

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

In the matter of an Application for a determination of whether the Bill titled: "Inland Revenue (Special Provisions)" or any part thereof is inconsistent with the Constitution in terms of Article 121 read with Article 78 of the Constitution.

Nihal Sri Ameresekere
167/4, Sri Vipulasena Mawatha
Colombo 10.

PETITIONER

SC/SD No. 11 | 2003

Vs.

K.C. Kamalabayson, P.C.
Hon. Attorney General
Attorneys General's Department,
Colombo 12.

RESPONDENT

TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

We tender herewith our Appointment from the Petitioner above-named, together with the Petition and Affidavit of the Petitioner and Documents marked "A1" to "A5", "B", "C1", "C2" and "D" and respectfully Move that Your Lordships' Court be pleased to accept the same.

We respectfully draw Your Lordships' Court's kind attention to the averments contained in the Petition, more particularly to paragraphs 2, 3, 4, 12, 13, 14, 16, 17, 18, 19, 21, 23, 24, 32, 33, 36 and 37.

We state that the facts adduced in the Petition disclose that the Bill, the subject matter of this Application, was not placed in its entirety on the Order Paper of Parliament as mandated by the Constitution, and that there has not been due compliance with the constitutional process, and that certain provisions of the said Bill are unconstitutional / could not have been legitimately enacted / passed by a simple majority, and thus **has not been enacted as law.**

We respectfully reiterate the contents of paragraphs 40, 42 and 43 of the Petition, quoted below:

- "40. a) the mere circumstance that there has been no challenge to the Bill "A3" within 7 days of it being placed on the Order Paper of Parliament cannot render the passage of the Bill into an Act of Parliament, a constitutionally valid exercise and / or make it a legitimate piece of legislation, in the facts and circumstances set out hereinbefore.
- b) the reason for the aforesaid being that the law does not expect the Petitioner (or indeed any member of the public) to do the impossible - *lex non cogit ad impossibilia*. The non-availability of the Bill, whether by design or otherwise, in due time, made it *impossible* to challenge same in time. Such deprivation itself being violative of the Constitution.
- c) it is a principle of the rule of law that *no man can take advantage of his own wrong*, and the relevant Respondents' named in the Fundamental Rights Application No. 194/2003 filed by the Petitioner on 15.4.2003 in Your Lordships' Court referred to in paragraph 46 hereinbelow and those others responsible, *cannot be heard to contend otherwise.*"
- "42. In view of the gravity and seriousness of the matters averred hereinbefore, and to protect public interest and uphold public good as enshrined in the Constitution, Your Lordships also being bound by solemn oath / affirmation of office to uphold and defend the Constitution and to ensure that the judicial power of the people and their sovereignty is not alienated, the Petitioner respectfully implores Your Lordships' Court to exercise the inherent judicial powers of Your Lordships' Court in the interest of upholding and defending the Constitution, thereby protecting and safeguarding the sovereignty of the people, which is inalienable. "

"43. A 7-Member Bench of Your Lordships' Court in the unanimous determination in respect of the Bill titled "19th Amendment of the Constitution", *inter-alia*, reiterated an Indian Judgment which had held;

"if there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective"

We also respectfully draw Your Lordships' Court's kind attention to paragraph 41 in respect of the unanimous determinations that two 7-Member Benches of Your Lordships' Court had made in October 2002 in relation to the Bills titled "18th Amendment of the Constitution" and "19th Amendment of the Constitution", and the dicta contained therein, which ought to have been respected and duly conformed with in the formulation **thereafter** of any legislation, *which includes the said Bill*.

We respectfully bring to the notice of Your Lordships' Court, that the Petitioner's Senior Counsel, Mr. K. Kanag-Isvaran P.C. is out of the island and is expected back within a week, and upon his return we shall tender a further Motion indicating his free dates for listing this matter for hearing, and we respectfully Move that Your Lordships' Court in the given circumstance be pleased to list this matter for hearing and grant the reliefs prayed for by the Petitioner in the Petition.

We respectfully draw the kind attention of Your Lordships' Court, *inter-alia*, to prayer (a) of the Petition quoted below:

- a) make Order declaring that the mere circumstance that there has been no challenge to the Bill ("A3") within 7 days of it being placed on the Order Paper of Parliament cannot render the passage of the Bill into an Act of Parliament, a constitutionally valid exercise and/or make it a legitimate piece of legislation, in the facts and circumstances set out in this Petition.

We also respectfully bring to Your Lordships' Court's kind attention that the Petitioner has already on 15.4.2003 filed in Your Lordships' Court the Fundamental Rights Application No. 194/2003 under Articles 17 & 126 of the Constitution for reliefs claimed therein in regard to the administrative and executive actions in relation to the said Bill, and we respectfully Move that the said Application and this Application be listed together for hearing.

In terms of Articles 121 (1) and 134 (1) of the Constitution, Notices of this Petition having been served by Registered Post on the Hon. Speaker of Parliament and the Hon. Attorney General, Registered Postal Article Receipts are attached hereto.

Colombo 21st day of April 2003

Abdeen Associates

Attorneys-at-Law for the Petitioner

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Attorney-At-Law

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

In the matter of an Application for a determination of whether the Bill titled: "Inland Revenue (Special Provisions)" or any part thereof is inconsistent with the Constitution in terms of Article 121 read with Article 78 of the Constitution.

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SC/SD No. 11/2003

Vs.

K.C. Kamalabayson, P.C.
Hon. Attorney General
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RESPONDENT

TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

On this 18th day of April 2003

The **Petition** of the Petitioner above-named appearing by Razmara Abdeen practising under the name, style and firm of **ABDEEN ASSOCIATES**, and his assistants Amarasinghe Priyantha Upali Amarasinghe, Leelan Indith Weerasooriya, Bushra Muheesa Hashim and Manjula Pasquel, his Registered Attorneys-at-Law, states as follows:

1. The Petitioner
 - a) is a citizen of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as "**Sri Lanka**")
 - b) is a Fellow Member of the Institute of Chartered Accountants of Sri Lanka and the Chartered Institute of Management Accountants of UK
 - c) is practising as a Consultant, having functioned as a Senior Consultant on World Bank and USAID funded economic infrastructure re-structuring projects of the Government of Sri Lanka, and as an Advisor to the Ministry of Finance.
 - d) is presenting this Petition, as advised, on his behalf and on behalf of the general public of Sri Lanka, in the national and public interest, in respect of the Bill titled "**Inland Revenue (Special Provisions)**", presented to Parliament on 31.1.2003 and *purportedly passed by Parliament*,
2. a) In terms of Articles 53 and/or 61 and/or 165 the holders of public office, are bound to faithfully perform and discharge the functions of such public office in accordance with the Constitution and the law, and are bound to be faithful to the Republic of Sri Lanka and uphold and defend the Constitution, under and in terms of the solemn official oath / affirmation taken in terms of the Fourth Schedule to the Constitution; and in addition, Members of Parliament are further bound to uphold and defend the Constitution in terms of Article 63 of the Constitution.
 - b) The Petitioner respectfully states that, similarly, in terms of Article 107 of the Constitution, Your Lordships are bound to faithfully perform and discharge the functions of judicial office in accordance with the Constitution and the law, and are bounden in duty to be faithful to the Republic of Sri Lanka and uphold and defend the Constitution, under and in terms of the solemn official oath / affirmation Your Lordships have taken in terms of the Fourth Schedule to the Constitution.

