicians.

The new Bill "Inland Revenue (Regulation of Amnesty)" presented to Parliament by the new Government repeals the above 'infamous' "Tax Amnesty Law" of 2003 of the previous Government completely, and grants only an "Income Tax Amnesty" to those Declarants, who had 'disclosed hitherto undisclosed incomes or assets', under the Inland Revenue Act No. 38 of 2000. This is a proper 'Income Tax Amnesty'.

This also includes Declarants, who had made Declarations during the 2-Month period 1.7.2003 to 31.8.2003, for which period there was no Law for receiving or acting upon Declarations, since the Law i.e. Act No. 31 of 2003, to extend the amnesty period up to 31.8.2003, the closing date for the receipt of Declarations of 30.6.2003, was passed in Parliament only on 21.8.2003, and certified by the Speaker only on 22.10.2003, on which date it became a Law, with no retrospective effect to cover the 2-Months period 1.7.2003 to 31.8.2003; the legal validity of the Declarations during this period already had been challenged and Notices issued by Court.

Only 16,860 Declarations had been received up to 30.6.2003 and the balance 34,945 Declarations had been received during the 2-Months period 1.7.2003 to 31.8.2003. Those who had filed Declaration under the "Income Tax Amnesty Law" of 2003, without Tax Files had been 13,482, giving the lie to the public pronouncement made by Finance Minister K.N. Choksy that 51,000 New Tax Files had been opened !

The President setting out the obnoxious and fraudulent features of the 'infamous' "Income Tax Amnesty Law" of 2003 i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003 forwarded a Cabinet Memorandum on 10.7.2003 requiring such Law to be immediately suspended and thereafter repealed. However, the then Cabinet knowingly and deliberately continued to perpetrate this massive defraud of public revenue by extending the period to receive Declarations by a further 2-Month period, with scant regard for public property and the 'Rule of Law'.

Even the "Income Tax Amnesty" of 2003 under the proposed new law of the new Government will be granted, after the verification of the correctness of the Declarations by the Commissioner General of Inland Revenue or his Officials, to eliminate "fictitious" Declarations suspected to have been made under the 'infamous' "Income Tax Amnesty Law" of 2003 of the previous Government, where the Commissioner General of Inland Revenue was required to accept as correct, without any question, the Declaration made by a Declarant. How is this ever permissible in public administration ?

Another "heinous" provision in the 'infamous' "Income Tax Amnesty Law" of 2003 was that, as per Section 3 of that Law, the grant of full immunity and indemnity from investigation or prosecution for any Offence under any Law Scheduled, in so far as it related to sources of income or assets declared, or the manner in which such assets were funded, notwithstanding anything to the contrary in any other Law i.e. including the Penal Code, as per Section 4 of that Law.

In other words, if the sources of incomes or assets were acquired after murdering a person or extorting money or through fraud or robbery or through any other criminal and illegal means, then full immunity and indemnity was granted from investigations and prosecutions for such illegal and criminal acts, thereby criminalising society. Was this not inimical to the 'Rule of Law' ?

Finally, under the absolute secrecy granted in terms of Section 6 of the 'infamous' "Income Tax Amnesty Law" of 2003 i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, no Commission of Inquiry or Regulator or Court of Law could call for the identity of the Declarant or any information contained in any Declaration, except in Court Proceedings instituted for Bribery or Corruption. But to institute Court Proceedings bribery and corruption investigators would need the details of the Declarations to establish a prima-facie Case.

Therefore, even action on Bribery or Corruption has been thwarted by this 'infamous' "Income Tax Amnesty Law" of 2003. Was this how Bribery and Corruption was to have been fought with the establishment of the Commission to Investigate Allegations of Bribery or Corruption, as far back as October 1994 ?

