

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

*In the matter of an Application in terms of Article 121, read with the other relevant and applicable Articles of the Constitution in relation to the enactment of laws, for a determination, as to whether the Bill titled: "Inland Revenue (Special Provisions) (Amendment) - a BILL to Amend the Inland Revenue (Special Provisions) Act No. 10 of 2003" or any part thereof is inconsistent with and ultra-vires the Constitution and outside the limited legislative power conferred by the People to be exercised in trust by Parliament, in terms of the Constitution.*

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

**PETITIONER**

SC/SD No. 20/2003

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

**WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER**

1. The Petitioner has presented this Petition 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) (Amendment) - a BILL to Amend the Inland Revenue (Special Provisions) Act No. 10 of 2003" (hereinafter referred to as the "Amendment Bill"), contained in the Government Gazette issued on 14.7.2003 and placed on the Order Paper of Parliament on 25.7.2003.
2. In the Special Determination of the 7 Judges of Your Lordships' Court in respect of the proposed 19<sup>th</sup> Amendment to the Constitution, in relation to Articles 3 and 4 of the Constitution, Your Lordships, *inter-alia*, unanimously held and determined as follows:
  - a. The People are sovereign and sovereignty is inalienable.

- b. It is exercised: - legislative power (by the People) - Parliament; and also by the People at a Referendum;
- executive power (by the People) - President;
  - judicial power (by the People) - Parliament through courts, tribunals, etc.
- c. Sovereignty includes: - powers of government;
- fundamental rights;
  - franchise.
- d. Alienate is: - to transfer from one to another;
- to relinquish;
  - to remove from where it is.
- e. Therefore alienation is contrary to Articles 3 and 4 and balance of power should be maintained:
1. Any abuse of such power is antithetic to the Constitution.
  2. The powers (legislative, executive and judicial) are held in trust for the People;
  3. and can be exercised only in the right and proper way.
- "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".  
*[Emphasis added]*
- f. Constitution does not attribute any *unfettered discretion* or authority to any organ or body established under the Constitution.
- g. Under the Principle of the Rule of Law:
- i. The Judiciary is entrusted with the task of keeping the organs of the State within the limits of the law;
  - ii. Any exercise of the power entrusted for a partisan objective would be a violation of the Rule of Law.

h. The only way alienation (or inconsistency) can take place is by compliance with:

1. Article 84(2) - requiring the special majority and the certificate of the Speaker; and

2. Article 83 - approval by the People at a Referendum

i. In terms of Article 84, a Bill with provisions inconsistent with the Constitution "shall become law" only with special majority and approval by the People at a Referendum.

j. That "Clauses that have the effect of suspending a part of the operation of the Constitution cannot be validly enacted by Parliament in view of specific bar contained in Article 75 of the Constitution" [*Emphasis added*] (so also Article 76).

k. The judicial power of the People cannot be alienated.

3. It is submitted 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) In Article 4 of the Constitution is enshrined that the Sovereignty of the People shall be exercise and enjoyed in the following manner;

(a) the legislative power of the People shall be exercised by Parliament and by the People at a Referendum

(b) the executive power of the People shall be exercised by the President of the Republic.

(c) the judicial power of the People shall be exercised by Parliament, through Courts, Tribunals and Institutions created and established, etc.



- (d) the fundamental rights, which are by the Constitution declared and recognised shall be respected, secured and advanced by all organs of the Government, and shall not be abridged, restricted or denied, save in the manner provided in the Constitution.
- (e) the franchise shall be exercisable at the election of the President of the Republic and of the Members of the Parliament, and at every Referendum by every citizen, etc.
- c) Your Lordship's Court had consistently held that Article 3 of the Constitution is linked with Article 4 of the Constitution and that they must be read together.
- d) Thus, it is patently clear from 2 b) (a) above, that the People have conferred only a "limited legislative power" to be exercised in trust by Parliament to enact laws, whilst the People, reserving unto themselves the right of they, themselves, approving at a Referendum the enactment of certain other laws, in terms of Article 3, read with Article 4(a) of the Constitution.
- e) Even if all Members of Parliament were to vote unanimously on a Bill (which has not been challenged before Your Lordships' Court within the "narrow window" of one week) and the Speaker certifies such a Bill, whereby the Executive Presidency or the Executive Powers of the President are abolished, then would such Bill, merely by its passage in Parliament and the certification by the Speaker become law and the Presidency and the Executive Powers of the President conferred under the Constitution, thereby cease to exist thereafter ? THE CLEAR ANSWER IS AN UNHESITANT - "NO".
- WHY IS IT "NO" ? It is simply because the People have not exercised their legislative power approving the same at a Referendum in conformity with the constitutional mandates therefor.
- f) Therefore, even if Parliament unanimously votes to enact the provisions of a Bill, wherein the executive powers of the President of the Republic enshrined in the Constitution are restricted and/or removed and/or usurped and/or alienated and the Speaker certifies the passage of such a Bill, it is respectfully submitted, that the said provisions of such Bill do not become law, inasmuch as "Parliament has acted outside the limited legislative power conferred upon it in trust", as aforesaid.