3. a) The Hon. Attorney General in terms of Article 77 of the Constitution is bounden in duty,
- i). to examine every Bill for any contravention of the requirements of paragraphs 1 and 2 of Article 82 of the Constitution and **for any provisions, which cannot validly be passed,** except by the special majority prescribed by the Constitution
 - ii) if he is of the opinion, that a Bill contravenes any of the requirements in paragraphs 1 and 2 of Article 82 of the Constitution or **that any provisions in a Bill cannot be validly passed** except by a special majority prescribed by the Constitution, **he shall communicate such opinion to the President;** *provided that in the case of an amendment proposed to a Bill in Parliament **he shall communicate his opinion to the Speaker** at the stage when the Bill is ready to be put to Parliament.*
- b) The Petitioner verily believes that to conform with the foregoing, every Bill presented to Parliament is certified after examination by the Hon. Attorney General not to be repugnant to any provisions of the Constitution, when in his opinion no provisions of a Bill are repugnant; ***inasmuch as the Hon. Attorney General is bound by the oath / affirmation as aforesaid to uphold the Constitution.***
4. a) In terms of Article 79 of the Constitution, the Speaker of Parliament, is required to give a Certificate that a Bill has been **duly passed by Parliament.**
- b) Inherent in such certification of a Bill being **duly passed** would be that a **Bill has been lawfully and/or legitimately and/or constitutionally passed,** and that it is not repugnant to any provisions of the Constitution; ***inasmuch as the Speaker is bound by the oath / affirmation as aforesaid to uphold the Constitution.***
5. In terms of Article 75 of the Constitution, Parliament is **debarred** from making any law **suspending** the operation of the Constitution or any part thereof.
6. Under Article 34 of the Constitution **only** the President of Sri Lanka has been conferred with Constitutional power to
- grant pardon,
 - grant any respite,
 - substitute a less severe form of punishment, or
 - remit the whole or any part of any punishment imposed or of any penalty or forfeiture due to the State
- and no other person, whomsoever.**
7. The Petitioner states that as a citizen of Sri Lanka he, as well as other citizens are entitled to,
- a) **equality before the law and to equal protection of the law in terms of Article 12 (1) of the Constitution.**
 - b) **the freedom of speech and expression in terms of Article 14(1) of the Constitution**
8. The Petitioner states that in terms of Article 28 of the Constitution, as a citizen of Sri Lanka, it is his **fundamental duty, inter-alia,**
- a) **to uphold and defend the Constitution and the law**
 - b) **to further the national interest**
 - c) **to work conscientiously in his chosen occupation**
 - d) **to preserve and protect public property, and to combat misuse and waste of public property**
9. The Petitioner, as advised, states that
- a) Article 3 of the Constitution is an entrenched provision dealing with the sovereignty of the people and reads thus -
- “3 In the Republic of Sri Lanka sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise”

- b) Article 4, read with Article 3, of the Constitution, *inter-alia*, mandates that the fundamental rights, which are declared and recognized by the Constitution shall be respected, secured and advanced by all organs of the Government, and shall not be abridged, restricted or denied, and that the sovereignty of the people, including the fundamental rights and powers of Government, **is inalienable**.
- c) **It has been determined by Your Lordships' Court that Article 3 of the Constitution is linked with Article 4 thereof and that they must be read together.**
10. Article 27 of the Constitution defining the **Directive Principles of State Policy and Fundamental Duties**,
- a) stipulates that Directive Principles of State Policy contained in the Constitution **shall guide Parliament**, the President and the Cabinet of Ministers **in the enactment of laws** and the **governance** of Sri Lanka for the establishment of a just and free society.
- b) stipulates that the State is pledged to establish in Sri Lanka a Democratic Socialist Society, the **Objectives** of which include
- i) **the full realization of the fundamental rights and freedoms of all persons;**
 - ii) **the promotion of the welfare of the People** by securing and protecting as effectively as it may, **a social order in which justice (social, economic and political) shall guide all the institutions of the national life;**
 - iii) **the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing**, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities;
 - iv) the rapid development of the whole country by means of public and private economic activity and by laws prescribing such planning and controls as may be expedient for directing and co-ordinating such public and private economic activity **towards social objectives and the public weal;**
 - v) **the equitable distribution among all citizens of the material resources of the community and the social product, so as best to subserve the common good;**
 - vi) the **establishment of a just social order** in which the means of production, distribution and exchange are not concentrated and centralised in the State, state agencies or **in the hands of a privileged few**, but are dispersed among, and owned by, all the People of Sri Lanka;
 - vii) **raising the moral and cultural standards of the People**, and ensuring the full development of human personality;
- c) **stipulates that the State shall eliminate economic and social privilege** and disparity, and **the exploitation of man by man or by the State.**
- d) stipulates that the State shall ensure that the operation of **the economic system does not result in the concentration of wealth and the means of production to the common detriment.**
- e) stipulates that the State shall ensure **social security and welfare.**
- f) stipulates that the **State shall endeavour to foster respect for international law and treaty obligations in dealings among nations.**
11. The Petitioner states **that notwithstanding being bound by the aforesaid solemn oath/affirmation taken under and in terms of the Constitution to uphold and defend the Constitution**, several public officers, Ministers, Deputy Ministers, Speaker and Members of Parliament, ***acting in breach of the aforesaid oath/affirmation***, have been directly and/or indirectly involved in mooted and/or formulating and/or in causing and/or having caused the passage of the Bill, the subject matter of this Application, **without adhering to the provisions enshrined in the Constitution for the due enactment of law**, and further the said **Bill containing provisions *ultra vires* and violative of the Articles enshrined in the Constitution and determinations already made by Your Lordships' Court in respect of the Constitution.**

12. The Petitioner states that,

- a) in or about mid March 2003, the Petitioner learnt from the media, that a Bill titled “Inland Revenue (Special Provisions)” had been passed in Parliament. Petitioner was unaware and had no reasonable and/or adequate means of being aware of the contents of the Bill *till the passage of the Bill was reported in the media*
- b) upon coming to know of the aforesaid, the Petitioner endeavoured to obtain a copy of the Bill from the Government Publications Bureau, but was informed that it had been sold out.
- c) subsequently, the Petitioner was able to obtain a photocopy of the library copy of the Bill only on **3.4.2003** from the Government Publications Bureau; on the face of the Bill it is stated that *the same has been presented to Parliament by the Finance Minister on 1.1.2003*
- d) upon enquiry, the Petitioner ascertained that the Government Publications Bureau had received copies of the aforesaid Bill for sale to the public only on **11.2.2003** (*i.e. 11 days after presentation to Parliament*), and that too, only 10 Sinhala copies, 5 Tamil copies and 15 English copies thereof had been received.
- e) the Petitioner in the meantime had obtained from a source at the Inland Revenue Department a copy of a document titled “Inland Revenue (Special Provisions)” published as a “Gazette of the Democratic Socialist Republic of Sri Lanka”, with no Gazette Notification number given thereto, *and not in the format of a normal Government Gazette Notification.*
- f) to the aforesaid document obtained by the Petitioner, titled as aforesaid containing a Bill was attached a 2 page fax *stating to be from the Legal Draftsman, containing Amendments to be moved at the Committee Stage of the Bill*
- g) subsequently, the Petitioner on or about 25.3.2003, was able to obtain a printed document stated to be the Inland Revenue (Special Provisions) Act *numbered in hand* as 10 of 2003, but not a published copy of the Act from the Government Publications Bureau.
- h) as per Section 11 of the aforesaid document stated to be a copy of the Act, the Inland Revenue (Special Provisions) Act No. 7 of 2002 **certified on 5th June 2002** had been sought to be repealed.

True copies of the

- *said Document titled the “Gazette of the Democratic Socialist Republic of Sri Lanka” (unnumbered), containing a stated Inland Revenue (Special Provisions) Bill, marked “A1”,*
- *said 2 page fax containing Amendments to be moved at the Committee Stage of the Bill, marked “A2”*
- *the said photocopy of the Inland Revenue (Special Provisions) Bill, marked “A3”*
- *said hand numbered printed copy of the Inland Revenue (Special Provisions) Act No. 10 of 2003, marked “A4”, and*
- *said Inland Revenue (Special Provisions) Act No. 7 of 2002 certified on 5.6.2002, marked “A5”*

are annexed hereto and pleaded as part and parcel hereof

13. The Petitioner, as advised, states that,

- a) in terms of Article 121 (1) of the Constitution any citizen is entitled to invoke the jurisdiction of Your Lordships’ Court to seek determinations, as to the constitutionality and/or validity of the provisions of any Bill presented to Parliament, within one week of it being placed on the Order Paper of Parliament
- b) no copy of the Bill (“A3”) was made available to any member of the public **within one week** from the same being presented to Parliament, *as is borne out as aforesaid.*
- c) the provisions of the Bill (“A3”) violates the fundamental right to equality enshrined by Article 12(1) of the Constitution and violates the judicial power of the people enshrined in Article 4(c) of the Constitution, and read with Article 3 of the Constitution, *it alienates the sovereignty of the people, and as such, **the same could not have been validly passed by Parliament.***

