Consultants 21 Limited <consultants21@gmail.com>

Response to your Letters in the media

Consultants 21 Ltd. <consultants21@gmail.com> Sat, Dec 19, 2015 at 1:09 PM
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Consultants 21 Limited PB 119
BUSINESS & MANAGEMENT • FINANCIAL ENGINEERING & RE-STRUCTURING
ECONOMIC CRIME INVESTIGATION • LITIGATION SUPPORT
PRIVATISATION • PUBLIC FINANCE

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BY E-MAIL

19th December 2015

Mr. Todd Schneider
Mission Chief for Sri Lanka
International Monetary Fund (IMF)
14th Floor, Central Bank
30, Janadhipathi Mawatha
Colombo 1.

Dear Mr. Todd Schneider,

I read with interest your Letter published in the media on 7/8 December 2015, pertaining to the Budget, whilst the Committee Stage Debate thereon was in process in Parliament. Nevertheless, I thought, that I should wait until such Parliamentary proceedings were over, before I responded.

I have been somewhat intrigued by the endeavours of IMF to micromanage, not only to advocate, but even to putsch for reforms, *sans* any understanding of ground realities.

1. I have appallingly witnessed in 1992 a Deputy Secretary Treasury, getting the Plantation Companies' Management Agreements executed in haste, to carry proof thereof to the IMF discussions in Washington, which I was made to understand was to comply with conditionalities. The 'clustering' of the Plantations Companies had been devoid of rationale and economic scales and geographical realities, resulting in the present precarious predicament the sector is in.

   Management Agreements were to have been awarded on invitations called therefor from both foreign and local expertised Companies. Nevertheless on an *ad hoc* decision, selection had been limited to local Companies only, some even without any experience in the Plantation Sector, whilst it is known that through strategies foreign Companies are in fact involved in the Plantation Management Sector, with the impugned process having excluded reputed foreign Plantation Companies with expertise and experience.

2. As an Advisor to the Ministry of Finance, at the request of then Secretary, Ministry of Finance, I once had the experience of having to meet an IMF Review Mission. I was appalled to be confronted with a list of privatisations, with committed dates of conclusion, with probing inquiries made on the progress of each one of them. I asserted that such target dates ought not have been committed to, and privatization ought not be so rushed *sans* strategies and regulatory frameworks, with safety nets to protect the interests of all stakeholders, including the public. I relieved myself of being an Advisor to the Ministry of Finance.

   I verily believe that consequently, devoid of pragmatic realities, several privatizations had been rushed through due to such conditionalities, causing loss and damage to the State and the public, and more importantly negatively eroding, without building-up, the public confidence in privatization, which as a consequence has been a major set-back to growth and development.

3. For instance, majority 51% Shareholdings of profitable Plantation Companies were sold at ridiculous values, on a camouflaged *'strike-price formula'*, so named to mislead, whereby 51% of the controlling Shareholdings of 6 profitable Plantations Companies had been sold to the Plantation Management Companies, at the lowest price on the fragmented sale of 20% of the Shareholdings of the respective Plantation Companies in the Stock Market. The lowest price obviously had to be the nominal value of Rs. 10/- per Share, at which ridiculous price the 51% majority Shareholdings of the profitable Plantations Companies consequently had been sold; whereas the 51% majority Shareholdings, which possession and management control, ought have been sold at a price even higher than the price at which the 20% fragmented Shareholdings had been sold.

Even the 51% majority Shareholdings was a camouflage with convertible Debentures, whereby the majority Shareholdings of these 6 profitable Plantations Companies acquired had varied from 60.8% to 71.2% at total sale price of only Rs. 787.3 Mn., with an estimated loss in 1995 to the State and public of over Rs. 3500 Mn., *(today's value Rs. 30,000 Mn.)*. Quite intriguingly, Representatives of the World Bank and ADB had been participating at Public Enterprise Reform Commission Meetings during privatisations, as evidenced by the Minutes of Meetings. - *IMF, World Bank & ADB Agenda on Privatisation – Pillage of the Plantations in Sri Lanka*

4. One such Plantation Company had been sold with effective 71.2% majority control, with the conversion of the convertible Debentures, to a joint-venture Company, between a Sri Lankan Company and a Singaporean Company, which had been substantially owned by the ADB Consultant to the Government on this very Plantation privatization process. Another Plantation Company had been sold at the nominal value of Rs. 102 Mn., and re-sold immediately for Rs. 200 Mn., to a Malaysian Party, who had advanced the Rs. 102 Mn., and thereafter within 4 months sold for Rs. 400 Mn., and with this Plantation Company sold having had adequate liquidity, had purchased another profitable Plantation Company for Rs. 102 Mn., with grave and serious conflicts of interest and violation of the law. - *IMF, World Bank & ADB Agenda on Privatisation – Pillage of the Plantations in Sri Lanka*

5. Other privatisations had been failures and the Government was compelled to repossess them under the Rehabilitation of Public Enterprises Act No. 29 of 1996, and thereafter compelled to seek the reversal of the privatization of Shell Gas and Air Lanka, whilst some have closed due to failure. *IMF, World Bank & ADB Agenda on Privatisation – Dubious Deals' in Sri Lanka – What a Paradox*

   Sri Lanka Insurance, including majority controlling interest of Lanka Hospitals, and the monopoly of Colombo Port Bunkering privatizations, were both annulled as unlawful, illegal and fraudulent by the Supreme Court. Sri Lanka Insurance had been sold for Rs. 6000 Mn., with a consequent Claim for refund of Rs. 2000 Mn., whilst value reckoned in 2003 had been over Rs. 30,000 Mn., *(today's value reckoned Rs. 85,000 Mn.)*. The professional compensation to the Chartered Accountants, who handled this privatization at today's value had been over Rs. 800 Mn. - *IMF, World Bank & ADB Agenda on Privatisation – Sri Lanka Insurance Privatisation - Annulled as Unlawful & Illegal by Supreme Court - IMF, World Bank & ADB Agenda on Privatisation – Colombo Port Bunkering Privatisation – Annulled as Illegal & Fraudulent by Supreme Court*

   In the case of Lanka IOC cognizable Subsidies claimed on an erroneous formula had to be curtailed and stopped, whilst the sale, itself, had been violative of the conditions of the Cabinet Approval, and US $ 30 Mn., to have access to 'dealer owned and dealer operated' Retailers had been ignored. - *IMF, World Bank & ADB Agenda on Privatisation – Dubious Deals' in Sri Lanka – What a Paradox*

   Puttalam Cement privatisation had been held to be fraudulent by the Commercial High Court, the Textile Mills privatisation had been failures, and the monopoly Duty Free Facility at the International Airport was sold, whereas it ought have been leased periodically on royalties, with anticipated growth of passenger traffic, and knowing the norm of gross profits in this sector to be in the range of 50% to 55%. - *IMF, World Bank & ADB Agenda on Privatisation – Dubious Deals' in Sri Lanka – What a Paradox*

6. One of the issues which has been referred to is VAT. You ought examine the Report on the colossal VAT fraud to Parliament in July 2006 by the Auditor General in a Special Project Audit on the Management of Government Tax-Revenue in terms of Article 154 (6) of the Constitution. The National Audit Office of UK had issued a Report in March 2004 on VAT frauds in the UK, and so also the International VAT Association Report of March 2007 presented to the European Commission dealing with massive VAT frauds. The Presidential Commission Report on the VAT fraud had not been made public, due to the then ongoing criminal Cases, which were pending, which are now believed to be concluded. This Report would be quite revealing.

