

SHINE A LIGHT ON CORRUPTION

Addressing a conference on February 24, 1999, convened in Washington by the United States Vice President, on the theme – "*A Global Forum on Fighting Corruption*", the US Secretary of the Treasury, Robert Rubin had, inter-alia, made the following incisive assertions on the subject of the cancerous menace of corruption – *vide Wireless File – USIA*:

COMBATING CORRUPTION

"Corruption is very much a social and political issue. An accountable, responsive and honest government is central to a government's legitimacy and, ultimately, to political and social stability In order to succeed in the global economy, nations must be able to attract private capital to foster growth. There are many dimensions to an environment conducive to attracting private capital Among these dimensions I would include here is good governance, in particular, effectively combating corruption It (*Corruption*) discourages small business, entrepreneurs, and consumers who simply cannot afford the cost of bribery. It discourages foreign investment. And it damages the respect for law and public and financial institutions, undermines the credibility and effectiveness of both elected and appointed government officials, and creates an environment conducive to crime in the private sector, including organized crime"

"Corruption exists everywhere. But corruption is specially troubling in developing countries It seems to me there are at least five elements critical to effectively combating corruption; – First, nations must have good, clear laws and regulations that can be easily and reliably enforced. This, in turn, requires courts that are adequately funded and independent of political pressure, as well as honest, well trained and adequately compensated regulators, judges, prosecutors and law enforcement officers; – Second is to eliminate unnecessary controls on the economy and reduce state involvement in the economy. Reducing both the scope and the administrative discretion of government reduce the potential for corruption "

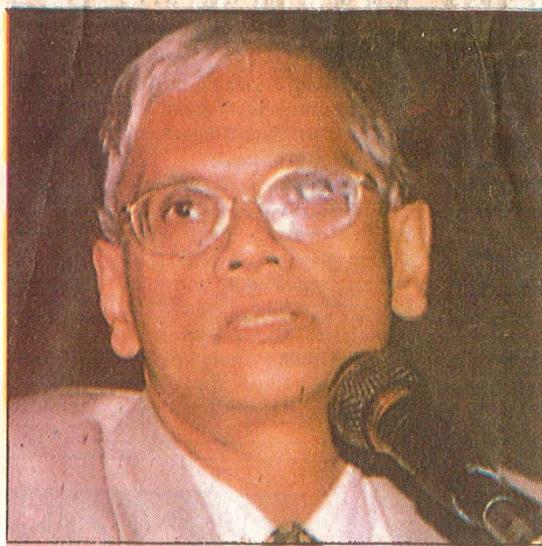
"Third is to create a well supervised, soundly regulated, and competitive financial system that operates on a commercial basis and is not subject to decisions based on personal or political connections; – Fourth is to increase the transparency and accountability of government operations and decision-making. Shining light on the activities of government by publishing information about its operations and decision making and by including public participation in those decisions, is a powerful deterrent to corruption. Let me also add that a free and vibrant press can make an enormous contribution here; – Fifth and finally is to create a sound civil service system with strict conflict of interest rules, appropriate sanctions for malfeasance, and adequate compensation for employees ..."

"Developed countries must deal directly with their own involvement in developing country corruption. Corruption is a two way street and for every bribe taker, there is a bribe giver. In 1977, the United States passed the Foreign Corrupt Practices Act, which outlaws bribery by our businesses and investors in other countries The OECD Bribery Convention, which was signed in December 1997, and went into effect just a few days ago, was a critical step in recognizing the responsibility of industrial countries to discourage the giving of bribes. While most of the OECD have ended the tax deductibility of bribes, there are still several OECD countries that have not, and they should do so forthwith"

"The international financial institutions – including the International Monetary Fund, World Bank and the Regional Development Banks – have been active in combating corruption and should take further steps. The IMF has developed a code of fiscal transparency which calls for governments to accurately track and disclose expenditures and thereby helps hold them accountable for their spending decisions. ... The Multilateral Development Banks are in a unique position to fight corruption. With annual disbursements of about \$ 50 billion per year, the MDBs can have real impact through the conditions they place on loans and with the standards they set for themselves"

"The World Bank is providing direct assistance for anti-corruption programs in many countries and has strengthened its own international anti-corruption systems.... The IMF needs to raise the bar still further on transparency in member countries.... Conferences like this one demonstrate that with intensified international focus, corruption is becoming a mainstream issue. In fact, just by shining a light on corruption, and its corrosive effects on a society and an economy, I believe we make progress in demonstrating how behavior that was once tolerated, is now unacceptable and that those people who engage in it are subject to condemnation."