- d) provisions inconsistent with Article 3, read with Article 4 of the Constitution, have to be passed by a **special majority required under the provisions of Article 84(2) of the Constitution and approved by the people at a Referendum** in terms of Chapter XIII of the Constitution
- e) The provisions of the Bill (“A3”) directly and/or indirectly *deviously/ manipulatively* suspend provisions of the Constitution, **particularly those relating to the exclusive right of the President to grant pardon, and Parliament is debarred from legitimately passing such Bill in terms of Article 75 of the Constitution.**
- f) The provisions of the Bill (“A3”) *deviously / manipulatively* transfer power which is attributed by the Constitution to one organ of the Government, namely the Executive President, to another organ the legislative Parliament, **which is an alienation of sovereignty of the people including fundamental rights, in terms of Article 3, read with Article 4 of the Constitution.**
14. The determination by 7-Member Bench of Your Lordships’ Court made on or about 15.10.2002 in respect of the Bill titled “19th Amendment to the Constitution”,
- i) contained, *inter-alia*, the following conclusion:
- ✓ “(5) the transfer of a power which is attributed by the Constitution to one organ of government to another; or the relinquishment or removal of such power, would be an alienation of sovereignty inconsistent with Article 3 read with Article 4 of the Constitution.”
- ii) the summary of determination, *inter-alia*, stated that,
- ✓ 1) the effect of suspending the operation of a part of the Constitution cannot be validly enacted by Parliament in view of the specific bar contained in Article 75 of the Constitution.
- ~~X~~ 2) provisions inconsistent with Article 3 read together with relevant provisions of Article 4 have to be passed by a special majority required under the provisions of Article 84(2) and approved by the people at a Referendum.
- iii) in the dicta of the aforesaid Order Your Lordships stated –
- ~~X~~ “We have to give effect to this provision according to the solemn declaration made in terms of the Fourth Schedule to the Constitution to “uphold and defend the Constitution” ”
15. The Petitioner, as advised, further states that,
- a) the provisions of the Bill (“A3”) violates the Directive Principles of State Policy and Fundamental Duties enshrined in Article 27 of the Constitution, as morefully set out hereinbefore, **in breach of the solemn oath/affirmation to uphold and defend the Constitution taken by the Respondents hereinafter referred to at paragraph 46**
- b) the provisions of the Bill (“A3”) in violation of the Directive Principles of State Policy and Fundamental Duties, **concentrates wealth in the hands of a privileged few to the common detriment**, and is contrary to the Objectives of the State, **particularly the raising of the moral standards of the people**
- c) the provisions of the Bill (“A3”) unlawfully passed as aforesaid, brings about the **abdication** of “**good governance**” by the Government, and clearly encourages law breakers and those who perpetrate crimes, and thereby ***eroding all norms of “good governance”***, and undermining *Article 27 of the Constitution which provides for the governance of the country for the establishment of a just and free society, with a just social order, raising the moral standards of the people*
- d) the provisions of the Bill (“A3”) are **illogical and arbitrary** and blatantly flout and undermines the “rule of law”, which is a sacred fundamental principle of the Constitution of Sri Lanka

16. The Petitioner, as advised, respectfully states that,

- a) a 7-Member Bench of Your Lordships' Court unanimously determined in respect of the Bill titled – "19th Amendment to the Constitution", and communicated to the Speaker on 15.10.2002, that certain provisions contained in the said Bill **could not be validly enacted by Parliament**, *thus affirming the principle that Parliament's capacity to enact laws are circumscribed by the Constitution*, which confers on Parliament the powers to enact laws
- b) thus and otherwise, the Bill ("A3") has not been duly and lawfully enacted in compliance with the requirements of and the procedure laid down by the Constitution .

17. The Petitioner, as advised, states that,

- a) the Members of Parliament having taken an *official oath and affirmation* under and in terms of Article 63 of the Constitution *to uphold and defend the Constitution*, do not have the right, the authority, or the power to act in violation of the provisions of the Constitution, and *to unlawfully enact a Bill in to Law as aforesaid*.
- b) the Members of Parliament **do not and did not possess unfettered powers** to have **legitimately** enacted the Bill ("A3") in to Law, conferring a benefit on themselves and/or a privileged few causing colossal financial loss to the State, in violation of the provisions enshrined in Articles 27 and 28 of the Constitution, in breach of their solemn oath / affirmation to uphold and defend the Constitution.
- c) the aforesaid ***unlawful enactment*** of the Bill ("A3") in violation of fundamental principles and ***entrenched provisions*** of the Constitution, tantamounts to the misuse and abuse by Members of Parliament of the legislative power of the people enshrined in Article 4 of the Constitution, and is an alienation of the sovereignty of the people enshrined in Article 3 of the Constitution, which includes the powers of the Government, *which is inalienable*.
- d) the powers of Government are reposed in the people by the Constitution and Members of Parliament being custodians thereof are bound to exercise their legislative powers ***in trust on behalf of the people***.
- e) a 7-Member Bench of Your Lordships' Court in the unanimous determination in respect of the Bill titled "18th Amendment of the Constitution", *inter-alia*, held –

"The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution"
- f) a 7-Member Bench of Your Lordships' Court in the unanimous determination in respect of the Bill titled "19th Amendment of the Constitution", *inter-alia*, held

"The power that constitutes a check, attributed to one organ of government in relation to another, has to be seen at all times and exercised where necessary, in trust for the People. This is not a novel concept. The basic premise of Public Law is that power is held in trust."

18. The Petitioner, as advised, states that,

- a) a Bill which has not been lawfully enacted, **cannot become lawful** by Members of Parliament acting in the manner aforesaid *unlawfully, and in excess of the legislative power of the people* that they are obligated to exercise **in trust for the people; as the custodians of such power in trust for the people**.
- b) the Members of Parliament cannot abuse and/or misuse the legislative power reposed in them ***in trust by the people*** to perpetrate a fraud on the country or to grant or suffer to be granted to a privileged few the benefit of colossal amounts of resources, which legitimately belong to the people, thereby *acting against all known norms and principles of social justice and morality*.

19. The Petitioner states that

- a) the Bill ("A3") has been hastily and unlawfully passed as aforesaid devoid of any discussion and debate, of whatsoever nature, in the public domain, notwithstanding the serious public repercussions it is bound have on the nation and on the national interest.
- b) as morefully set out hereinbefore, the Petitioner (as indeed the general public) had been denied the constitutional right to have invoked the jurisdiction of Your Lordships' Court timeously under and in terms of Article 121, read with Article 78 of the Constitution, since as a member of the general public, the Petitioner was not aware and was not privy to resources to have been made aware of the Bill ("A3"), having been placed on the Order Paper of Parliament; *inasmuch as only a limited number of copies as aforesaid of the Bill ("A3") had been made available to the Government Publications Bureau on 11.2.2003 though stated thereon that it had been presented by the Finance Minister to Parliament on 31.1.2003, i.e. **11-days after such presentation***
- c) the jurisdiction of Your Lordships' Court, under the aforesaid Articles of the Constitution, *is invariably invoked in respect of political matters and issues*, upon a Bill being placed on the Order Paper of Parliament is *very well known to politicians* (24 Petitions had been filed against the Bill titled "19th Amendment to the Constitution"), and a fortiori the aforesaid Bill ("A3"), ought in good conscience and as a matter of Constitutional right to have been made known to the general public in the public interest and public good, in so far as it sought to **alienate the sovereignty and the rights of the people, in violation of the Constitution and occasioning colossal loss to the people**
- d) had the presentation of the Bill ("A3") to Parliament been immediately known to Petitioner, the Petitioner would have within the stipulated 7 days of the Bill ("A3") being placed on the Order Paper of Parliament, invoked the jurisdiction of Your Lordships' Court, to seek the determination of Your Lordships' Court thereon, *Your Lordships exercising the judicial power of the people in terms of the Constitution.*
- e) the general public had a fundamental right to have had sufficient notice of the presentation of the Bill ("A3") to Parliament in keeping with the provisions of the Constitution, so that any member of the public, including the Petitioner, would have had the opportunity of exercising his /her fundamental right of expressing his /her dissatisfaction regarding such Bill and challenging its validity and constitutionality before Your Lordships' Court in terms of the provisions of the Constitution.
- f) thus and otherwise the general public, including the Petitioner, have been prevented from invoking the jurisdiction of Your Lordships' Court within the time stipulated by Article 121(1) of the Constitution, and this has manifestly resulted in the violation and denial of the Petitioner's fundamental right to equality guaranteed by Article 12(1) of the Constitution and his fundamental right of expression guaranteed by Article 14(1)(a) of the Constitution.
- g) the fundamental rights of the general public, including the Petitioner, enshrined in Articles 12(1) and 14(1)(a) of the Constitution have been infringed upon and denied.
- h) it is both *unjust and inequitable* for the general public, including the Petitioner, to have been denied the opportunity to have acted in the public interest and public good, and perform his/her duties and discharge his/her obligations *under and in terms of Article 28 of the Constitution.*