g) In the unanimous Determination made by a 7-Member Bench of Your Lordships' Court in or about October 2002 in respect of the Bill titled "19<sup>th</sup> Amendment to the Constitution", Your Lordships, *inter-alia*, determined that:

**" ..... this amendment would amount to an alienation, relinquishment or removal of the legislative power of the People. The amendment as contained in Clause 3 (2) would then be inconsistent with Article 3 read with Article 4 (a) of the Constitution and require to be passed by the special majority provided in Article 84 (2) and approved by the People at a Referendum"** (*Emphasis added*)

h) Furthermore, the Sovereignty of the People, in terms of the Constitution **is inalienable.**

In the unanimous Determination made by a 7-Member Bench of Your Lordships' Court in or about October 2002 in respect of the Bill titled "19<sup>th</sup> Amendment to the Constitution", Your Lordships, *inter-alia*, determined that:

**"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."**

4. 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.

In the summary of the unanimous Determination made by a 7-Member Bench of Your Lordships' Court in or about October 2002 in respect of the Bill titled "19<sup>th</sup> Amendment to the Constitution", Your Lordships, *inter-alia*, determined that

**"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."**

5. 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.**

In the unanimous Determination made by a 7-Member Bench of Your Lordships' Court in or about October 2002 in respect of the Bill titled "19<sup>th</sup> Amendment to the Constitution", Your Lordships, *inter-alia*, determined that

**“(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.”**

6. a) All citizen of Sri Lanka, including the Petitioner are entitled to equality before the law and to equal protection of the law in terms of Article 12 (1) of the Constitution.

b) In terms of Article 28 of the Constitution, it is the fundamental duty, of all the citizen of Sri Lanka, including the Petitioner, *inter-alia*,

- to uphold and defend the Constitution and the law
- to further the national interest
- to work conscientiously in his chosen occupation
- to preserve and protect public property, and
- to combat misuse and waste of public property

7. 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.

8. It is submitted with respect that,

- a) by the Amendment Bill ("X1(a)"), the provisions of the *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003, ("X2(a)"/("X2(b)")) are sought to be incorporated by reference and enacted, and given life and effect to, to be operative and/or applicable as law after 30.6.2003 up to 15.8.2003.
- b) by Clauses 2 and 3 of the Amendment Bill ("X1(a)")) presented to Parliament on 25.7.2003, the Minister of Finance is seeking the approval of Parliament to incorporate by reference, and give life and effect to all the provisions in the *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("X2(a)"/("X2(b)")), they being incorporated by reference into the Amendment Bill "X1(a)", the questionable constitutionality, validity and effect of which said *purported* provisions had lapsed and/or extinguished on 30.6.2003.

- c) the patently clear intent of this Amendment Bill ("X1(a)") is to incorporate by reference and enact into law all the provisions of the said *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("X2(a)/"X2(b)"), in that, the said provisions would be included in the said Amendment Bill ("X1(a))", incorporated thereto by reference and/or by adoption.
- d) to facilitate Your Lordships' Court to easily perceive "in toto" the provisions now before Parliament to be enacted into law, and which said provisions have now been put in issue in this Application before Your Lordships' Court, the Petitioner has compiled the provisions of the said Amendment Bill "X1(a)", *incorporating thereto by reference*, the provisions of the *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("X2(a)/"X2(b)") to give "in toto" the legal provisions, which are being sought to be enacted to be effective and/or applicable from 1.7.2003 up to 15.8.2003. The said composite Bill setting out the aforesaid provisions "in toto", compiled as aforesaid *by reference* to assist Your Lordships' Court, is hereinafter referred to as the "Composite Bill"
- e) the Petitioner in such circumstances is rightfully empowered under the Constitution, to challenge the constitutionality and/or validity of all the aforesaid provisions, which are being sought to be enacted by Parliament, in that, such provisions are a composite part and parcel by reference of the said Amendment Bill ("X1(a)) as aforesaid.