COLLAPSE OF PA'S CORRUPTION COMBAT



Justice Minister G. L. Peiris



Chandrika Kumaratunga

The US Secretary of the Treasury had further stressed, that there is evidence of many instances of governments, that have lost public support in part because of corruption. As an example, in this country, corruption was a major issue on the election platform, that brought the People's Alliance government into power in August 1994, and was one of the pivotal issues that made President Chandrika Bandaranaike Kumaratunga win an overwhelming 62% mandate at the presidential elections in November 1994. On the eve of the presidential elections, the PA government in October 1994 enacted new legislation, presented to parliament by justice minister, G.L. Peiris, to deal with the cancerous menace of corruption. In terms of the new legislation, the permanent commission on bribery and corruption was established. The opposition United National Party voted to enact this new legislation unanimously. This was in accordance with the new vision and new deal of the new UNP leader, Ranil Wickremesinghe.

Now, four and a half years since October 1994, the PA government has achieved very little, in fact nothing at all of any significant public impact, through the enforcement of the new legislation, by ensuring the effective functioning of the newly set up permanent commission on bribery and corruption. On the contrary, the PA government now stands accused by the opposition UNP of allegedly having stifled and stymied the functioning of the permanent commission. Ironically, in terms of the new legislation enacted by the PA government in October 1994, the UNP has lodged complaints to the permanent commission against the ministers of the PA government on the Air Lanka privatisation issue and against the minister of telecommunications & posts on the Sri Lanka Telecom credit card issue. A complaint against the minister of justice is also being speculated, under and in terms of the very law that he, himself, had introduced !

It is the onus and responsibility of the PA government to have ensured the effective law enforcement to have dealt with the cancerous menace of corruption in terms of the very legislation that the PA government enthusiastically enacted in October 1994, with the unstinted support of the opposition UNP. President Kumaratunga in her address to Parliament on January 6, 1995, whilst severely faulting and castigating the former UNP regime on the score of corruption, pledged to take stern action to combat corruption – " Corrupt politicians can no longer have recourse to membership of the country's supreme legislature as a shield against investigation of, and punishment for, gross abuse of public power ", was the unambiguous undertaking given to parliament by President Kumaratunga.

In addition to establishing the permanent commission on bribery and corruption, President Kumaratunga in February 1995 appointed a special presidential commission, comprising Supreme Court Judge, Priyantha Perera, as its Chairman and Appeal Court Judges, Hector Yapa and Ninian Jayasuriya (then High Court Judge) as the other members, to inquire into alleged malpractices in certain public bodies. The schedule to the warrant appointing this special presidential commission of inquiry, that had been finalised by justice minister, G.L. Peiris, had listed 18 specific matters to have been inquired into and reported upon. The presidential warrant given in February 1995 for a period of 6 months had been regularly extended by President Kumaratunga.

AFFRONT TO THE JUDICIARY ?

Four years since the appointment of this special presidential commission, President Kumaratunga was reported, in the *Sunday Times* of February 28, 1999, to have asserted at a public rally at the Anuradhapura public grounds, held to launch the PA election campaign for the forthcoming provincial councils, that – "Some of the judges on presidential commissions had been appointed by the UNP and proceedings of the commissions had prolonged due to this". The report further stated "The President said one of the commissions found former minister Chandra Bandara guilty of plundering state property and ruled that his civic rights be stripped for seven years, but he passed away before that. She said that another commission was looking into the allegations against former minister A.M.S. Adhikari, but it has not yet concluded findings. There is no end to the sittings as some of the judges were appointed by the UNP ".

The very first inquiry commenced by the special presidential commission in March 1995 was into the Hilton matter, which had been an issue, that had been prominently featured on the People's Alliance election platform in 1994. After extensive preliminary inquiries, including a

report by a panel of architects, the commission issued show cause notices in December 1995, setting out several charges against four persons, including an influential minister in the former regime. They were asked to show cause, as to why they should not be found guilty of misuse or abuse of power and/or corruption and/or the commission of fraudulent acts. Certain UNP MP's immediately alleged in parliament, that certain key personalities of the People's Alliance, including a prominent minister, had also been contributory parties to the said matter and should be dealt with. The report of the commission on this very first inquiry is still awaited. President Kumaratunga, who once highlighted this matter in a television interview, strangely, however, did not refer to this matter, when publicly complaining of delays by commissions.