20. The Petitioner, as advised, states that,

- a) the Bill ("A3") is adverse to the interests of and causes loss and damage to the nation and is detrimental to the public good and further erodes the **"rule of law", the basis and the fundamental principle of the Constitution.**
- b) a 7-Member Bench of Your Lordships' Court in the unanimous determination in respect of the Bill titled "18th Amendment of the Constitution", *inter-alia*, held

X /
"Hitherto without exception, executive and administrative action have been subjected to the jurisdiction enshrined in Article 126 of the Constitution"

21. The Petitioner states that,

- a) in the context of the averments herein contained, he verily believes that the Hon. Attorney General, had not examined, or not had the opportunity to examine, as mandated by Article 77 of the Constitution, the Bill (“A3”) for any contraventions of the Constitution and for any provisions, which cannot be validly passed and consequently had not given an Opinion thereon, nor made any communication of his Opinion to the President, as also mandated by the Constitution; *and that the President had not received such an Opinion.*
- b) in the context of the averments herein contained, he verily believes that the Hon. Attorney General, likewise had not, as mandated by Article 77 of the Constitution, examined the Amendments (“A2”) to the Bill (“A3”) and communicated his Opinion to the Speaker, at the stage when the Bill was ready to be put to Parliament for its acceptance; *and that the Speaker had not received such an Opinion*
- c) the Petitioner understands, that the Speaker, having been seriously ill had been abroad for medical treatment and had returned to the island only on or about Sunday 16.3.2003 and his signature on the certification of the Bill as passed, had been obtained thereon on Monday 17.3.2003, *at a time when he had not fully recovered from his illness, without him having had the opportunity to examine the validity of the Bill (“A3”) with regard to the inconsistencies / irregularities / illegalities set out herein.*

22. The Petitioner, as advised, states that,

- a) the very Preamble of the Bill (“A3”) states thus:

“An act to enable persons who have not furnished a return of income and assets prior to March 31, 2002 to make a declaration in respect thereof; to make provision for the grant of certain concessions to declarants and non-declarants; 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; to provide for the repeal of the Inland Revenue (Special Provisions) Act, No. 7 of 2002; and to provide for matters connected therewith or incidental thereto.”

- b) under the guise of the *misleading and/or misrepresenting* title “Inland Revenue (Special Provisions) Bill” (“A3”), which **on the face of it** held out that the same was to provide an Income Tax amnesty, *the said Bill had, however, encompassed several other Statutes dealing with illegal acts, offences and/or crimes against society.*
- c) violations of provisions in the following Statutes, which had been enacted in the national and public interest have been encompassed in the Bill (“A3”) upon the fiction that it was dealing with inland revenue matters only , *to wit,*
 - i Customs Ordinance (Chapter 235)
 - ii Excise Ordinance (Chapter 52)
 - iii Excise (Special Provisions) Act No. 13 of 1989
 - iv Import and Export Control Act No. 1 of 1969
 - v Exchange Control Act (Chapter 423)
- d) The aforesaid statutes provided for the **imposition of duties and/or penalties and/or fines, and also sentences of imprisonment**, and not only taxes and penalties, as stated in the Preamble to the Bill (“A3”).
- e) Thus the aforesaid **Preamble camouflages and misleads the actual effect, ambit and scope of its provisions.**

23. The Petitioner, as advised, states that,

- a) The offences under the aforesaid statutes would, *inter-alia*, include the following wrong-doings, which have been provided for to be dealt with in accordance with public policy and international objectives, as recognized by the community of nations:
 - i) smuggling, including smuggling of restricted / prohibited items, such as drugs and narcotics, firearms and security sensitive equipments.
 - ii) violations of the provisions of the Intellectual Property Act enacted to protect consumer interests, *inter-alia*, preventing unlawful/spurious products and/or pirating in the market place
 - iii) distilling of illicit brew of liquor such as *Kasippu*, etc and bootlegging,
 - iv) import and/or export of items prohibited in the national or public interest

- v) Exchange Control violations detrimental to the national economy
 - vi) Money laundering in connection with activities such as narcotics/drug peddling and terrorism *banned under international conventions/treaties entered into by Sri Lanka*
- b) **some of the aforesaid offences are Scheduled offences under the Criminal Procedure Code**, for which a Magistrate is not empowered to grant bail and are punishable under the provisions of the Penal Code and therefore cannot be given any **immunity and/or pardon**, whatsoever, from prosecution, conviction and imprisonment **under the guise and ruse of an Income Tax amnesty, as aforesaid.**

24. The Petitioner, as advised, further states that,

- a) the Bill (“A3”) *deviously / manipulatively* has **usurped** the executive power of the people to be exercised solely and exclusively by the President of Sri Lanka under and in terms of the Constitution, and thereby the same is in violation of Article 4 of the Constitution, *and read with Article 3 of the Constitution, it alienates the sovereignty of the people, which is inalienable.*
- b) the Bill (“A3”) is unlawful, unconstitutional and **could not have been legitimately enacted by Parliament.**
- c) a 7-Member Bench of Your Lordships’ Court in the unanimous determination in respect of the Bill titled “19th Amendment of the Constitution”, *inter-alia*, held

“..... any power that is attributed by the Constitution to one organ of government cannot be transferred to another organ of government or relinquished or removed from that organ of government; and any such transfer, relinquishment or removal would be an “alienation” of sovereignty which is inconsistent with Article 3 read together with Article 4 of the Constitution”

- d) a 7-Member Bench of Your Lordships’ Court in the unanimous determination in respect of the Bill titled “19th Amendment of the Constitution”, *inter-alia*, held

“.... this manifests a cardinal rule that applies to the interpretation of a Constitution, there can be no implied amendment of any provision of the Constitution.”

- e) Article 82 (1) of the Constitution **expressly prohibits the placing on the Order Paper** of Parliament any Bill for amending / repealing / altering of any provision of the Constitution **unless the same is expressly specified in the Bill and is described in the long title thereof as an Act for the amendment of the Constitution.**

25. The Petitioner states that,

- a) Section 6 (4) of the aforesaid Bill stipulates –

“ (4) No court of law shall call upon any person referred to in Sub-section 1 to divulge the identity of the declarant or any information contained in any declaration made under Section 2, other than in the course of any proceedings instituted under the Commission to Investigate Allegations of Bribery and Corruption Act No. 19 of 1994”

- b) thus and otherwise Courts of law and law enforcement authorities would be impeded in the pursuit of investigations and prosecutions of offenders involved in criminal acts against society as aforesaid. This would also be in contravention of international conventions and treaties, to which Sri Lanka is a party, which conventions and treaties also enable investigations by tax authorities in other countries and by international criminal investigation authorities, such as *Interpol*.
- c) the Bill (“A3”) would also undermine the arduous efforts of long years of investigations **at great risks to themselves** by public officers of the aforesaid statutory authorities and other law enforcement agencies of the government, carried out into major frauds, knowingly and deliberately perpetrated against the State by unscrupulous persons, *denying legitimate revenues to the government and through it to the people of this country.*
- d) the provisions of the Bill (“A3”) *would only demoralize the public servants* serving in the aforesaid statutory authorities and the relevant law enforcement authorities, **discouraging them from taking any future actions to curb crimes against society and losses caused to the State**, as they are statutorily mandated to do, *contrary to the “ rule of law ” and principles of good governance.*

- e) **the Petitioner is unaware of any such far reaching and wide amnesties and/or pardons being given in any other civilized country in the world, for such crimes against society, where law is not only enforced to deal with crimes, but also new laws are continuously being enacted to deal with and curb crime, including the menace of *fraud and corruption*.**

26. The Petitioner states that the Bill ("A3") provides for,

- a) the disclosure and/or declaration of monies and/or assets movable and/or immovable to the Commissioner General of Inland Revenue, for the purpose of a Tax amnesty on such monies regardless of its source, and
- b) furthermore stipulates, particularly at Section 7 thereof, that the declaration of monies could be by the person holding the money or investment in his own name or **any other name or without any name**.
- c) in terms of Section 3 of the Bill ("A3"), merely on such disclosure and/or declaration, the declarant is wrongfully and/or unlawfully sought to be granted, as aforesaid, full immunity from payment of duties and/or fines and/or penalties and/or prosecution, under those other statutes set out in the Schedule to the Bill, coming under the purview and/or direction of the,
- i) Director General of Customs
 - ii) Director General of Excise
 - iii) Controller of Exchange
 - iv) Controller of Imports & Exports

in addition to the taxes, levies and penalties imposed under the several other Acts specified in the Schedule to the Bill ("A3") to be enforced by the Commissioner General of Inland Revenue