In the mid-1980s a similar fraud took place at the Treasury, where exporters were refunded by cheque import duty paid in respect of exported articles manufactured with such import duty paid items. A sum reckoned in the region of Rs. 3000 Mn., *(today's value Rs. 90,000 Mn.)* had been paid by the Treasury, as import duty refunds on 'fictitious exports', based upon fabricated export documentations, including those from respective Banks. This resulted in the scrapping of such scheme and the introduction of a Bank Guarantee Scheme at the point of import, with such guarantees being cancelled upon re-exports. *Transparency & Public Accountability Fiscal Mismanagement & Lack of Public Accountability Case Study - Sri Lanka, a Country under the purview of IMF, World Bank, ADB*

I see no rationale in public officers and resources being expended in collecting taxes, and the same resources again being deployed to refund taxes, with additional impediment and delay to the tax payers. Hence, when VAT Schemes in the UK and EU had led to cognizable frauds, and so also in Sri Lanka, is it not best that a structured indirect tax be enforced to be deducted as expense by the person so charged, thereby mitigating, if any, the criticism of cascading, which could be rationalized to be equitable ?

7. Tax Holidays, including Import Duty Concessions ought be given where deemed necessary for achievement of certain targets, and for a period in which the investment would be recovered at an allowable rate of interest. The quantum of State Revenue so lost annually should be known, to consider against the benefits, and as to whether the benchmarks agreed upon had been achieved, and if not, such Tax Holidays, including Import Duty Concessions, appropriately adjusted for.

8. Though commenting microscopically on the foregoing, IMF was indifferent to an all-encompassing amnesty granted in 2003 in the guise of a Tax Amnesty, which effectively granted amnesties for criminal activity, with confiscated prohibited items having to be returned, with the taxes to be written-off being in the range of Rs. 200 Bn., as had been reported. The Statute which led to a controversy was repealed thereafter, with the Supreme Court having pronounced, *inter-alia*, thus:

> *"It is inimical to the rule of law, violative of the 'Universal Declaration of Human Rights and International Covenant on Civil & Political Rights', and it had defrauded public revenue, causing extensive loss to the State"*

I attach copy of the Supreme Court Pronouncement thereon. IMF was indifferent thereto. *Transparency & Public Accountability Fiscal Mismanagement & Lack of Public Accountability Case Study - Sri Lanka, a Country under the purview of IMF, World Bank, ADB*

9. I challenged in the Supreme Court the Appropriation Bill 2008, having been encouraged to do so by the present Finance Minister, then a Member of the Opposition. Prime Minister, then Leader of the Opposition, supported me in getting a Member of the UNP, as another Petitioner, represented by a President's Counsel, a former Attorney General. I attach a copy of the Supreme Court Special Determination, which reveals fiscal mismanagement, castigated by the Auditor General, with the Supreme Court pointing out of a 'budget within a budget'. IMF was indifferent thereto. - *Transparency & Public Accountability Fiscal Mismanagement & Lack of Public Accountability Case Study - Sri Lanka, a Country under the purview of IMF, World Bank, ADB*

10. Cited below are the Exports, Imports, Remittances, Reserves & External Debt for the last 10 Years:

	Exports	Imports	Worker Remittances	Official Reserves Year End	External Debt Year End
	US $ Mn.	US $ Mn.	US $ Mn.	US $ Mn.	US $ Mn.
2005	6,347	8,863	1,918	2,735	11,354
2006	6,883	10,253	2,326	2,837	11,981
2007	7,640	11,297	2,502	3,508	13,990
2008	8,111	14,091	2,917	2,561	15,107
2009	7,085	10,207	3,332	5,357	18,662

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2010	8,626	13,451	4,116	7,197	21,438
2011	10,559	20,269	5,114	6,749	32,748
2012	9,774	19,190	5,986	7,106	37,098
2013	10,394	18,003	6,407	7,495	39,905
2014	11,130	19,417	7,017	8,208	42,989
	86,549	145,041	41,635		

A 'Voluntary Survey' without any Bank certification had been carried out to ascertain the export proceeds repatriated back to Sri Lanka by quarter ended 31.12.2004 in respect of the exports made during the quarter ended 30.9.2004. The facts revealed by such Survey as reported by the Controller of Exchange had been as follows, disclosing admittedly a non-repatriation of 20%. This being a 'Voluntary Survey' without Bank certification, the Finance Minister reckoned a non-repatriation of 30%. Obviously the gap between exports and imports is cognizably reduced by Worker Remittances:

	Non-BOI		BOI		Total	
		%		%		%
No of Responses to the Questionnaire	1,247	56%	307	37%	1,554	51%
No of Questionnaires returned undelivered	161	7%	33	4%	194	6%
No of Responses stating that they had not exported	136	6%	0	0%	136	4%
No of Responses not yet received	686	31%	484	59%	1,170	39%
Total Number of Exporters	2,230	100%	824	100%	3,054	100%

The answers in respect of Non-BOI exporters, as per the responses to the Questionnaire circularised, as reported, had been as follows:

	(In US$)	%
Repatriated to Sri Lanka	545,056,687	80.2%
Used Abroad for Foreign Expenditure	61,706,203	9.1%
Used Abroad for Foreign Loan Repayments	2,855,619	0.4%
Retained in Commercial Banks Abroad	445,354	0.1%
Value of Short Shipments	4,263,952	0.6%
Defaults by Foreign Buyers	434,842	0.1%
Export Proceeds due form Foreign Buyers	64,513,075	9.5%
Total	679,275,733	100.0%

IMF Annual Reports on 'Exchange Arrangements & Exchange Restrictions', reveal that IMF Article VIII Status Countries do have export proceeds repatriation requirements, whilst some countries even have export proceeds surrender requirements. Even China, an IMF Article VIII Status Country, with the largest foreign exchange reserves in the world, enforces export proceeds repatriation requirements. So does IMF Article VIII Status Countries, such as, Malaysia, Thailand, etc., whilst IMF Article VIII Status Countries, such as, India and South Africa not only enforce export proceeds repatriation requirements, but also surrender requirements. *Transparency & Public Accountability Fiscal Mismanagement & Lack of Public Accountability Case Study - Sri Lanka, a Country under the purview of IMF, World Bank, ADB*

11. As far back as 1981, in addition to my professional practice, I rendered services on an honorary basis, as a part-time Finance Director of the all island Sri Lanka Transport Boards, appointed to a Special Executive Board by President J.R. Jayawardene. Then Secretary Treasury, Dr. W.M. Thilakaratne intimated that I could have Subsidies of around Rs. 300 Mn., per year. (*today's value over **Rs. 25,000 Mn.***). Nevertheless, I managed the finances of the all island operations, which achieved 93% of Time Table Scheduling, without drawing any Subsidies from the Treasury. I resigned after two years due to pressure of my professional practice, leaving Fixed Deposits of over Rs. 80 Mn. (*today's value over **Rs. 3,600 Mn***.) I dispensed with 4 Consultants from Crown Agents of UK provided under a World Bank Development Assistance Program, thereby saving US $ 1.9 Mn., *(today's value around Rs. 275 Mn.*). Commendations by international visiting missions are given in the below-scanned Letter dated 8.6.1983 from the Director, Public Enterprise Division, Treasury:

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Treasury No. } PE1/COMPAC.
Your No. }

GENERAL TREASURY

Colombo } 1983 June 8.

Mr.Nihal Sri Ameresekera,
167 B, Sri Vipulasena Mawatha,
Colombo 10.

Computerisation of information - Sri Lanka Central Transport Board

I refer to an extract of a mission report 17th November to 9th December, 1982, of Mr.P.W.P.Browne, Inter-regional Adviser on Information Management and the use of computers in Public Administration which reads as follows -

"Useful computerisation of an organisation can only be carried out with the active participation and desire of management. Management must feel the need for better information and support the search for it via computerisation. They must understand what sort of improvements in information, computerisation can bring about. The only manager that I encountered during my mission who seemed to have such an understanding was the Director (Finance) of the Sri Lanka Transport Board, (Mr.Nihal Sri Ameresekere) who developed and installed some 10 computerised control systems in about one year".