Significantly, would it be proper for the President of the country to cast public strictures and aspersions of political bias, on judges of the superior courts, who are appointed under Presidential warrant in terms of Article 107 (1) of the Constitution, to hold office during good behavior ? Article 107 (2) provides for the removal of superior court judges by an order of the President, after an address of parliament, supported by a simple majority of the number of members of parliament, for proved misbehavior or incapacity, provided that the notice of resolution for the presentation of the address, is signed by not less than one-third of the members of parliament, setting out full particulars of the alleged misbehavior or incapacity. Article 107 (3) provides for the investigation and proof of allegations and the right of a superior court judge to be heard in such situation. President Kumaratunga enjoys the parliamentary majority to enforce such removal, if any allegations could be proven in terms of the constitutional provisions. Should the judiciary be tolerant to such unconstitutional public presidential censures anymore ?

LAW ENFORCEMENT ?

The PA government's track record in dealing with the cancerous menace of corruption, which was a major issue in its political campaign to come into power, is now lamented upon by, none other than, President Kumaratunga, herself. Whatever may be the excuses trotted out, it is the onus and responsibility of the PA government, who gave leadership to the crusade against corruption on the election platform, to have upheld its committed public policy and to have enforced the rule of law, without any fear or favour, regardless of the political hues of the personalities concerned. This is what was expected by the public, who voted the PA government into power. Failure to have done so, would only attract the apt label – "*A lame duck government*".

The same would apply to the manner in which, the PA government has dealt with law enforcement on the widespread violence and malpractices perpetrated at the Wayamba provincial council elections, that have been condemned all round by the respected and right thinking members of various segments of the civil society, including by the revered religious leaders. Public pronouncements to take action to prevent the repetition of such despicable conduct and actions at the forthcoming provincial council elections on April 1, 1999 is, no doubt, the least that could be expected of a democratic government ! It is the very media, who played a significant role in bringing the PA government into office, who relentlessly exposed the violence and malpractices at Wayamba, agitating that action be taken.

Nevertheless, mere public pronouncements of commitment to do so, in the future would be grossly inadequate in the absence of tangible and visible real law enforcement actions, to have dealt with the miscreants, who had been responsible and/or instrumental for the despicable acts

already perpetrated at Wayamba. Would not, evading to do so, or to have avoided honestly admitting and/or acknowledging such violence and malpractices, whether on record or otherwise, citing the challenges before the Supreme Court as excuses, be an admission of weakness and cover-up by the PA government ? Ought not a democratic government, in the public interest, be expected to make honest and truthful admissions before the Supreme Court, the highest judicial forum in the country, and cause the law enforcement authorities to expeditiously unravel the true facts to assist the judiciary in its determinations ?

MEDIA EXPOSURE

The incisive diagnosis of the cancerous menace of corruption, including the critical actions to be taken to effectively combat corruption, presented by the US Secretary of the Treasury, Robert Rubin to a recent conference convened by the US Vice President is quite apt and relevant to the realities prevalent in the socio-political scenario in this country. The crying need of the hour is not mere rhetoric and lip service to deal with this cancerous menace of corruption, but the courageous ability to sincerely and honestly to ensure that warranted action is taken without any inhibitions.

As Robert Rubin has asserted – "Just by shining a light on corruption, and its corrosive effects on a society and an economy, I believe we make progress in demonstrating how behavior that was once tolerated, is now unacceptable and that those people who engage in it are subject to condemnation". In the public interest, corruption and the consequences of its corrosive effects on the country and the economy have been brought to light. Regrettably, such highlighted exposures are clearly resented by the PA government. In this context, the apt words of the US Secretary of the Treasury are worth repeating –" Shining light on the activities of the government by publishing information about its operations and decision making and by including public participation in those decisions, is a powerful deterrent to corruption. Let me also add that a free and vibrant press can make an enormous contribution here."

- Published in The Sunday Leader on 21.3.1999 by Nihal Sri Ameresekere under the pseudonym 'Bismark'