- d) in any case, the Bill ("A3") has not provided for and cannot annul duties and/or fines imposed under other statutes and/or by Courts of law thereunder
- e) the Bill ("A3") **does not specify the nexus and/or co-relationship** between the value or volume of monies/assets declared by a person to the Commissioner General of Inland Revenue for Tax amnesty **and** the corresponding transactions and/or crimes perpetrated under the aforesaid other statutes and the values thereof, (*eg. the nexus and co-relationship between the declaration of Rs. 1 Mn. for Tax amnesty and 10 different Customs violations and/or Exchange Control violations attracting fines of Rs. 400 Mn.*)
- f) monies collected by persons under the following statutes contained in the Schedule to the Bill ("A3") i.e.,
- i) The Turnover Tax Act No. 69 of 1981
 - ii) The National Security Levy Tax Act No. 52 of 1991
 - iii) The Goods and Services Tax Act No. 34 of 1996

are not taxes on income as it were, but are monies collected by such persons **as agents for the State**, from the consumer public, and therefore such monies rightfully and legitimately belong to the state and, such persons could not be lawfully permitted to retain such monies, **to which they have no entitlement**; and.

these indirect taxes have been duly paid by the consumer public to be paid to the State. The persons, who are to be granted amnesties in relation thereto **do not have the right** to retain the same with themselves, even if it is now not payable to the State on account of such amnesty.

27. The Petitioner states that,

- a) if the amnesties as contemplated under the Bill ("A3") are granted, the Petitioner verily believes that the State would be denied of considerable revenues of national economic proportions.
- b) some of the aforesaid revenues would be on fines to be collected on prosecutions pending before Courts of law and prosecutions successfully concluded. There is no rationale or logic, whatsoever, to defraud the country and the public of such legitimate revenues
- c) a proper reckoning of the amounts of the aforesaid denial of revenues to the State could be assessed only by the public officers referred to at paragraph 26 hereinbefore, who ought to be required to adduce such information to Your Lordships' Court.

- d) the aforesaid monies receivable would become funds of the Consolidated Fund as enshrined in Articles under Chapter XVII of the Constitution, and as such, belong to every citizen of this country, including the Petitioner, *who has a right and interest thereto*.
- e) not only has the Bill (“A3”) been hastily and unlawfully passed as aforesaid, devoid of adequate public disclosure and debate, but also, the Finance Minister, has failed to provide estimated and/or reckoned figures of revenue losses to the government, consequent to the enactment of the Bill (“A3”), as he ought to have, inasmuch as relevant revenue and expenditure estimates are disclosed in the budgetary provisions.
- f) the budgeted revenue streams that have been reckoned and anticipated to be collected by the relevant statutory authorities, would have also taken into reckoning the aforesaid revenues, now being denied by Bill (“A3”), and included in the Budget for the year 2003, *which has already been approved by Parliament*
- g) the Finance Minister, has failed to specify, as to how such reckoned revenue stream shortfalls for the year 2003, would be bridged and from what sources
- h) even the mere revision of poorly paid salaries of public servants is decided upon, *only after examination, study and review by a Committee, upon representations being entertained / received*, whereas, in this instance, *ad-hoc* privileges / favours / financial benefits have been conferred upon a privileged few, that too, wrong-doers and law breakers, *without any such examination, study and review, devoid of any representations, whatsoever*.
- i) the Petitioner understands that the Government had expected to collect in the year 2002, 84% Tax revenue from indirect taxes. The Petitioner understands that actual revenue was Rs. 20,000 Million below anticipated revenue. In the circumstances, it surely cannot be in the public interest to deny such a colossal sum of revenue to the State and seek to wrongfully and unlawfully enrich a privileged few law breakers by passing into law the provisions of the Bill (“A3”)
- j) in addition to colossal revenue losses to the government, commission of such acts of smuggling, under-invoicing, illegal disposal of BOI products to the local market, etc., cause undue and unfair competition to local industries, causing losses thereto and closures thereof, resulting in the loss of employment opportunities; in violation of the Directive Principles of State Policy and Fundamental Duties and Objectives enshrined in Article 27 of the Constitution.

28. The Petitioner states that,

- a) the aforesaid unconscionable colossal bonanzas, in violation of the provisions of the Constitution, as aforesaid, are attempted to be given to a privileged few, **who could easily afford to pay and should in law be made to pay**
- b) **there are scores of poverty stricken persons lingering in jails for non-payment of bail monies and/or minor fines**. These are persons, who have no means to pay such bail monies and/or minor fines, and they in contrast have thus been **denied equal treatment** under the law as enshrined in the Constitution.
- c) garment “export quotas” are not granted to garment exporters, where such exporters are in default and/or in arrears of the payment of the statutory dues, such as Employees Provident Fund and Employees Trust Fund payments – they too are thus **denied equal treatment** under the law as enshrined in the Constitution.
- d) given such criteria enforced for the granting of garment “export quotas” to garment exporters, *earning valuable foreign exchange for the country*, it would be inequitable, if tax evaders, smugglers and exchange control violators, et al, *who had defrauded and not paid legitimate dues to the State*, are permitted to and would become entitled to participate in privatization programmes of the government and buy State property, paying from such monies, *which in the very first instance, rightfully and legitimately belong to the State i.e. the public*.
- e) the Prime Minister, addressed the Nation in or about July 2002, and emphatically portrayed the grave and serious economic crisis faced by Sri Lanka and the grave indebtedness of the country, giving facts and data in such regard, including the level of per capita debt of each and every citizen of the country .

- f) in the context of the Prime Minister's Address to the Nation, it is beyond comprehension, rationality and logic, as to how such bonanzas of billions of rupees are being conferred upon a privileged few law breakers, denying the revenue that rightfully belong to the people of this country, *who are said to be gravely indebted as aforesaid, with the per capita debt level rising* .
- g) **the Petitioner verily believes, that even rich and developed countries could not have and would not have afforded such all encompassing amnesty, denying the public of its rightful revenues, affording wrongful and unlawful privileges and unjust enrichment to a privileged few, who had knowingly and deliberately violated the law and acted contrary to the interest of the State and the public, and being permitted to pillage and plunder the resource that rightfully belong to the people.**
- h) a 7-Member Bench of Your Lordships' Court in the unanimous determination in respect of the Bill titled "18th Amendment of the Constitution", *inter-alia*, held

X } " if such immunity is given to the Constitutional Council, it would in effect be elevated to a body that is not subject to law, which is inconsistent with the rule of law. The Rule of Law, means briefly the exclusion of the existence of arbitrariness and maintaining equality before the Law the effect of the amendment in clause 4 is to introduce a different class of people whose actions are not subject to judicial review. There is no justification for such immunity to be granted, which is contrary to Article 12(1) of the Constitution and the basic principles of Rule of Law"

A true copy of the page of Daily Mirror of 5.7.2002 publishing excerpts from the Prime Minister's Address to the Nation is annexed hereto marked "B" and pleaded as part and parcel hereof

29. The Petitioner states that,

- a) the International Monetary Fund and the World Bank (also known as the International Bank for Re-construction and Development), are involved/associated in assisting the Government to plan the management of its finances and also assisting the Government to raise loans, aid and donor funding, to support socio-economic development projects and also to give budgetary support.
- b) the aforesaid organizations in carrying out the aforesaid tasks are known to impose conditionalities, such as cutting down of subsidies, reduction of the public service and acceleration of the privatization processes, whilst at the same time, providing for funding of poverty alleviation programmes.
- c) it is also known that some of the subsidies that directly affect the broader spectrum of the less privileged segments of society are denied, such as bread subsidies and fertilizer subsidies, whilst social sectors, such as health and education, **are starved of vital funds.**
- d) in the given facts and circumstances, it is beyond comprehension, as to how the said organizations could condone the colossal loss of such legitimate revenue streams to the State, as morefully set out herein, affording bonanzas to a *few privileged wrong-doers or law breakers, who could afford to pay such revenues so denied and/or defrauded by them to the State.*

30. The Petitioner states that,

- a) with the enactment of Act No. 19 of 1994, presented to Parliament by the present Minister of Constitutional Affairs, as the then Minister of Justice, to establish the Commission to Investigate Bribery or Corruption, the Bribery Act was also amended at the very same time, with the Bribery Amendment Act No. 20 of 1994, also presented to Parliament by the said then Minister of Justice, to include "**Corruption**" as an offence under the Bribery Act; but not retrospectively.
- b) "**Corruption**" was defined by the replacement of Section 70 of the Bribery Act, by the following new Section, as per the Bribery Amendment Act No. 20 of 1994.