*A copy of the aforesaid Composite Bill setting out in toto the aforesaid provisions compiled as aforesaid by reference, is annexed to the Petition marked ("X3").*

9. Accordingly, analytically set out herein-below, is the unconstitutionality and/or illegality and/or obnoxiousness of the provisions in the aforesaid "Composite Bill" ("X3"), with reference to the Sections thereof, which are now being sought to be enacted into law as aforesaid.

<b>Title</b>	Though camouflagingly / misleadingly titled an "Inland Revenue Bill" the provisions of it go beyond the scope and ambit of "taxation", whilst the word "tax" is consistently misleadingly used right throughout the Sections of the said "Composite Bill" "X3").
<b>Section 1</b>	
<b>Short title</b>	The word "tax" is craftily defined only at the very end of this Bill at Section 13, "to include any tax, levy, penalty (including any penalty in respect of any offence), forfeiture or fine payable or levied under any of the laws in the Schedule to this Bill".
	The above words "penalty payable" would not only mean pecuniary payment of fines, but also include "paying the penalty of jail sentences", "paying the penalty of death", etc.



The above laws, include *laws that do not come within the purview of* “Inland Revenue” i.e.

- the Customs Ordinance (including the Code of Intellectual Property Act vide Section 166 thereof),
- Exchange Control Act,
- Import & Export Control Act,
- Excise Ordinance and
- Excise (Special Provisions) Act,

and some of the Offences under the aforesaid laws include, Scheduled non-bailable offences under the Criminal Procedure Code, punishable under the Penal Code, for which immunity / pardon from investigations / prosecutions / convictions cannot be granted under the guise, ruse and “smoke screen” of an “Inland Revenue Bill”.

The offences under the aforesaid laws would, *inter-alia*, include the following, which have been provided for to be dealt with in accordance with public policy and international objectives, as recognized by the community of nations:

- **smuggling, including smuggling of restricted / prohibited items, such as drugs and narcotics, firearms and security sensitive equipments.**
- **violations of the provisions of the Intellectual Property Act enacted to protect consumer interests, *inter-alia*, preventing unlawful/spurious products and/or imitations in the market**
- **distilling of illicit brew of liquor such as *Kasippu*, etc and bootlegging,**
- **dealing in narcotics, cannabis, opium and cultivating of ganja**
- **import and/or export of items prohibited in the national or public interest**
- **Exchange Control violations detrimental to the national economy**
- **Money laundering in connection with narcotics, drug peddling, human trafficking *banned under international conventions/ treaties entered into by Sri Lanka***
- **funds related to terrorism and terrorist activities, which funds are to be frozen and seized by the Government, in terms of Regulations Gazetted on 16.10.2001 under the United Nations Act No. 45 of 1968 in terms of United Nations Resolution 1373 of 28.9.2001.**

Also the above laws include,

- **Turnover Tax Act,**
- **National Security Levy Act,**
- **Goods & Services Tax Act,**
- **Stamp Duty Act, and**
- **Betting & Gaming Levy Act,**

which are not “**income taxes**”, but statutory revenue levies imposed on the public and those collected on behalf of the state by persons, who have no right or title, whatsoever or in anywise to retain such funds collected from the public, which are state property.

Though it is stated in the title of the said “**Composite Bill**” (“X3”), that it is “**with a view to securing the future compliance with the prevalent tax laws**”, there is no provision to secure and ensure compliance even with the income tax laws, let alone the other laws aforesaid, for which immunity is granted with impunity.

The provisions of this purported Inland Revenue (Special Provisions) Act No. 10 of 2003 (“X2(a)/“X2(b)”) causes wrongful or unlawful immense losses to the government and confers wrongful or unlawful benefits, favours or advantages on wrong-doers and law breakers, who have committed fraud and crimes. Therefore, the causing of the passage of this Bill (“X1”) is in, itself, an offence of Corruption under Section 70 of the Bribery Act and those responsible therefor being liable to be punished with imprisonment for a term not exceeding 10-years.