The Supreme Court in its Determination given on 23.8.2004 on the "Inland Revenue (Regulation of Amnesty) Bill" presented by the new Government, referring to the 'infamous' "Income Tax Amnesty Law" of 2003 i.e. Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended by Act No. 31 of 2003 of the previous Government stated thus:

"It is our opinion, based upon the preceding analysis that, the provisions contained in the Inland Revenue (Special Provisions) Act, No. 10 of 2003, as amended, are inconsistent with Article 12(1) of the Constitution which guarantees to every person equal protection of the law; in that it grants; immunities and indemnities to persons who have contravened the laws that have been referred to and thereby defrauded public revenue causing extensive loss to the State"

The 'infamous' "Income Tax Amnesty Law" of 2003 i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, was prevented from being examined and determined upon by the Supreme Court for its constitutionality by the Attorney General objecting to such examination and Determination, on the premise that a citizen had challenged the Bill after the lapse of the period of 7-days stipulated in the Constitution to challenge a Bill. Upon such objection by the Attorney General, the Supreme Court declined to exercise its jurisdiction and thus a Supreme Court Determination on the constitutionality of the Inland Revenue (Special Provisions) Act No. 10 of 2003 was wilfully prevented.

Had such Supreme Court Bill challenge been duly filed within the 7-day period, then the Supreme Court Determination would have been similar to the Determination given above, i.e. that - *"the provisions of the Bill were inconsistent with the Constitution, and grants immunities and indemnities to persons who have contravened the laws that had been referred to, and thereby defrauded public revenue causing extensive loss to the State"*.

In such circumstances, Parliament could not have and would not have enacted the 'infamous' "Income Tax Amnesty Law" of 2003 i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003 into law.

Now, in the Supreme Court Determination on the new Government's Bill titled "Inland Revenue (Regulation of Amnesty) Bill", the Supreme Court referring to the 'infamous' "Income Tax Amnesty Law" of 2003 i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, had determined, *inter-alia*, that - *"the provisions of that law were inconsistent with the Constitution, and grants immunities and indemnities to persons who have contravened the laws that had been referred to, and thereby defrauded public revenue causing extensive loss to the State"*.

Therefore, it is the Constitutional duty and obligation of Parliament to repeal the 'infamous' "Income Tax Amnesty Law" of 2003 i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended, respecting the Supreme Court Determination forwarded to Parliament on the new Government's "Inland Revenue (Regulation of Amnesty) Bill" to repeal the 'infamous' "Income Tax Amnesty Law" of 2003 of the previous Government. All Parliamentarians are bounden by Oaths / Affirmations to uphold and defend the Constitution and to enact laws in conformity with the Constitution.

Any one who opposes the repeal of the 'infamous' "Income Tax Amnesty Law" of 2003 i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003, is not only violating the Constitution and acting disrespecting the Supreme Court Determination, but also is acting to criminalise society, degrading social and moral values, and colluding in the defrauding of public revenue, causing extensive loss to the State i.e. to the poor people of this country; blatantly contravening the Directive Principles of State Policy and Fundamental Duties enshrined in Chapter VI of the Constitution, which cannot be turned upside down !

The Supreme Court had also pronounced that the 'infamous' "Income Tax Amnesty Law" of 2003, i.e. the Inland Revenue (Special Provisions) Act No. 10 of 2003 was violative of the Universal Declaration of Human Rights and International covenant on Civil and Political Rights.

Article 82 (6) of the Constitution stipulates that –

"No provision in any law shall, or shall be deemed to, amend, repeal or replace the Constitution or any provisions thereof, or be so interpreted or construed, unless enacted in accordance with the requirements of the preceding provisions of this Article."

And Article 84 (3) of the Constitution stipulates that –

"Such a Bill when enacted into law, shall not, and shall not be deemed to, amend, repeal or replace the Constitution or any provision thereof, and shall not be so interpreted or construed, and may thereafter be repealed by a majority of the votes of the Members present and voting"

With the Supreme Court having pronounced that the 'infamous' "Income Tax Amnesty Law" of 2003 was inconsistent with the Constitution, and a fraudulent illegality on the public, causing extensive loss to public revenue, no right or legitimacy, whatsoever, would flow or be derived from such illegality and fraud.