"70. Any public servant who, with intent, to cause wrongful or unlawful loss to the government, or to confer a wrongful or unlawful benefit, favour or advantage on himself or any person, or with knowledge, that any wrongful or unlawful loss will be caused to any person or to the government, or that any wrongful or unlawful benefit, favour or advantage will be conferred on any person –

- (a) does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public servant;
- (b) induces any other public servant to perform, or refrain from performing, any act, which such other public servant is empowered to do by virtue of his office as a public servant;
- (c) uses any information coming to his knowledge by virtue of his office as a public servant;
- (d) participates in the making of any decision by virtue of his office as a public servant;
- (e) induces any other person, by the use, whether directly or indirectly, of his office as such public servant to perform, or refrain from performing, any act,

shall be guilty of the offence of corruption and shall upon summary trial and conviction by a magistrate be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine." - [emphasis added]

- c) also as per the Bribery Amendment Act No. 20 of 1994, **the definition of a "Public Servant" was expanded to include, *inter-alia*, a Cabinet Minister, Non-Cabinet Minister, Speaker, Deputy Minister, Member of Parliament, Servant or Employee of the State, etc.**
- d) both the aforesaid Acts for the establishment of a Permanent Commission to Investigate Bribery or Corruption and to include "**Corruption**" as an offence punishable under the said law as aforesaid, were passed unanimously in Parliament.
- e) at the Debate on the passing of the aforesaid Acts in Parliament in October 1994, the present Constitutional Minister, as the then Minister of Justice, *inter-alia*, stated thus:

"Hon. Deputy Speaker, you are aware that there is a great resentment and hatred in our country concerning bribery and corruption. Therefore, it is the duty of the government to formulate laws in conformity with public opinion."

"Apart from the financial implications, there is also the question of an overweening sense of cynicism. Discerning, discriminating, thinking people in our country have expressed profound dissatisfaction with the extent to which corruption and bribery have taken root in our country. If this spirit of cynicism is not addressed there is a definite danger to the stability and tranquility of political and social institution in our country. That is why the government was convinced that there should be a vigorous response to the issues of bribery and corruption".

- f) also, at the Debate in the passing of the aforesaid Acts in Parliament in October 1994, the present Prime Minister, as the then Leader of the Opposition, *inter-alia*, stated thus: :

"In fact, the whole question of bribery and corruption raises many fundamental questions in a democratic society. We have all got to recognise that corruption is a cancer of democracy, as one of the biggest problems that we faced, when elected representatives and officials of the Government who are also public servants - when their decisions are effected not by matters of political consideration but by pecuniary gains and financial gain".

- g) which aforesaid two Statements made in Parliament by the Constitutional Minister [*then Minister of Justice*] and the Prime Minister [*then Leader of the Opposition*], **clearly demonstrate the intention of the legislature in passing the aforesaid laws to deal with Bribery and Corruption.**
- h) accordingly, the very acts perpetrated by those persons, who were instrumental and/or involved in mooted and/or lobbying and/or formulating and/or causing the unlawful enactment of the Bill ("A3"), with the knowing intention of conferring benefit on a privileged few and thereby causing colossal loss to the Government, the Petitioner is advised, **is a contravention of the aforesaid "Corruption" provision unanimously enacted by the Parliament, whereas the Bill ("A3") had been unlawfully passed as aforesaid only by a simple majority.**

True copies of the Hansard Columns 280 to 288 of 4.10.1994 and Hansard Columns 401 to 412 of 5.10.1994 are annexed hereto marked "C1" and "C2" respectively, and pleaded as part and parcel hereof

31. The Petitioner states that upon representations he had made to the President of the World Bank, the Petitioner received Letter dated 25.9.2002 from the World Bank, Country Program Co-ordinator for Sri Lanka, who had written the same on the instructions of the World Bank President, stating thus:

“As noted in your letter, the senior management of the World Bank, as well as the entire staff of the institution, take the issues of fraud and corruption very seriously. Furthermore, the community of developing countries acknowledged this issue at the meeting held in Monterrey earlier this year. Specifically, developing countries in Monterrey said “We understand that if there is to be development assistance, then we have to put our house in order. We have to deal with building our human capacity, we have to deal with legal systems that protect rights, we have to have financial systems that are transparent, and we must fight corruption.” ”

A true copy of the said Letter dated 25.9.2002 from the World Bank is annexed hereto marked “D” and pleaded as part and parcel hereof

32. The Petitioner states that,

- a) by the provisions of the Bill (“A3”), it is abundantly clear, that colossal financial benefit, favour or advantage are wrongfully and/or unlawfully attempted to be conferred upon certain persons, thereby wrongfully and/or unlawfully causing loss to the State. **The Petitioner is advised that this tantamounts to “Corruption” within the meaning of the aforesaid statute.**
- b) should any of those who mooted and/or lobbied and/or participated and/or acted to cause the unlawful enactment of the Bill (“A3”) as aforesaid, seek refuge under the aforesaid unlawfully enacted Bill (“A3”) to obtain amnesty and/or immunity from suit for themselves, thereby wrongfully and unlawfully causing loss to the State, and gaining wrongful and/or unlawful benefit, favour or advantage unto themselves, they too, the Petitioner is advised, **would then be committing the offence of “Corruption” and be liable to be prosecuted.**
- c) inasmuch as Section 6 (4) of the Bill (“A3”) under which the Commission to Investigate Allegations of Bribery or Corruption is entitled to call upon the identity of the declarant or any information contained in any declaration made under Section 2 of the Bill (“A3”) , in the interest of public justice,
 - i) the Commissioner General of Inland Revenue, ought to communicate any such declarations made by any persons, coming within the meaning of the definition of “Public Servant” as aforesaid, to the Chairman of the Commission to Investigate Bribery or Corruption, and
 - ii) the Chairman of the Commission to Investigate Bribery or Corruption should require the Commissioner General of Inland Revenue to communicate any such declarations made by any persons, coming within the meaning of “Public Servant” as aforesaid.

33. The Petitioner states that,

- a) Sub-section 3 of Section 3 **was not contained in the Bill (“A3”),** but had been contained in the Statement of Amendments to be moved at the Committee Stage of the Bill, as disclosed in the aforesaid two page fax (“A2”) containing such Amendments.
- b) the aforesaid Sub-section 3 of Section 3, **not contained in the Bill (“A3”) reads thus:**

“3. Any transaction taking place on or after March 31, 2002, in connection with any asset declared for the purposes of the Exchange Control Act (Chapter 423) under Section 2 of this Act, shall be afforded the same immunity referred to in Sub-section 1, as if such transaction has taken place on or before March 31, 2002”
- c) the Petitioner verily believes, that the Hon. Attorney General, **had not communicated his Opinion to the Speaker** on the aforesaid proposed Amendments, **as stipulated under Article 77(2) of the Constitution, and nor had the Speaker received the same.**
- d) the aforesaid Sub-section 3, included as aforesaid, significantly affords immunity to any Exchange Control **violation and/or fraud perpetrated even today** and/or **even at a future date, since such transaction would be deemed to have taken place before 31.3.2002.**

- e) in other words it gives a *carte blanche* open ended licence to perpetrate Exchange Control violations and/or frauds, which could and would involve, *inter-alia*, transactions pertaining to narcotics / drugs peddling, human trafficking, terrorism and/or terrorists and/or terrorist organizations, etc.
- f) the aforesaid Sub-section 3 is not contained in the Bill (“A3”) and therefore would not have been placed on the Order Paper of Parliament in terms of Article 78 of the Constitution.
- g) the aforesaid **material omission** would render that the “entirety of the Bill (“A3”)” was not placed on the Order Paper of Parliament, as mandated by Article 78 of the Constitution .
- h) in addition to the grounds stated hereinbefore, in the given facts and circumstances as aforesaid, the Petitioner is advised that he is entitled to invoke the jurisdiction of Your Lordships’ Court to seek a determination on the Bill (“A3”) in terms of Articles 121 and 78 of the Constitution..