Section 2

Declaration to be made to the Commissioner General before June 30, 2003.

Declaration to be **exclusively and solely** made to the Commissioner General of Inland Revenue (*or the authorised Commissioner*) and not to any other Authority enforcing any of the other laws Scheduled to the said "Composite Bill" ("X3").

The declaration could be made by any person in Sri Lanka or abroad, even by a foreigner, including *an international terrorist, a money launderer, or any fugitive from the law.*

The Commissioner General of Inland Revenue **is debarred** from ascertaining the correctness of any declaration.

Section 4 (2) specifically states that "tax specified by such person as being the amount of tax paid by him shall be accepted by the relevant authority". (The word "tax" has to be understood in the context of its aforesaid perverse definition under Section 13)

Though Section 2 (1) refers to the imposition of "tax" relating to laws Scheduled to the said "Composite Bill" ("X3"),, such laws, nor the Authorities enforcing such laws, impose "taxes", but they levy duties and impose fines and other penalties, and institute prosecutions for frauds, crimes and offences punishable with imprisonment; including the forfeiture of prohibited goods.

Also, Section 3 (1) grants full immunity from any investigation or prosecution for any offence under any of the aforesaid laws, *including the manner in which any assets were funded, or the sources of income or assets, or any matter related to or incidental thereto.*

The Commissioner General of Inland Revenue in terms of Section 2 (4) is thus simply compelled to give a **mere acknowledgement in writing of a receipt of a declaration** within 30-days thereof. **The contents of the declaration is unknown / undisclosed.**

There is no nexus and/or co-relationship between the value or volumes of items declared by a Declarant to the Commissioner General of Inland Revenue and any related transaction/s and/or offence/s and/or crime/s and/or fraud/s perpetrated under the other aforesaid laws Scheduled to said "Composite Bill" ("X3"), eg. *the nexus and co-relationship between a declaration of Rs. 1 Mn. to the Commissioner General of Inland Revenue and 10 different offences under Customs Ordinance and/or the Exchange Control Act attracting fines of Rs. 400 Mn ?*

The strict and absolute secrecy provisions as per Section 6 would prevent and debar the Commissioner General of Inland Revenue from **even communicating the contents of any declaration to any one of the other statutory authorities** enforcing the other laws Scheduled to said "Composite Bill" ("X3").

**Would not the above also mean that the Commissioner General of Inland Revenue would be debarred from even disclosing the contents of a Declaration of a Declarant even to the Assessor dealing with the Declarant's Income Tax File, for the said Assessor to ensure correct future compliance by a Declarant ?**

**Such authorities also under Section 4 (2) are required to accept the "tax"** (vide its perverse definition in Section 13) specified by the Declarant, regardless of the nexus / co-relation with the Declarant's declaration made to the Commissioner General of Inland Revenue.

Significantly, Section 4 (1) also stipulates that any investigation or prosecution "**notwithstanding anything to the contrary in any other law**" shall be withdrawn in respect of a Declarant.

Hence, the mere flaunting of the "**acknowledgement in writing**" from the Commissioner General of Inland Revenue "**of a receipt of a declaration**" by a Declarant affords him the unbelievable status of being **above the Rule of Law**, and law enforcement authorities being prevented to even question such Declarant, in relation to any other matter.

Pointedly, does this not afford a license to a person to declare a considerable value of "fictitious" movable assets (other than cash), but comprising stocks, debts receivable, etc., **which are debarred from being verified** (vide Section 3 (1) read with Section 4 (2) ), and thereafter continue evade payment of income tax in the future years, on the basis that he finances himself, as well as any others, on such "fictitious" movable assets declared as at 31.3.2002 ?

Similarly, could not a person declare a huge loss as at 31.3.2002 as per his declaration, **which is mandated to be accepted** and continue to evade payment of income tax in the future years, carrying forward such "**fictitious**" loss declared ?



