# CRONYISM, CORRUPTION AND ECONOMIC DEBACLES

Fraud and corruption being prevalent in the private sector, it is the responsibility of the government to enact statutory and regulatory frameworks, and to develop institutional capabilities and infrastructural safeguards to deal with fraud, corruption and corrupt practices prevalent in the private sector, particularly whilst transforming the economy to a private sector economy, to ensure the protection of public interest and the safeguard of public resources.

It is in scenarios of socio-economic realities of unbridled and non-regulated private sector exploitation of public resources, where the resources of the helpless many had been exploited for the benefit of the influential and powerful few, that socio-political upheavals had led to the birth and growth of the state sector controlled economies, which also globally miserably failed to socio-economically develop countries, leaving them in want despair and social instability.

The answer, no doubt, whilst being the development of a free and open economy, with equality of opportunity, fair play and justice, by no means includes the permissibility for the resurgence of crony capitalism, where an influential and powerful coterie of a few, unfairly exploit public resources, without equality of opportunity and sans any qualms or sensitivities of socio-political responsibilities –thereby fertilising the ground for breeding social upheavals, as witnessed in many countries today even in the contemporary world .

## NEED FOR REGULATORY CONTROLS

Whilst market forces of free and fair competition are necessary ingredients for the development of a robust economy, benefiting not only the influential and powerful few, but also the helpless many, requisite statutory and regulatory frameworks, with developed institutional capabilities to ensure the efficacious operation of such statutory and regulatory frameworks are also very basic and necessary ingredients, to ensure the sustained socio-political stability and socio-economic development and growth of the country – the economic benefits filtering down to the down-trodden many .

It is not only the issue of unfair and unjust exploitation of public resources for the undue benefit and gain of an influential and powerful few at the cost of the helpless many, but also, the complex issues of management, with accountability and responsibility, of public resources by the private sector, devoid of fraud, corruption and corrupt practices, that is crucially necessary and important for the development of economic stability and the sustained confidence in a privatised economy by the constituency of the public.

Erosion of public confidence in the prevalent system of "private economy" will invariably lead to social upheavals and economic set-backs as witnessed in recent times in the Far East Asian countries. Would not the massive financial difficulties that nearly a dozen of the leading Japanese banks have got themselves into today, resulting in national economic set-backs in Japan affecting the entire country be a very relevant and pertinent case in point to demonstrate the impact of management of the private corporate world and its impact on national economic development and the need for properly regulated checks and balances ?.

On the contrary, the countries that had pursued policies of enacting effective statutory and regulatory frameworks, with the development of institutional capability of law enforcement to ensure that resource management by the corporate world of the private sector is devoid of fraud, corruption and corrupt practices, have demonstrated a far greater degree of socio-political stability and sustained economic development and growth, benefiting not only the powerful few, but also the helpless many, who have thereby graduated to becoming a more contended constituency of public, with confidence in such democratic economic process.

## SOCIO-POLITICAL REALITIES

A parallel analytical objective study of the socio-political realities and socio-economic development since independence between Sri Lanka and Singapore would make a very revealing and educative study. Ought not such a study be undertaken even at this very late stage as an educative process ?

The above scenario, that demands focusing upon the socio-political realities of the intertwining of the forces of the private sector business world and the political leaders, with the phenomenon of one depending on the other for their own personal agenda, thereby giving rise to the cancerous menace of fraud and corruption, that is an impediment and threat to the socio-economic development and socio-political stability and growth of a country, which phenomenon has been identified as one of the prime causes for the recent economic debacles in South-East Asia.

The public at large have come to comprehend to-day with the relevance and importance of these issues to their day to-day life and are yearning and yelling for socio-political and socio-economic management of their countries devoid of fraud, corruption and corrupt practices. Exploiting such public yearnings, contemporary political leaders have on political platforms espoused such cause to gallantly fight fraud and corruption in aspiring for political power and office, but ironically not doing very much about it thereafter. Why ?

Reacting to Harvard University research relating growing public concerns, the World Bank has also recently focused upon this issue of fraud and corruption, whereas in the not too distant past, the world has witnessed many political leaders decamping from their countries, with vast fortunes of amassed wealth, leaving behind their coterie of the powerful few, who had also benefited and gained by unjust and unfair means, with the country and the public left in chaos, disarray and abject poverty. One cannot say for certain that the World Bank had had no programmes going in those countries during those times and therefore, the World Bank's determination to deal with the issue of fraud and corruption should be far greater and more purposeful with results orientation.

## NO CHANGING GOAL POSTS

The Property & Finance Bulletin dated July 1998 of Collin, Biggers & Paisley, Lawyers of Sydney, Australia, reported a recent Judgment of the Supreme Court of Victoria, Australia thus – " TENDERS AND DUTY TO ACT FAIRLY - The Victorian decision in Willow Grange Pty Limited –v– Yarra City Council related to a lease of an area of public land for the running of a commercial enterprise. The prior operator complained about the leasing process, as it was unsuccessful in the tender.