An United Nations supported International Advisory team, consisting of Mr.Praxy Fernandes, (Team Leader) who was formerly the Secretary, Ministry of Finance, Government of India and presently UN Team Leader to the International Centre for Public Enterprises, Mr.Philip Neck, The Director, ILO Regional Office, India, Dr.Toni Bennett, UN Adviser, Ministry of Public Enterprises, Malaysia, Mr.Raja Gomez, Assistant Director, Commonwealth Secretariat and Mr.Yashieko Inoue, ILO Regional Adviser on Productivity, in their study titled "Government and Public Enterprises in Sri Lanka - A Study in relationships" have said

"The Finance Director of the SLCTB has introduced an information system which enables top management to assess continuously the performance of each bus depot and indeed of each vehicle in the fleet. This system covers information on vehicle utilisation, load factor, fuel consumption, tyre consumption, earnings per road kilometre, expenditure per road kilometre and a variety of other productivity factors. This information has been computerised and this enables the top management of SLCTB to know what is going on".

2. Since you have left the public sector, a statement for posterity of your experience in this field will be very valuable. I wonder whether you could prepare a note, which I intend to give wide exposure at senior decision making levels, about how you got about achieving this task indicating the information providing system that prevailed, the strategies and tactics adopted, the difficulties encountered, the achievements and failures and suggestions for the future.These elements are mere suggestions for you are welcome to draft this note in the way you wish.

M.Sornasundram,
Director,
Public Enterprises Division.

A couple of years back, I listened to a Key Note Address by your Predecessor, Dr. Koshy Mathai. His words were like music in the ears, that Sri Lanka's economy was doing very well, with a promising future. This to my understanding is different to what you opine. Was not IMF present in Indonesia during Suharto's regime, and in the Philippines during Marcos of regime ? Dr. Mahathir Mohamad of Malaysia was a Medical Doctor and Lee Kuan Yew of Singapore was a pragmatic self-moulded persons. I know not of any country which was so developed by the IMF.

Yours sincerely,

Nihal Sri Ameresekere, F.C.A. F.C.M.A., C.M.A., C.G.M.A., C.F.E.
Associate Member, American Bar Association
Sri Lanka Co-ordinator, International Association of Anti-Corruption Authorities
Director, International Consortium on Governmental Financial Management

cc: Ms. Eteri Kevintradze, IMF Country Manager
Ms. Shamini Cooray, IMF Officer, Sri Lanka

Hon. Ravi Karunanayake, M.P., Minister of Finance
Dr. R.H.S. Samaratunga, Secretary, Ministry of Finance
Mr. S.R. Attygalla, Deputy Secretary to the Treasury

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3 attachments

1 - Supreme Court Pronouncement of 2004.pdf
2045K

2 - Supreme Court Determination of 2008.pdf
476K

3 - BOOKS FLYER.pdf
2420K

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

Reference under Article 129(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka by Her Excellency the President.

S.C. Reference No. 1/2004

BEFORE :

Sarath N. Silva	- Chief Justice
Shirani A. Bandaranayake	- Judge of the Supreme Court
H.S. Yapa	- Judge of the Supreme Court
J.A.N. de Silva	- Judge of the Supreme Court
Nihal Jayasinghe	- Judge of the Supreme Court

COUNSEL :

P.A. Ratnayake, President's Counsel, Additional Solicitor General, with U. Egalahewa, State Counsel, and Riad Ameen, State Counsel, for Attorney General.

K. Kanag-Iswaran, President's Counsel, with M.A. Sumanthiran

Ben Eliyathamby, President's Counsel, with D.K. Rajakaruna and Mohideen

Cyrene Siriwardane

were granted permission to appear under Article 134(3) of the Constitution.

Nihal Sri Amerasekera present in person

Court assembled for hearing on 17.03.2004 at 10.15 a.m.

The President has by a communication dated 08.03.2004 invoked the consultative jurisdiction in terms of Article 129(1) of the Constitution by referring questions of law and fact for an opinion to be expressed by this Court, in relation to the Inland Revenue (Special Provisions) Act, No. 10 of 2003 as amended by Act, No. 31 of 2003.

Learned Additional Solicitor General took up the position that in terms of Article 80(3) of the Constitution and in view of the previous decisions, this Court cannot entertain the questions referred to by the President.

Article 80(3) of the Constitution is in the following terms:

> "Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed thereon no Court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever."

The questions, it is to be borne in mind, were raised in terms of Article 129 of the Constitution which states that,

> "If at any time it appears to the President of the Republic that a question of law or fact has arisen or is likely to arise which is of such nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer that question to that Court for consideration . . . ."

The consultative jurisdiction granted in terms of Article 129 of the Constitution confers upon the President the power to refer to the Supreme Court any question of law or fact which is of "public importance", as the President may think fit. The Supreme Court of India, held that in terms of Article 143 of the Constitution, which provision is identical to

Article 129(1)of our Constitution, that the President's opinion as to the questions being of public importance cannot be canvassed. The Court considering a preliminary objection that the questions raised by the Indian President are not related to his powers, duties and functions conferred on him, stated that,

> "In our opinion, this contention is wholly misconceived. The words of Article 143(1) are wide enough to empower the President to forward to this Court for its advisory opinion any question of law or fact which has arisen or which is likely to arise, provided it appears to the President that such a question is of such a nature or of such public importance that it is expedient to obtain the opinion of this Court upon it. (*In re,* Under Article 143, Constitution of India [1965 SC pg. 745 at pg. 755].")

Furthermore it is to be noted that in India the President has invoked the consultative jurisdiction of the Supreme Court by seeking an opinion on the Constitutionality of an existing law (*In re,* The Delhi Laws Act, 1912 [1951] SCR 747). In this instance the President referred to the Supreme Court, questions regarding the Delhi Laws Act of 1912, Extension of Laws Act of 1947 and States (Laws) Act of 1950. It is to be noted that the said reference was made to the Supreme Court several years after the enactment of these laws, in 1951.

We are of the view that the consultative jurisdiction exercised in terms of Article 118(d) read with Article 129 of the Constitution is distinct and different from the ordinary jurisdiction of this Court and that the ouster clause contained in Article 80(3) is not a bar to the Court expressing an opinion on a question of law referred to it by the President.

The questions raised in the reference are all based on the Inland Revenue (Special Provisions) Act, No. 10 of 2003 as amended by Act, No. 31 of 2003. The cumulative effect of the questions is that,

(a) whether the provisions contained therein are inconsistent with Article 12(1) of the Constitution which requires all persons to be treated equally before the law;

(b) (i) whether a pardon could be given by way of an Act such as Inland Revenue (Amendment) Act to a person who is guilty of an offence;

(ii) whether there has been an alienation of judicial power;

(c) whether there has been misappropriation of public funds held in trust for the benefit of the people resulting in an erosion of the Rule of Law.

The Inland Revenue (Special Provisions) Act, No. 10 of 2003 was introduced, as stated in its long title, for the following purpose:

(a) to enable persons who have not furnished a return of income and assets prior to March 31, 2002 to make a declaration in respect of their income.

(b) to make provision for the grant of certain concessions to declarents and non-declarents;

(c) to indemnify such persons against liability to pay certain taxes and against liability from investigations; prosecutions and penalties under specified statutes with a view to securing the future compliance of such persons with the prevalent Tax Laws.