### Section 3

#### *Immunity granted to persons making the declaration*

Declarant to be granted full immunity from any investigation or prosecution, **“notwithstanding anything to the contrary in any other law”** – vide Section 4 (1), on the mere production of the **acknowledgement in writing** given by the Commissioner General of Inland Revenue, which is a **“blanket receipt”**.

There is no question of payment of **“tax”** under certain laws Scheduled to said **“Composite Bill” (“X3”)**, i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance (including the code of Intellectual Property Act No. 52 of 1979 – S 166).

Whilst the Customs Ordinance, levies duties, all these laws, to uphold the **Rule of Law**, prohibit and/or debar committing of certain acts, violation of which attracts liability to be prosecuted and be fined and/or imprisoned in the very interest of maintaining the Rule of Law and social order.

Authorities enforcing the above laws, which do not concern **“tax”** as purported, are compelled to ensure under Section 3 (2) that **full immunity is granted to any person making a declaration in terms of Section 2**, which is to be made **“solely and exclusively”** to the Commissioner General of Inland Revenue and not to such authorities. Shockingly, **there is no nexus** between the facts disclosed to the Commissioner General of Inland Revenue and the magnitude and/or number of offences under the aforesaid other laws. The Commissioner General of Inland Revenue under Section 2 (4) is **only required** to give an **“acknowledgement in writing”** and is **debarred** under Section 6 in making any other communication.

The law enforcement authorities are debarred from investigating or prosecuting under any law of the country, the **manner of funding of assets declared, or sources of income or assets declared, whether, they be from drug peddling, arms dealing, money laundering, extortion, contract killings, terrorism or even robberies, etc.**

**Would not therefore any stolen goods declared, shield and save free a Declarant from any investigation or prosecution by law enforcement authorities ?**

In the context of the strict and absolute secrecy under Section 6, none of the Authorities enforcing the laws Scheduled to the said **“Composite Bill” (“X3”)**, or any other law enforcement authorities, would be able to ascertain the contents of the declaration made, solely and exclusively to the Commissioner General of Inland Revenue.

The mere production of **“the receipt of acknowledgement”** from the Commissioner General of Inland Revenue **debars** any of the aforesaid law enforcement Authorities **from even questioning**, let alone investigating or prosecuting, a Declarant, even if it relates to an offence or crime of any other person, if the Declarant takes cover under Section 3 (1) (e) – i.e. **“any matter related to or incidental to any of the above”**.

**Section 3 (3) is a new Section “smuggled”** in at the Committee Stage of Parliament, and hence, was not placed on the Order Paper of Parliament and made known to the People. It is inconsistent with the other provisions of the said **“Composite Bill” (“X3”)**.

Section 3 (3) amazingly affords a **full immunity in perpetuity** from any investigation or prosecution under any laws in respect of any foreign exchange transactions after 31<sup>st</sup> March 2002 relating to any asset declared as 31<sup>st</sup> March 2002, since such transaction, to afford such immunity, **“is deemed”** to have taken place retrospectively prior to 31<sup>st</sup> March 2002, and could be so declared before 15<sup>th</sup> August 2003. Amazingly, the Controller of Exchange would have to merely accept the **“mere say so”** of a Declarant, since he is unaware of the contents of the Declaration of a Declarant .

**Section 3 (3) is in blatant violation of the United Nations Security Council Resolution No. 1373 of 28.9.2001 binding on Sri Lanka, and under which, Regulations have been gazetted on 16.10.2001 under the United Nations Act No. 45 of 1968, which said Regulations would thus be frustrated, with threat to national security, inasmuch as such foreign exchange transactions could and would pertain to terrorist related activities and terrorist organisations.**

The aforesaid Gazetted Regulations, *inter-alia*, prohibit any funding directly or indirectly connected with terrorism, and any such funds discovered are to be frozen by the State, and any person upon conviction in Court is liable to imprisonment and any such financial assets or resources of such person shall be forfeited to the State. **How could such Regulations be made impotent and freedom granted to the movement of terrorism related funds, in violation of the obligations as a member country of the United Nations ?**



Would not the provisions of the said “Composite Bill” (“X3”), enable a person to declare, say US \$ 500 Mn., as per his Declaration made under Section 2 of the said “Composite Bill” (“X3”), to the Commissioner General of Inland Revenue as receivable from foreign sources, **which cannot be questioned**, and thereafter, regularly “channel” **foreign exchange into the country**, with no questions being able to be asked, let alone investigations and prosecutions, by any law enforcement authority, in view of Section 4 (1) – “**notwithstanding anything to the contrary in any other law**”.