34. The Petitioner states that,

- a) he understands that the Bill (“A3”) had been mooted by the Finance Minister, on the premise that the aforesaid statutory authorities are unable to collect revenues, which are legitimately due to the State, arising from the violations of the Statutes listed in the Schedule to the Bill (“A3”).
- b) the aforesaid premise, is in itself, an admission by the Finance Minister, that he is unable to discharge his functions, duties and responsibilities, as the Finance Minister, in directing the effective functioning of the aforesaid statutory authorities, ensuring the due and proper collection of the revenues, legitimately due to the State.
- c) in fact, the above would tantamount to a self admitted indictment by the Government of its inability to effectively govern enforcing due revenue collection, and enforcing the Rule of Law, and prosecuting wrong-doers / law breakers, and the Bill (“A3”) only demonstrates the abdication of the duties and responsibilities of the Government
- d) the said statutory authorities over several decades have been satisfactorily functioning, even in the face of socio-political pressures that have been wrongfully and unlawfully brought to bear on the public officers of the said statutory authorities, endeavouring to inhibit the lawful conduct of their public duties and responsibilities .
- e) the heads of the aforesaid statutory authorities ought to be called upon to apprise Your Lordships’ Court, as to whether the aforesaid colossal revenues could not be collected by their respective authorities, and if not, to show cause as to why they should be permitted to continue in such public office.
- f) In fact, a considerable number of prosecutions would have been successfully concluded before the Courts of law and fines imposed. Are the Courts now powerless to collect them?

Can the judicial power of the people enshrined in the Constitution to be exercised through the Courts of law, be thus caused to be abdicated or thus and otherwise abrogated ?

35. The Petitioner states that,

- a) the Preamble of the Bill (“A3”) specifically states that provisions of the Bill are being enacted –

“with a view to securing the future compliance of such persons with the prevalent tax laws” - [Emphasis added]
- b) there is no provision, whatsoever, in the Bill (“A3”) to ensure the securing of future compliance by such persons, on whom such bonanzas are to be conferred with the provisions of the statutes scheduled to the Bill (“A3”), morefully set out hereinbefore.
- c) Whereas on the contrary, the Bill (“A3”) has provided for Exchange Control violators and fraudsters to continue to so violate and defraud the State even in the future, deeming such acts to have been committed prior to 31.3.2002, as morefully set out hereinbefore.
- d) in the case of criminal offences referred to hereinbefore, there is no provision for the suspension of the fines and/or sentence to be re-imposed, should such defaulters/fraudsters, who are to be pardoned, would perpetrate such fraud in the future

- e) even in the instances of waiving revenue collections, there is no provision to obtain even an undertaking in law from such persons, that such revenues waived would be re-imposed, should such persons similarly violate the revenue laws in the future, to secure future compliance by such persons as so stated in the Preamble in the Bill (“A3”).
- f) **on the contrary, as it stands now, the clear signal and message would be that such persons could continue to defraud the state, expecting to influence peddle, lobby and cause laws to be enacted, time and again, by their political mentors, to have such revenue defrauded waived and crimes pardoned.**
- g) **Significantly, the aforesaid Preamble only contemplates securing future compliance with prevalent Tax laws and not compliance with those other Statutes scheduled to the Bill (“A3”)**

36. The Petitioner respectfully draws Your Lordships’ attention to:

- a) Section 8 of the Bill (“A3”), which states thus;

“8. (1) The Minister may make regulations in respect of all matters which are required by this Act to be prescribed or in respect of which regulations are required or authorized to be made under this Act to give effect to the principles and provisions of this Act.

(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of publication, or on such later date as may be specified therein.

(3) Every regulation made by the Minister shall, **as soon as convenient** after its publication in the *Gazette*, be placed before Parliament for approval. Every regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval, **but without prejudice to anything previously done thereunder**. (*Emphasis added*)

(4) Notification of the date on which any regulation is deemed to be so rescinded shall be published in the *Gazette*.”

and, as advised, respectfully states that,

- b) the aforesaid Section has conferred ***unchecked and unfettered power*** on the Finance Minister, to make Regulations in respect of all matters required, and that such Regulations would come into operation, as published in the *Gazette*.
- c) Sub-section (3) of Section 8 requires the Finance Minister, **as convenient, after** the publication of the said Gazetted Regulations, to place such Regulations before Parliament **for approval**.
- d) questionably, the aforesaid Sub-section (3) also stipulates that the Gazetted Regulations by the Finance Minister, and **not approved** by Parliament will be deemed to be rescinded from the date of such **disapproval by Parliament, without prejudice to anything previously done under such Regulations disapproved by Parliament**.
- e) the above confers on the Finance Minister ***unchecked and unfettered power*** to wrongfully regulate to suit and/or oblige and/or favour any particular person/s, and even if Parliament **disapproves** such Regulations, **the acts perpetrated under such unlawful Regulations not approved by Parliament stand lawful, in clear violation of the right to equality to all persons afforded under Article 12(1) of the Constitution**.
- f) by the foregoing, the Finance Minister, has **usurped** the legislative power of the people, that is to be exercised by Parliament in terms of Article 4 of the Constitution, ***and the said provisions has thereby alienated the sovereignty of the people, which is inalienable in terms of Article 3 of the Constitution***.
- g) furthermore, the above is violative of Article 76(1) of the Constitution which stipulates that **“Parliament shall not abdicate or in any manner alienate its legislative power”**, and is also contrary to the provisions of Article 76(3) of the Constitution in view of the **absolute nature of the power** given to the Finance Minister in terms of the said Section 8 of the Bill (“A3”)

- h) a 7-Member Bench of Your Lordships' Court in the unanimous determination made in respect of the Bill titled "18th Amendment to the Constitution", *inter-alia*, held,

✓ "the proposed Amendment enable the council to exercise legislative power, which according to Article 4(a) of the Constitution, is reposed in the people and is exercised by Parliament. In terms of Article 76(1) of the Constitution, Parliament cannot abdicate or alienate its legislative power The proposed Amendment thus undermines the parliamentary control over Rule making powers of an institution established by the Constitution, which in turn is abdication as well as an alienation that affects the sovereignty of the people, which is inconsistent with Articles 3 and 4 of the Constitution."

37. The Petitioner states that the aforesaid exercise of the Finance Minister's power to make regulations under the Bill would necessarily infringe the fundamental right to equality guaranteed under Article 12(1) of the Constitution.
38. The Petitioner states that the **whole purport of the Bill ("A3") itself is a fraud on the State and the general public of Sri Lanka and a corruption of the public morals and time-honoured public policy of the country.**
39. In this background any Regulation made to give effect to the provisions of the Bill ("A3") would necessarily infringe the fundamental rights to equality guaranteed under Article 12 (1) of the Constitution and is an alienation of the sovereignty of the people, *which is inalienable* in terms of the Constitution.
40. The Petitioner, as advised, respectfully states that
- the mere circumstance that there has been no challenge to the Bill "A3" within 7 days of it being placed on the Order Paper of Parliament cannot render the passage of the Bill into an Act of Parliament, a constitutionally valid exercise and /or make it a legitimate piece of legislation, in the facts and circumstances set out hereinbefore.**
 - the reason for the aforesaid being that the law does not expect the Petitioner(or indeed any member of the public) to do the impossible - *lex non cogit ad impossibilia*. The non-availability of the Bill, whether by design or otherwise, in due time, made it *impossible* to challenge same in time. Such deprivation itself being violative of the Constitution.**
 - it is a principle of the rule of law that *no man can take advantage of his own wrong*, and the relevant Respondents' named in the Fundamental Rights Application No. 194/2003 filed by the Petitioner on 15.4.2003 in Your Lordships' Court referred to in paragraph 46 hereinbelow and those others responsible, *cannot be heard to contend otherwise*.**
41. The Petitioner, as advised, states that,
- the Articles of the Constitution and the several determinations, which have been made by Your Lordships' Court in terms of the jurisdiction vested in Your Lordships' Court to make determinations in respect of the Constitution **form part of the Constitutional Law of Sri Lanka.**
 - the determinations made by two 7-Member Benches of Your Lordships' Court in respect of the Bills titled – "18th Amendment of the Constitution" and "19th Amendment of the Constitution" - **were made as recently as October 2002.**
 - the Bill ("A3") had been formulated almost **immediately thereafter**
 - in addition to the aforesaid previous determinations made by Your Lordships' Court as aforesaid, the above 2 determinations made by Your Lordship's Court as recently as October 2002, **ought to have been taken in to account and conformed with in formulating and enacting the Bill ("A3")**
 - it is clear that those who have been responsible for the formulation and enactment of the Bill ("A3") **have failed and neglected to respect and take cognisance of the dicta of the aforesaid 2 determinations** made by the two 7-Member Benches of Your Lordships' Court in October 2002
 - accordingly, the Bill ("A3") contains **provisions, which are contrary to and violative of** the above determinations of Your Lordships' Court in relation to the applicability of the provisions of the Constitution and the enactment of Laws.