The Court held that a tenderer was entitled to know the basis of the criteria which would be used for the selection of the successful tenderer. In this case, these criteria were unknown to all tenderers and were different from those which the tenderers were reasonably entitled to believe would in fact be applied. This came about by virtue of the Council, after the issue of the tender documentation, deciding to take into account various factors which were not made known to all tenderers.

The Court held that there was a triable issue, as it could be held on the facts that the ternderer had been denied fairness in that all of the relevant selection criteria were not made known to it.

Whilst this case only dealt with a preliminary issue and did not deal with the issues on their merit, it is obvious that, when preparing a tender, there must be a clear statement as to all criteria which are to be used in the assessment process and, if those criteria change, then this fact must be disclosed in clear and unequivocal terms to all tenderers."

## INFLUENCE PEDDLING & CORRUPT PRACTICES

President Kumaratunga in the Cabinet Memorandum of June 10, 1998 dealing with influence peddling and lobbying by the private sector that leads to corrupt practices, inter-alia, stated – "...it is important that the local agents of companies bidding for such projects do not unduly influence public officials or resort to corrupt practices in concluding deals which at times are unfavourable to the Government....The justification for public listed companies representing reputed international suppliers, contractors and investors is that they are compelled to operate more transparently than an unlisted private or public company and with a greater degree of accountability towards shareholders. Furthermore, public listed companies are required to comply with the continuing listing requirements of the Securities & Exchange Commission...".

To regulate the conduct of affairs of at least the listed public companies and to protect the interests of the investing public, the SEC was established in 1987. The SEC Act No. 36 of 1987 was amended by Act No. 26 of 1991, whereby, inter-alia, the SEC was vested with power to investigate and inquire into complaints made by shareholders of listed public companies relating to the professional conduct or activities of listed public companies. The SEC Act empowered the SEC to carry out investigations summoning officials of listed public companies and requiring the production of all relevant documentations for investigation and examination, obstruction of and/or non-compliance with which carried penal consequences. The SEC was also vested with power to institute prosecutions in criminal Courts of law, with consequences of imprisonment and/or imposition of penalties for those found guilty of offences under the SEC Act.

## CENTRAL BANK RAPS AUDITORS

Central Bank Governor A. S. Jayawardene

Almost at the very time that amendments were effected in July 1991 to the SEC Act empowering the SEC to deal with complaints from shareholders of listed public companies relating to the professional conduct or activities of listed public companies, in October 1991, the Monetary Board of the Central Bank of Sri Lanka published prominent notices in the press under the caption – "Notice on Audited Statements of Accounts of Finance Companies".

The Central Bank press notification went on to state – "This is to inform the registered finance companies and their auditors, that the Monetary Board of the Central Bank of Sri Lanka will prosecute the auditors, who fail to comply with the provisions of the Finance Companies Act No. 78 of 1988 as amended by Act No. 23 of 1991. Section 17 of the Finance Companies Act No. 18 of 1998 reads as follow. "

Section 17 of the Finance Companies Act No. 78 of 1988 stipulated the scope and responsibilities of auditors of Finance Companies in carrying out their inspections and examinations of the accounts of Finance Companies.

The Central Bank press notification went on to stipulate – "Any auditor who fails to comply with the requirements of the above Section commits an offence under Section 35 of the Finance Companies Act No. 78 of 1988 as amended by Act No. 23 of 1991."

## LAW ENFORCEMENT WITHOUT FAVOUR ?

A Deputy Governor of Central Bank is also nominated by the Governor of the Central Bank to be a member of the SEC, as statutorily provided for in the SEC Act. The SEC rules and regulations also stipulate and require that the auditors of listed public companies shall certify that the accounts of listed public companies are presented in accordance with accountancy standards laid down by the Institute of Chartered Accountants. The President of the Institute of Chartered Accountants is also an ex-officio member of the SEC as per the provisions of the SEC Act. Notwithstanding such statutory and regulatory promulgations, in how many instances has the Central Bank and/or the SEC faulted and/or prosecuted any auditor ? Why have such statutory and regulatory provisions at all ?

The above press notification published by the Monetary Board of the Central Bank of Sri Lanka was in the background of the catastrophic crash of several finance companies at that time, including some well known and leading finance companies. The public depositors of these finance companies lost their valuable savings and some are still languishing in anguish. In the cases of some of these finance companies the proprietary corporate management had to sell their private assets and repay public depositors. In the case of several other finance companies the Directors have been prosecuted in criminal Courts of law.

The Central Bank also advanced under the provisions of the Finance Companies Act No. 78 of 1988 large tranches of public funds from the Medium and Long Term Credit Fund established under the Monetary Law Act, to some of these finance companies to repay public depositors on the condition of recovering such advances from these finance companies and/or the Directors of these finance companies. Ought not the Central Bank in the public interest disclose the details of such advances made from public funds and recoveries made and as to whether, in all instances, prosecutions have been instituted in criminal Courts of law against the Directors of the concerned finance companies, treating everyone to be equal before the law or as to whether, socio-political influences and/or any other reasons have stymied the law taking its legitimate course equally and equitably against everyone, irrespective of socio-political considerations ? If not, why ?

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