Learned Additional Solicitor General submitted that the tax amnesty, which was granted in the aforementioned form by Act, No. 10 of 2003 was due to a serious deficiency of the present taxation system, in that it had only a few taxpayers. A large number of potential taxpayers had evaded the payment of tax over several decades and even some

of the existing taxpayers had suppressed the correct income and had only disclosed a part of their income for the purpose of tax. According to learned Additional Solicitor General, attempts over the past several decades to bring these tax evaders to pay to the Inland Revenue had been futile and even the previous amnesties offered to such tax evaders had not brought in the expected results. Therefore the rationale for Act, No. 10 of 2003 was to bring those resorting to tax evasion to make a voluntary declaration of all their assets and income and by that to increase the number of persons who could be made liable for future taxation purposes.

It was also stated that a further objective of Act No. 10 of 2003 was to provide an incentive to the existing taxpayers so that they could make a complete disclosure, of their income and assets. By an amnesty, according to the learned Additional Solicitor General, both the Government and the community would be benefited and would increase the future tax revenue of the Government as the number of people who are liable for taxation would be increased. It was pointed out that, to achieve this objective it is necessary to offer sufficient incentive, which are attractive to such defaulters. In the process, according to the learned Additional Solicitor General, the existing taxpayers were also allowed to make a complete disclosure of their income and assets.

However, it is to be noted that, in doing so, a special class of persons have been created who would be entitled to benefits, denied to others who had complied with the law and paid their dues.

The Act No. 10 of 2003 makes provision for persons who have not furnished a return of income and assets prior to March 31, 2002 to make a declaration.

Sections 4(2) and 4(3) of the Act No. 10 of 2003 provide that if a person has made a declaration in terms of Section 2 of the Act for the period ending on or before March 31, 2002, and if there is any tax in dispute, the tax specified by such person as being the amount of tax payable by him shall be accepted by the relevant authority. Moreover according to Section 4(3) if a person who has not made a declaration in terms of Section

2 for the period ending on or before March 31, 2000 then the amount of tax specified by such person as being the amount of tax payable by him should be accepted by the relevant authority.

An honest taxpayer who took pains to submit a tax return elaborating his income and expenditure is treated differently from the person who now submits a declaration in terms of Section 2 read with Sections 4(2) and 4(3) incorporating amounts which he decides that should be paid as taxes. With regard to an honest tax payer the amounts to be paid as tax is finally decided by the Assessor of the Department of Inland Revenue whereas a person submitting a declaration in terms of Sections 2 read with 4(2) and 4(3), would himself decide the amount that should be paid as taxes.

Although recent writings have conceptually expanded the Rule of Law, the basic meaning attributed by Dicey yet retains its value and cogency.

Discussing the Rule of Law, which forms a fundamental principle of the Constitution, A.V. Dicey, (Introduction to the study of the Law of the Constitution, 9th Edition, 1948 pg. 202) stated that,

> "That 'rule of law' . . . has three meanings, or may be regarded from three different points of view.
>
> It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; . . .

> It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law Courts; . . . ."

It is thus apparent that there cannot be any kind of unequal treatment and all classes of people should be subjected to equal treatment.

The immunity granted in terms of the Inland Revenue (Special Provisions) Act, No. 10 of 2003 is not restricted to persons who have not made declarations or had evaded paying tax under the Inland Revenue Act. Sections 2 and 3 of the said Act refers to the declaration that has to be made to the Commissioner General and the immunity granted to such persons, respectively under any law which is specified in the schedule to the Act. Sections 2 and 3 of the Act states that,

> "Section 2 -
> Any person whether in Sri Lanka or abroad, who though required under any law for the time being in force, which is specified in the **schedule** hereto . . . ."

> "Section 3 –
> Any person making a declaration in terms of Section 2, shall enjoy full immunity from liability to pay tax under any law specified in the **schedule** hereto . . . ."

The schedule to the Act includes the following Acts which could be considered as been pivotal to the country's revenue, public finance and fiscal control. They are,

(A) The Customs Ordinance;
(B) The Excise Ordinance;
(C) The Turnover Tax Act;
(D) The National Security Levy Act;

(E) The Goods and Services Tax Act;

(F) The Stamp Duty Act;

(G) The Finance Act;

(H) The Save the Nation Contribution Act;

(I) The Exchange Control Act;

(J) The Import and Export Control Act.

Thus it is obvious that the immunity granted by the Inland Revenue (Special Provisions) Act, No. 10 of 2003, although contained in a law that bears that title and includes time periods particularly applicable to Inland Revenue, is not restricted to Inland Revenue alone, but brings in a number of other important areas such as Customs, Excise and even the Goods and Services Tax, that have been in force at the time the said Act was enacted. Some of the laws such as Customs, it was submitted, attracts several other subject areas and therefore would include, matters such as Revenue Protection Act and the Air Navigation (Customs Regulations). Additionally, this has also included Value Added Tax, Exchange Control Act, Import and Export Control Act, Immigrants and Emigrants Ordinance, Board of Investment Act and the like.

The effect of the aforesaid provisions is the creation of two segments of tax payers and persons within the country. One being the law abiding honest person who has diligently complied with laws relating to revenue, public finance and fiscal control and submitted the requisite declarations and returns and paid what is due. The other would be the person who has been evading tax for several years and who has not complied with the salutary requirements of laws relating to revenue, public finance and fiscal control and who would now benefit through the immunity granted by the Inland Revenue (Special Provisions) Act, No. 10 of 2003. Section 3 referred to above, grants 'full immunity from liability to pay tax under any law specified in the schedule hereto' and the immunity would be enjoyed from liability from any investigation or prosecution for any offence under any law specified in the schedule to the Act. Thus the Act has made clear provisions to create two categories and through such classification has favoured one

category by allowing them to enjoy full immunity not only from liability to pay tax, but also from any investigation or prosecution. There again the immunity is not limited to the Inland Revenue Act, but extends as referred to earlier, to a number of other subject areas.

The grant of such immunity in terms of the provisions contained in Act, No. 10 of 2003, it was submitted, had a serious adverse impact on the revenue generated by way of taxes.

It is to be borne in mind that public revenue is held in trust for the People of Sri Lanka who cannot be denied its benefit. Any exemption that is granted should be strictly in compliance with Article 12(1) of the Constitution.

The schedule to Act No. 10 of 2003, lists different statutes as referred to earlier, such as Turnover Tax, Goods and Services Tax, National Security Levy Tax and the like. Revenue has been collected from the general public by various companies and persons under these statutes as agents of the State; hence kept in trust for the benefit of the People. The revenue thus collected should be remitted to the State. However, Act No. 10 of 2003 has permitted those companies and persons to retain the money collected from the public on behalf of the State and thereby condoned misappropriation of public funds.

Our attention was also drawn to the amounts due as arrears of taxes in respect of laws administered by the Commissioner General of Inland Revenue as at 31.12.2002. The Performance Report of the Commissioner General of Inland Revenue for the year 2002, states that the taxes in arrears as at 31.12.2002 is Rupees 68,723,222,261/- which includes Rupees 19,027,057,007/- being Goods and Services Tax, Rupees 10,299,012,135/- as Turnover Tax and Rupees 7,029,100,036/- as National Security Levy. This would reflect the loss of public revenue in relation to tax recoverable by the Commissioner General of Inland Revenue. No estimate has been made of the losses

resulting from the immunity granted in respect of custom duty, excise duty and other dues.

The right to equality is statutorily enshrined in terms of Article 12 of our Constitution and is a component of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (Article 2). It provides for all persons to be equal before the law and to be entitled to equal protection of the law. This guarantee of equal protection of the law is an injunction issued by the Constitution to the Legislature against enacting discriminatory laws. However it does not preclude any distinction based on classification of persons for the purpose of legislation and every differentiation cannot be treated as discrimination. There are instances where classifications have been permitted. A permissible classification postulates two conditions that have to be satisfied, developed through judicial dicta and crystallised in the decision in Ram Krishna Dalmia v Tendolkar (AIR SC 538) in the following terms:

(a) that the classification must be founded on an intelligible differentia which distinguish persons that are grouped in from others who are left out of the group; and

(b) that the differentia must bear a reasonable, or a rational relation to the objects and effects sought to be achieved.