42. In view of the gravity and seriousness of the matters averred hereinbefore, and to protect public interest and uphold public good as enshrined in the Constitution, Your Lordships also being bound by solemn oath / affirmation of office to uphold and defend the Constitution and to ensure that the judicial power of the people and their sovereignty is not alienated, the Petitioner respectfully implores Your Lordships' Court to exercise the inherent judicial powers of Your Lordships' Court in the interest of upholding and defending the Constitution, thereby protecting and safeguarding the sovereignty of the people, which is inalienable.

43. A 7-Member Bench of Your Lordships' Court in the unanimous determination in respect of the Bill titled "19th Amendment of the Constitution", *inter-alia*, reiterated an **Indian Judgment** which had held;

"if there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective"

44. In the circumstances aforesaid, the Petitioner respectfully states that he is entitled to invoke the jurisdiction of Your Lordships' Court for the reliefs prayed for herein.

45. The Petitioner further states that irreparable loss and damage and irremediable mischief will be caused, unless the interim reliefs prayed for are not granted.

46. The Petitioner on 15.4.2003 has filed in Your Lordships' Court a Fundamental Rights Application No. 194/2003 under Articles 17 and 126 of the Constitution in regard to the administrative and executive actions in relation to the said Bill "A3" praying for the reliefs contained therein, *citing*,

- i) Ranil Wickremesinghe, Attorney-at-Law, Prime Minister, and Minister of Policy Development & Implementation
- ii) Kairhasp Nariman Choksy, President's Counsel, Minister of Finance
- iii) Bandula Gunawardene, Deputy Minister of Finance
- iv) Milinda Moragoda, Minister of Economic Reform, Science & Technology, and Deputy Minister of Policy Development & Implementation
- v) Charitha Ratwatte, Attorney-at-Law, Secretary Ministry of Finance & Secretary to the Treasury, and Secretary, Ministry of Policy Development & Implementation
- vi) Ramalingam Paskaralingam, Advisor to the Prime Minister, and Minister of Policy Development & Implementation
- vii) Gamini Lakshman Peiris, Prof. of Law, Minister of Enterprise Development, Industrial Policy, Investment Promotion & Constitutional Affairs
- viii) Ranjith Fernando, Secretary, Ministry of Enterprise Development, Industrial Policy, Investment Promotion & Constitutional Affairs,
- ix) W.J.M. Lokubandara, Attorney-at-Law, Minister of Justice, Law Reform & National Integration
- x) Dhara Wijetilleke, Attorney-at-Law, Secretary, Ministry of Justice, Law Reform & National Integration
- xi) Joseph Michael Perera, Speaker of Parliament of Sri Lanka
- xii) Priyani Wijesekere, Attorney-at-Law, Secretary General of Parliament of Sri Lanka
- xiii) Therese R. Perera, Attorney-at-Law, Legal Draftsman
- xiv) Kandiah Susilar, Commissioner General of Inland Revenue
- xv) S.A.C.S.W. Jayatilleke, Director General of Customs
- xvi) Parakrama Ekanayake Bandara, Director General of Excise
- xvii) H.A.G. Hettiarachchi, Controller of Exchange, Central Bank of Sri Lanka
- xviii) Ranjan Samaraweera, Controller of Imports & Exports
- xix) A.S. Jayawardena, Governor, Central Bank of Sri Lanka, Chairman, Monetary Board of Sri Lanka
- xx) Ananda Coomaraswamy, ex Supreme Court Judge, Chairman, Commission to Investigate Allegations of Bribery or Corruption
- xxi) K.C. Kamalabayson, P.C., Hon. Attorney General

as Respondents therein.

47. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court under Articles 121 & 78 of the Constitution in respect of the said Bill ("A3").

48. The Affidavit of the Petitioner is annexed hereto in support of the averments herein contained.

WHEREFORE the Petitioner respectfully prays that Your Lordships' Court be pleased to:

- a) make Order declaring that the mere circumstance that there has been no challenge to the Bill ("A3") within 7 days of it being placed on the Order Paper of Parliament cannot render the passage of the Bill into an Act of Parliament, a constitutionally valid exercise and /or make it a legitimate piece of legislation, in the facts and circumstances set out in this Petition.

- b) make Order declaring that the passage of the Bill (“A3”) through Parliament was without adherence to the mandated constitutional procedures and safeguards enshrined in the Constitution in that behalf
- c) make Order declaring that in view of such non-adherence to the constitutional procedures and safeguards in respect of an enactment of a Law, the Bill (“A3”) had not been duly and legitimately enacted into law by the Parliament.
- d) make Order declaring that the Bill (“A3”) has not been duly and/or lawfully and/or constitutionally certified by the Speaker of Parliament.
- e) make Order declaring that the Bill (“A3”) has not been duly and/or lawfully and/or constitutionally enacted into law and is *ab initio* unlawful, null and void.
- f) make Order declaring that the Petitioner is entitled to invoke the jurisdiction of Your Lordships’ Court in terms of Article 121, read with Article 78 of the Constitution, to seek determinations from Your Lordships’ Court that certain provisions of the Bill (“A3”) passed by the Parliament in the manner aforesaid are *ultra vires* the several Articles of the Constitution and that the same could not have been legitimately enacted
- g) make Order determining that one or more of the provisions of the Bill (“A3”) is / are inconsistent with the provisions of the Constitution
- h) make Order determining that one or more of the provisions of the Bill (“A3”) required a special majority in Parliament and a Referendum under and in terms of the Constitution before it could have been enacted into law.
- i) make Order determining that one or more of the provisions of the Bill (“A3”) could not have been legitimately passed by Parliament under and in terms of the Constitution to have been enacted as law.
- j) make Order determining that the Bill (“A3”) could not have been duly and /or lawfully and/or constitutionally passed by Parliament to be enacted as a Law / Act in terms of the Constitution.
- k) make Interim Order staying and/or suspending the operation of the aforesaid Bill (“A3”) as a Law and any Regulations already made under Section 8 of the Bill (“A3”) until the final determination of this Application,
- l) make Interim Order directing the Respondent to call for and produce before Your Lordships’ Court all files, documents and records pertaining to all the procedures required by law to be followed with regard to the Bill (“A3”), maintained by and under the control of the Finance Minister and the Secretary of the Ministry of Finance
- m) make Interim Order directing the Respondent to obtain from the Director General of Customs, Director General of Excise, Controller of Exchange, Controller of Imports & Exports and the Commissioner General of Inland Revenue and adduce before Your Lordships’ Court, the extent of revenue losses reckoned by each one of them, as per the provisions of the Bill (“A3”), and also to obtain from each of them a list of the criminal prosecutions that have been instituted and are to be instituted as at date hereof, under and in terms of the respective Statutes set out in the Schedule to the Bill (“A3”), and to advise them to collect such revenues legitimately due to the State and proceed with the said criminal prosecutions,
- n) make Interim Order directing the Respondent to obtain declarations from the Director General of Customs, Director General of Excise, Controller of Exchange, Controller of Imports & Exports and the Commissioner General of Inland Revenue as to which of the aforesaid revenues, both statutory dues and fines imposed by Courts of law, each of them are unable to collect,
- o) make Order directing the Respondent to advise the Commissioner General of Inland Revenue to forward declarations made by “public servants” coming within the meaning of the definition in the Bribery Act, to the Chairman of the Commission to Investigate Allegations of Bribery or Corruption and/or to advise the Chairman of the Commission to Investigate Allegations of Bribery or Corruption to call for all declarations made by such “public servants” from the Commissioner General of Inland Revenue and to advise the Chairman of the Commission to Investigate Allegations of Bribery or Corruption to take all warranted actions in such regard,
- p) make Order declaring that the Speaker of Parliament and the Secretary General of Parliament should lay down Rules and Guidelines, as may be approved by Your Lordships’ Court, to give due, wide and timely publicity to the public, of Bills to be presented in Parliament, to enable the public to be aware and apprised of the contents and implications of such Bills, in order to avoid any repetition of what has taken place with regard to the Bill (“A3”),

- q) communicate any or all the declarations and determinations and orders made as above to the Speaker of Parliament
- r) make Order granting costs, and
- s) grant such other and further relief as to Your Lordships' Court shall deem meet in the given facts and circumstances averred as aforesaid in view of the imminent danger to public interest and the public good

Abdeen Associates
Attorneys-at-Law for the Petitioner

Settled by:

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Ms. Vindya Weerasekera, and
M.A. Sumanthiran Esqr.,
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K. Kanag-Isvaran Esqr.,
President's Counsel

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