What it attempts to prevent is discrimination between any two persons where they are similarly situated. As pointed out by Durga Das Basu,

> "When a law is challenged as denying equal protection, the question for determination by the Court is not whether it has resulted in inequality, but whether there is some difference which bears a just and reasonable relation to the object of legislation."

Moreover in Kunnathat v State of Kerala [(1961) 3 SCR 71] and in Khandige v Agricultural I.T.O. [(1963) SC 591] it was stated that Taxation Law is no exception to the doctrine of equal protection.

As pointed out earlier, Sections 2 and 3 of the Act, No. 10 of 2003 provide full immunity, not only from liability to tax, but also from any investigation or prosecution from any offence under any law specified in the schedule. Ironically, the basis of the differential treatment as conferred by the provisions of Act No. 10 of 2003 is the non compliance, the violation and evasion of taxes and duties payable under laws that are pivotal to the country's revenue, public finance and fiscal control such as the Inland Revenue Act, the Turnover Tax Act, the Goods and Services Act, the Stamp Duty Act, the Customs Ordinance, the Excise Ordinance, the Exchange Control Act and the Import and Export Control Act. These laws have been enacted from time to time; the integrity and the strength of the legal regime established thereby is dependent on due compliance and effective enforcement. The non compliance and violation of and the evasion of taxes and duties payable under the salutary provisions of these laws could never be a permissible basis to grant the sweeping indemnities from liability and immunities as contained in Sections 2 and 3 of Act, No. 10 of 2003. Hence, the indemnities from liability and immunities thus granted would not only erode the equal protection of the law guaranteed by Article 12(1) of the Constitution, but also be antithetic to the Rule of law being the underlying basis of our Constitution.

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. In view of the above position it would not be necessary to consider the other questions referred to earlier.

We wish to place on record our appreciation of the submission made by Additional Solicitor General, Mr. Kanag-Iswaran, President's Counsel, Mr. Ben Eliyathamby, President's Counsel, Ms. Cyrene Siriwardane Attorney-at-Law and Mr. Nihal Sri Amerasekera.

Sgd.
Sarath N. Silva,
Chief Justice.

Sgd.
Shirani A. Bandaranayake,
Judge of the Supreme Court.

Sgd.
H.S. Yapa,
Judge of the Supreme Court.

Sgd.
J.A.N. de Silva,
Judge of the Supreme Court.

Sgd.
Nihal Jayasinghe,
Judge of the Supreme Court.

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

S.C(SD) 3 & 4/2008

"APPROPRIATION BILL 2008"

PRESENT	Sarath N Silva,	Chief Justice
	R.A.N.G.Amaratunga	Judge of the Supreme Court
	P.A.Ratnayake	Judge of the Supreme Court

S.C(SD) 3/2008 Nihal Sri Amarasekera - Petitioner in person

S.C(SD) 4/2008 T.L.B. Hurulle - Petitioner

COUNSEL Y.I.W. Wijayatilake, P.C., A.S.G., with Janak de Silva, S.S.C., Maithree Amerasinghe, S.C., for the Attorney General

Shibly Aziz, P.C., with Anandi Cooray, Anslam Kaluarachchi, Sabrina Ahamed for the Petitioner (No. 4/2008)

Court assembled for hearing at 10.30 a.m on 24th October 2008

The above petitions presented in terms of Article 121(1) of the Constitution were taken up for hearing and considered together since it was agreed that the grounds of constitutionality raised in the petitions were identical.

The Petitioners in their submissions urged specific issues in respect of clauses 2 and 6 and contended that the Bill is inconsistent with Articles 148 and 150 of the Constitution.

Article 148 reads as follows :

"Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by Parliament or of any existing law."

The Petitioners submitted that "full control over public finance" vested by this Article would form part of the legislative power of the People exercised by Parliament in trust for the People in terms of Article 4(a) of the Constitution.

It was further contended that funds of the Republic not allocated by law to specific purposes form one Consolidated Fund in terms of Article 149(1) of the Constitution and that withdrawals from it have to be in terms of Article 150(1) and (2) of the Constitution that read as follows :

> "*(1) Save as otherwise expressly provided in paragraphs (3) and (4) of this Article, no sum shall be withdrawn from the Consolidated Fund except under the authority of a warrant under the hand of the Minister in charge of the subject of Finance.*
>
> (2) *No such warrant shall be issued unless the sum has by resolution of Parliament or by any law been granted for specified public services for the financial year during which the withdrawal is to take place or is otherwise lawfully charged on the Consolidated Fund."*

Paragraphs (3) and (4) of the Article mentioned above relate to instances where Parliament is dissolved and are not relevant to the matters at issue.

The Petitioners also submitted that to meet urgent and unforeseen expenditure there should be a Contingencies Fund as provided in Article 151(1) of the Constitution and when advances are made from the Consolidated Fund there should be a Supplementary Estimate presented to Parliament to replace the amount advanced in terms of Article 151(3) of the Constitution. It is common ground that at present there is no Contingencies Fund and the fiscal position of the country does not permit the establishment of such a Fund. Conceding this position the Petitioners contended that in any event in keeping with the full control Parliament should exercise over public finance, when funds are required to meet unforeseen expenditure, such expenditure should be

approved by Parliament on the basis of a Supplementary Estimate in the manner provided for in Article 151(3) of the Constitution.

We are in agreement with the submissions of the Petitioners as to the basis on which the full control over public finance vested in Parliament should be exercised. In the Determination made by a Bench of Seven Judges in regard to the Bill titled the 19th Amendment to the Constitution (S.D No.11-40/2002) this Court laid down the manner in which the provisions of Articles 3 and 4 of the Constitution as to sovereignty of the People and its exercise have to be interpreted. According to that Determination in terms of Article 4(a) of the Constitution, Parliament is the custodian of legislative power of the People and will exercise that power in trust for the People in whom sovereignty is reposed. Legislative power includes the "full control over public finance" as stated in Article 148 cited above, which in our opinion is also a vital component of the balance of power firmly established by the Constitution in relation to the respective organs of government.

Article 30(1) of the Constitution states that the President is the "Head of the Executive and of the Government." in terms of Article 43(1) the Cabinet of Ministers is charged with the direction and control of the Government and is collectively responsible and answerable to Parliament. One important check on the exercise of executive power is that finance required for such exercise remains within the full control of Parliament – the legislature. There are three vital components of such control in terms of the Constitution viz:

(i) control of the sources of finance i.e imposition of taxes, levies, rates and the like and the creation of any debt of the Republic;

(ii) control by way of allocation of public finance to the respective departments and agencies of Government and setting of limits of such expenditure;

(iii) control by way of continuous audit and check as to due diligence in performance in relation to (i) and (ii).

Since such control is exercised by Parliament in trust for the People, we are of the opinion that the process should be transparent and in the public domain, so that People who remain Sovereign are informed as to the manner control is exercised. It follows that any Act of Parliament concerning public finance should be premised on a disclosure of the basis of such enactment so as to be transparent in its implications. And, an Act lacking in such transparency or being an alienation of control by Parliament would be inconsistent with Article 148 of the Constitution.

In the light of the foregoing we would consider the specific grounds urged in respect of clauses 2 and 6 of the Bill.

Clause 2 of the Bill

The Appropriation Act is the foremost legislation concerning public finance for any particular financial year. The Preamble to the Bill, under review specifically states that it is intended to make financial provision in respect of activities of the Government during the financial year and for the payment of advances from public funds.

The format of Appropriation Bill has been broadly similar over the years. Following such format Clause 2 of the Bill contains an estimate of Government expenditure for the forthcoming year, that is 1.1.2009 to 31.12.2009 (financial year 2009). A statement of such expenditure is contained in the first schedule under different Heads, with each Head having one or two programmes. One program, styled Programmes No. 1, relates to Operational Activities applicable to all Heads. The other Programme, styled Programm 2, relates to Development Activities applicable only to certain Heads.

It is a known parliamentary practice that after the second reading of the Appropriation Bill the Committee of the whole House considers each Head of expenditure separately on the basis of the detailed estimates that are presented to Parliament.

The Petitioner in S.D 3/2008, Mr. Nihal Sri Amarasekera, submitted that the Recurrent and Capital Expenditure estimated at Rs. 980,634,464,000/- (approximately Rs. 980 Billion) specified in clause 2(1) being the total of the expenditure under the Heads set out in the first schedule does not in fact constitute the totality of governmental expenditure in the financial year 2009. That, this figure does not include the debt service payments due from Government by way of interest and capital in the financial year 2009. in respect of the loans taken and the debt raised by the Republic. On that basis he submitted that there is a non disclosure of the total expenditure of Government for the financial year 2009 and that clause 2 premised on such non disclosure is inconsistent with Article 148 of the Constitution.

The submission of the Additional Solicitor General who supported the Bill is that clause 2(1) contains a reservation that the expenditure of Government set out therein is "*without prejudice to any other laws authorizing any expenditure*"

It was submitted that there are other provisions in the Constitution and specific laws that provide for payments from the Consolidated Fund and that such expenditure is not included in the sum of approximately Rs. 980 Billion set out in clause 2(1). It was further submitted that details of such expenditure would be tendered to Parliament in the Budget Estimates of 2009. An extract of which was submitted to Court. According to this extract in the financial year 2009 in addition to the Rs. 980 Billion specified as expenditure of Government, a further expenditure of Rs. 738,779,568,000/- (Approximately Rs. 738 billion) would have to be incurred for such other expenditure. Thus the expenditure of Government for the financial year 2009 would not only be 980 billion specified in clause 2(1) but also include a further Rs. 738 Billion, totaling Rs. 1719 Billion. Of this a component Rs. 722 Billion would be for debt service, whereas the estimated revenue for the year is Rs. 875 Billion.

Whilst there may be some merit in the submission of Addl. Solicitor General that clause 2(1) makes a reservation in respect of expenditure authorized by any other law, the submission of the Petitioner that clause 2(1) does not set out a proper account of governmental expenditure for the financial year is correct. The purpose of the Appropriation Bill is to set out the estimate for the financial year. Debt service and other matters in respect of which the expenditure is charged on the Consolidated Fund are equally activities of the Government. Any estimate to be complete should include the totality of the expenditure in respect of all Government activities in the financial year. In this instance the total expenditure is clearly not disclosed in clause 2(1). A large component of approximately Rs. 738 Billion is not included.

It was submitted by Addl. Solicitor General that the borrowing limit of 849 billion is set out in clause 2(1)(b). to meet the deficit between the total expenditure of approximately Rs. 1719 billion and the expected revenue of Rs.875 Billion. In other words it is expected to meet the debt service payments due in the financial year 2009 amounting to Rs. 722 Billion by raising further debt. It is relevant to note that here, that as submitted by Mr. Amarasekera, in terms of clause 2(1)(b) proceeds of loans could only be used to meet the expenditure of Rs. 980 Billion included in clause 2(1). Accordingly debt service payments that are not included in clause 2(1) cannot be met from the proceeds of loans. Be that as it may, assuming the premise presented by the State, the Government is caught in a veritable "debt trap" in which debt service payments for the current year are met by raising further debt in that year thereby increasing the debt service payments for the succeeding year. These facts have been kept away from the public domain by the statutory device in clause 2(1) of excluding expenditure under any other law.. The staggering debt service payments of Rs. 722 Billion for the financial year 2009 reflect an accumulation of public debt over the past years that has resulted from irresponsible and reckless handling of public finance by the Treasury and a failure on the part of Parliament to exercise full control of public finance as mandated by Article 148 of the Constitution. Hence we agree with the submission of the Petitioners that the enactment of the Clause 2 in the present

form without the disclosure of the additional expenditure of Rs. 738 Billion would amount to an inconsistency with Article 148 of the Constitution. The Clause would cease to be inconsistent if it is amended by the inclusion of the expenditure already charged on the Consolidated Fund in terms of other laws being approximately Rs. 738 Billion according to the Estimates. Such items of expenditure may be included in a separate schedule.

Clause 6(1) of the Bill

This clause permits the Secretary to the Treasury, the Deputy Secretary to the Treasury or the Director General of National Budget Department to transfer any money allocated under the "Development Activities" Program appearing under Head "Department of National Budget" as specified in the 1st schedule to any other Program under any other Head in the schedule. It further provides that the monies so transferred shall be deemed to have been covered by a supplementary estimate by the appropriate Minister.

The submission of the Petitioners is that the allocation of money under the respective Heads in the Appropriation Act is a legislative measure taken by Parliament and the provision in clause 6 in effect empowers the Treasury officials to amend the allocation that has been made by Parliament. It was also submitted that if there is a shortfall in the allocation made to a particular Head of expenditure the proper procedure in terms of the Constitution is to present a supplementary estimate to Parliament. In terms of clause 6(1), instead of such a supplementary estimate being submitted to Parliament, the Treasury officials are empowered to provide the extra allocation which is then deemed to have been covered by a supplementary estimate submitted by the appropriate Minister. On this basis it was contended that the clause amounts to an alienation of the full control of Public Finance vested in Parliament by Article 148 read with Article 150(1) and (2) cited above to Treasury officials. Hence clause 6 is inconsistent with Articles 148 and 150 (1) and (2) of the Constitution.

A similar challenge was made in respect of the Appropriation Bill of 2007, and this Court having considered the matter, made a determination there was no alienation of Parliamentary control of Public Finance.

The Petitioners now contend that the said determination was made without examining the nature and volume of the transfers made and on the assumption that such transfers are duly reported to Parliament through the medium of the Reports submitted to Parliament in terms of the Fiscal Management (Responsibility) Act No.3 of 2003. It is recorded in the determination that the transfers "should be specifically indicated in the relevant Reports submitted in terms of Fiscal Management (Responsibility) Act No. 3 of 2003.with reasons for the particular deviations."

The Petitioners submitted ~~that~~ the Mid Year Fiscal Position Report 2008 submitted to Parliament covering the first 4 months of the year 2008 which admittedly does not include any of the transfers that have been made. In the result, upto date transfers made in respect of the current year have not been reported to Parliament. This position is conceded by the State.

Addl. Solicitor General submitted that the Fiscal Management Report 2009 would be presented to Parliament on 6th November 2008 (Budget day). An initial copy of which was tendered to Court. This copy reveals that during the period 1st January to 30th September 2008, Treasury officials have made 108 transfers in terms of clause 6(1) of the 2007 Appropriation Act. A sum of Rs. 7,558, 078,445/- has been transferred from the Recurrent Account and a sum of Rs. 13,422,507,041/- has been transferred from the Capital Account under the Head "Department of National Budget" That is nearly Rs. 21 Billion have been transferred by Treasury officials during the period from the "Development Activities Program" to other activities under a large number of Heads. The transfers reveal that many of them have been for foreign travel, purchase of vehicles and for other miscellaneous items of expenditure far removed from "Development Activities". Furthermore this report does not specify any reason which required the particular deviations to be made. Hence there has been no compliance of the determination made by this Court.

The items of Government expenditure are included under over 300 Heads, specified in the 1st schedule to the Bill. As noted above each Head has one or two Programs, in respect of which too, specific amounts are stated. This allocation is a legislative act of Parliament in the exercise of powers vested in Parliament in terms of Articles 148 and 150 of the Constitution. From the Appropriation Act No. 44 of 2003 onwards a budgetary practice evolved in which large allocations have been made under the Head "Department of National Budget", with a provision similar to clause 6 referred to above authorizing a transfer by Treasury officials to any other Head. By this means the recourse to Parliament to obtain supplementary allocations when there is a shortfall in any particular Head has been obviated and that function of Parliament has been alienated to Treasury Officials who have made transfers from the amounts allocated to "Development Activities" under the Head Department of National Budget..

Addl. Solicitor General conceded that although Program is titled "Development Activities," in fact it is utilized for miscellaneous expenditure. In the present Bill under Head 240 titled "Department of National Budget" following amounts are allocated under the Development Activities Program, where Rs. 4,980,000,000]- as Recurrent Expenditure and Rs. 27,647,500,000/- as Capital expenditure. Accordingly a sum of approximately 32 Billion is thus set apart to be transferred at the discretion of Treasury officials to any other Head. As noted above for 9 months in the current year 108 such transfers have been made amounting to Rs. 21 Billion.

According to the same Report titled "Fiscal Management Report 2009" which as stated above will be tabled in Parliament only on 06.11.2008, during the period 16.10.2007 to 31.12.2007, 127 such transfers have been made totalling a Recurrent expenditure of Rs. 34,422,384,169/- and a capital expenditure of Rs. 33,262,585,762/-. Thus during the period of 2 ½ months transfers have been made approximately Rs. 69 Billion. An examination of the subjects in respect of which and the amounts of such transfers reveal that the then Secretary to the Treasury has been operating a "Budget" of his own. It

appears that the observations made in respect of previous year's Appropriation Bill has inhibited such transfers showing a marked reduction of such transfers, from 69 Billion for 2 ½ months in 2007 to Rs. 21 Billion for the first 9 months of this year. But the problem remains.

For the reasons stated above we are of the opinion that clause 6(1) of the Bill is in derogation of the control of public finance that should be exercised by Parliament and is accordingly inconsistent with Articles 148 and 150 of the Constitution.

Addl. Solicitor General submitted that in the current volatile fiscal situation some measure of flexibility should be permitted since the allocations in schedule 1 are made on a lower estimate than what would be the actual expenditure. In the circumstances the power of transfer as provided in clause 6(1) should be sustained by providing Parliament with an effective opportunity of reviewing each transfer. We are inclined to agree with this submission in respect of which the Petitioners had no serious objection.

Accordingly, we are of the opinion that the inconsistency with Articles 148 and 150would cease if clause 6(1) is amended by the inclusion of a specific provision that the money so transferred shall be deemed to be a supplementary allocation made to the particular Ministry and the transfer including the reasons therefor are reported to Parliament within a period of two months from the date such transfer is effected.

For the reasons stated above we make a determination in terms of Article 123 of the Constitution that provisions in clauses 2(1) and 6(1) of the Appropriation Bill 2008 are inconsistent with the Constitution and may only be passed by special majority required under the provisions of Article 84(2) of the Constitution.

We also make a further determination –

i) if clause 2(1) is amended by the inclusion of the expenditure already charged on the Consolidated Fund in terms of other laws, with such items of expenditure being included in a separate schedule; and,

ii) clause 6(1) of the Bill is amended with the inclusion of specific provision that the money transferred shall be deemed to be a supplementary allocation to the relevant Ministry and reported to Parliament stating the reasons for such transfers within a period of two months from the date of the transfer..

We wish to place on record our appreciation of the assistance rendered to Court by the Additional Solicitor General and the Secretary, Ministry of Finance who was present in Court and produced all material documents; and Mr. Nihal Sri Amarasekera who appeared in person and Presidents Counsel who appeared for the other Petitioners.

Sarath N Silva
Chief Justice

R.A.N.G. Amaratunga
Judge of the Supreme Court

P.A.Rathayake
Judge of the Supreme Court

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Member, The International Association of Anti-Corruption Authorities (IAACA)

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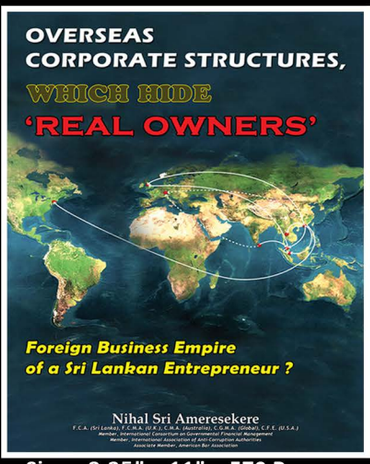

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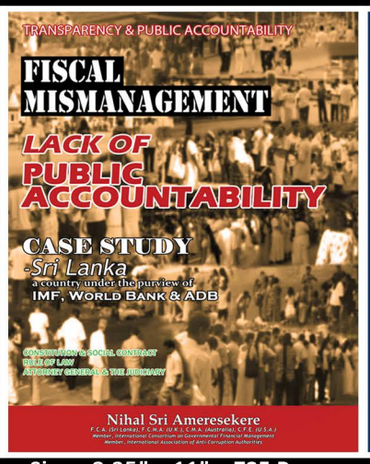

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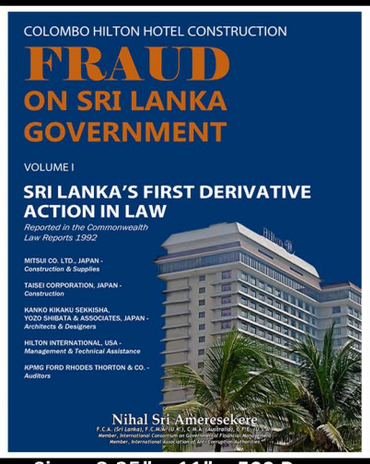

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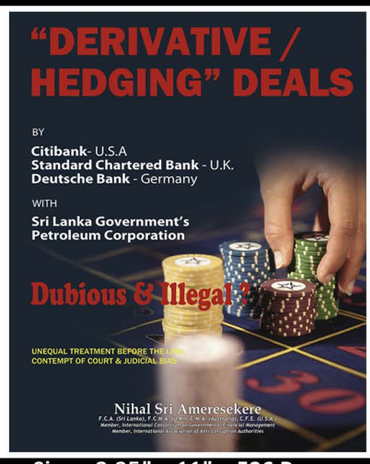

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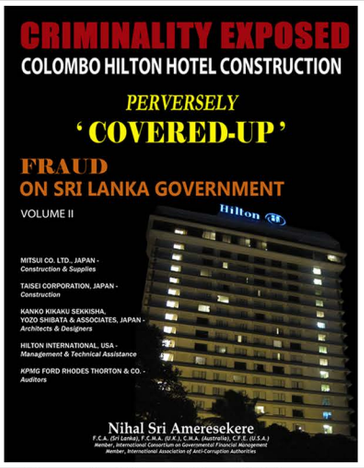

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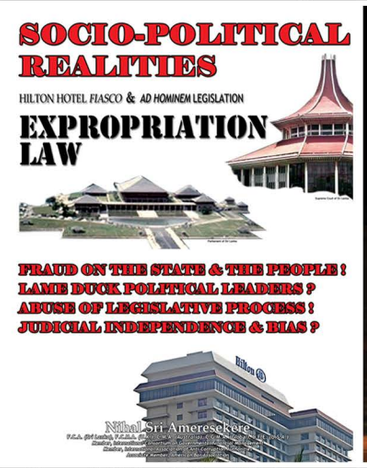

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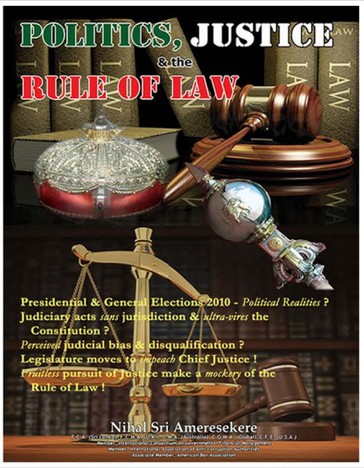

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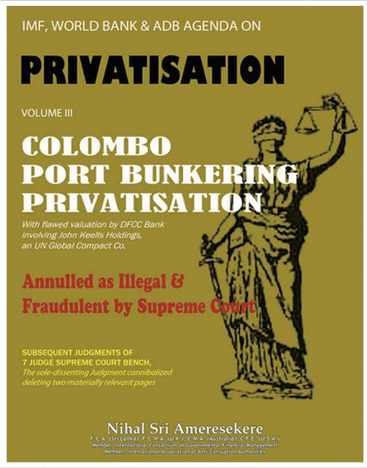

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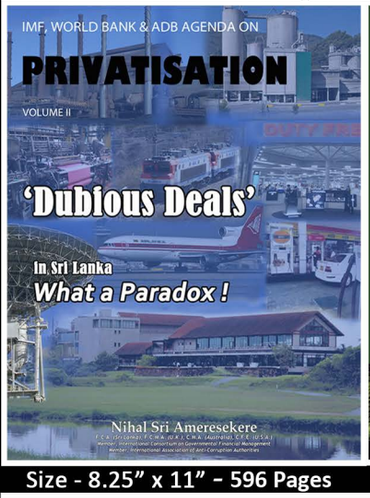

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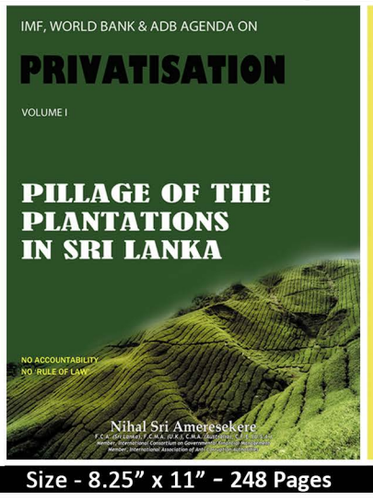

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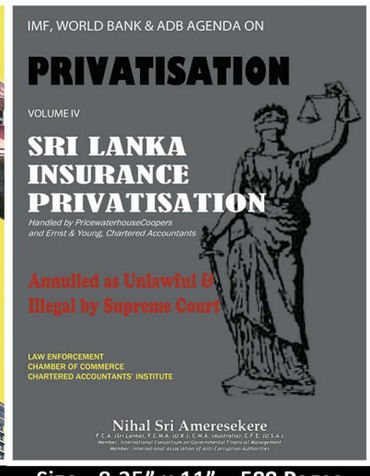

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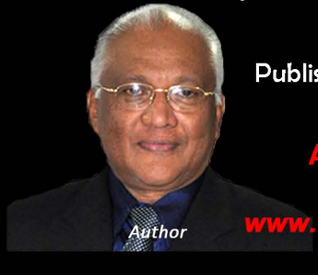
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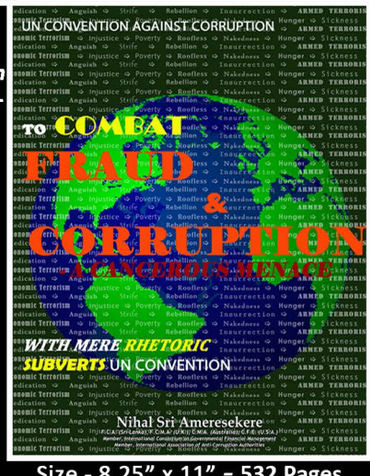

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From The Dhammapada* of Lord Gauthama Buddha

about 2550 years ago .....

Well done is that action of doing which one repents not later, and the fruit of which one, reaps with delight and happiness.

Should a person do good, let him do it again and again. Let him find pleasure therein, for blissful is the accumulation of good.

An evil deed is better left undone, for such a deed torments one afterwards. But a good deed is better done, doing which one repents not later.

Those who know the essential to be essential and the unessential to be unessential, dwelling in right thoughts, do arrive at the essential.

Those who discern the wrong as wrong and the right as right — upholding right views, they go to realms of bliss.

Those who are ashamed of what they should not be ashamed of, and are not ashamed of what they should be ashamed of — upholding false views, they go to states of woe.

Those who imagine evil where there is none, and do not see evil where it is — upholding false views, they go to states of woe.

Easy is life for the shameless one who is impudent as a crow, is backbiting and forward, arrogant and corrupt.

One who, while himself seeking happiness, oppresses with violence other beings who also desire happiness, will not attain happiness hereafter.

All tremble at violence; all fear death. Putting oneself in the place of another, one should not kill nor cause another to kill.

Neither in the sky nor in mid-ocean, nor by entering into mountain clefts, nowhere in the world is there a place where one may escape from the results of evil deeds.

There never was, there never will be, nor is there now, a person who is wholly blamed or wholly praised.

** The preachings of Lord Gauthama Buddha*

Contemporary Realities

Case Studies in a Third World Developing Country Revealing socio-political realities ……..

Incisive insights unraveling the socio-political realities in a third world developing country. The duplicitous hypocrisy of the developed world and international developmental agencies vis-a-vis the just and equitable enforcement of the 'rule of law'. The dubious management of the resources of the people, which are held in trust, on their behalf, by democratic governments or even by Kings.

" ..... The ruler's trusteeship of the resources of the State which belong to the people is a part of the legal heritage of Sri Lanka dating back at least to the third century BC as pointed out by Justice Weeramantry in his separate opinion in the International Court of Justice in the Danube Case, by quoting the sermon of Arahath Mahinda to King Devanampiya Tissa as recorded in the Great Chronicle – Mahawamsa " – June, 2009, Supreme Court of Sri Lanka**

With the cancerous menace of rampant fraud and corruption, does not the unbridled pillage and plunder of the resources of the already impoverished vast majority of poor people, by few persons socio-politically powerful, influential and affluent, further impoverish them ?

Is it not a curious paradox, that schemes and designs to replace, such pillaged and plundered property of the poor people, through 'poverty alleviation programs', ironically are financed from the very funds of the poor people or by debts to be re-paid by them or their future generations ?

Despite the adoption in December 2005 of the United Nations Convention Against Corruption, specifically identifying as culprits, 'politically exposed persons', do not such persons unabashedly continue to peddle fraud and corruption, and are shielded through socio-political influences, and publicly sanctified by religious leaders seeking the 'limelight' ?

Should not the pillage and plunder of the property of the poor people, referred to as 'economic terrorism', perpetrated by 'economic terrorists', condemned internationally in contemporary times, be first dealt with, as the root cause for the germination of terrorism ?

Denying the impoverished helpless vast majority of poor people equitable social justice, does it not ultimately lead to disillusionment, alienation, frustration, social unrest, insurrection and justifiable rebellion ?

Does not therefore, the pillage and plunder of the resources of the poor people, consequently result in armed struggles and armed terrorism, with brutal counter offensives by the international community, to destroy such terrorism ?

Ironically, do not such brutal counter-offensives, with the utilization of further resources of the poor people, which consequently give rise to despicable violations of human-rights, with concerns of humanity righteously transcending parochial interests of nationality, justifiably raise international concerns, however, at a very belated stage ?

Nihal Sri Amaresekere

** The Mahawamsa "The Great Chronicle" is the single most important work of Sri Lankan origin, written in Pali language translated to Sinhala and English, recording the history and heritage from 543 BC*