Even the quantum of declaration in view of the strict and absolute secrecy provision of Section 6 could not be ascertained or questioned and the “**mere flaunting of the acknowledgement receipt**” given by the Commissioner General of Inland Revenue to a Declarant, **would debar law enforcement authorities from questioning / investigating / prosecuting such Declarant.**

Section 3 (3) also violate international treaties on *money laundering*, to which Sri Lanka is a party and *bound under international law*.

#### Section 4

*Investigations, prosecutions & c. to be withdrawn.*

Any pending investigation or prosecution against the Declarant under any of the aforesaid laws shall stand withdrawn “**notwithstanding anything to the contrary in any other law**” i.e. immunity from all laws. **A Declarant transcends all laws !**

**Any fraud or crime committed by any person arising out of and/or connected with any matter of a Declarant shall stand abrogated notwithstanding anything to the contrary in any other law, including the Penal Code.**

The “**mere flaunting of the written acknowledgement of a receipt**” of a declaration given to a Declarant by the Commissioner General of Inland Revenue, affords such Declarant an “**all encompassing**” immunity from all frauds, crimes and offences under any other law - vide Section 3 (1) (e) – “*any matter related to or incidental to any of the above*”

In the above context, would it not mean, that a Declarant **is immune from prosecution even for a murder**, where he has robbed money by killing a person, if he has declared such ill-gotten money as a Declarant to the Commissioner General of Inland Revenue and has obtained an “**acknowledgement receipt**” therefor ?

Section 4 (2) stipulates that the “**tax**” (vide its perverse definition in Section 13) dictated by the Declarant is compelled to be accepted by the relevant Authorities enforcing the laws Scheduled to the said “Composite Bill” (“X3”); *whereas the declaration has been made solely and exclusively to the Commissioner General of Inland Revenue as per Section 2.*

The strict and absolute secrecy of Section 6 debars the Commissioner General of Inland Revenue from affording any information to any of the other Authorities or they obtaining details of such declaration to establish the **nexus** (i.e. value / number of offences / correlation) between the Declaration made to the Commissioner General of Inland Revenue and the offence or crime confronting the said other Authorities, **who are required to accept what is dictated to them by a Declarant.**

This would enable a Declarant to dictate his own fines and/or penalties and **reclaim**, as *a matter of right* any prohibited goods forfeited under the Customs Ordinance, **including arms, ammunitions, narcotics, drugs, etc.**, with Section 4 (1) stipulating “**notwithstanding anything to the contrary in any other law**”, and Section 7 (b) giving the right to a Declarant to recover a refund of tax (**which includes forfeited goods as per the definition of the word “tax” in Section 13**).

This would also enable a Declarant to obtain the release of **forfeited prohibited items**, such as **drugs, narcotics, firearms, ammunition, counterfeit currency, etc.**, *in violation of other laws and international treaties particularly in relation to money laundering and terrorism*, in the context of the perverse definition of the word “tax” in Section 13, and the provisio in Section 4 (1) – “**notwithstanding anything to the contrary in any other law**”.

Section 4 (3) gives indemnity, immunity or pardon to persons, who are not Declarants who obviously do not wish to be identified as Declarants and wish to remain “**hidden**” for offences and crimes committed upto 31.3.2000. *They too are entitled to dictate their own fines and penalties, and as matter of right reclaim all forfeited goods. as aforesaid and/or recover parts of any fines and penalties already paid.*



*Would the right to dictate the penalty by a Declarant, also entitle him to dictate vis-à-vis penalty a declarant has to pay by way of a custodial sentence i.e. imprisonment ?*

Section 4 also includes recoveries made from the public under the Turnover Tax Act, National Security Levy Act and Goods & Services Tax Act made by a Declarant as an agent of the State, where such monies having been so collected, **legitimately belong to the State and the Declarant has no right or title to retain such monies; if at all, such monies ought be refunded to the public.**

The very word "**tax in dispute**" (taking into account the perverse definition of the word "**tax**" as per Section 13) bears out, that public officials performing their lawful duties have discovered and disputed and consequently imposed penalties / fines, including the forfeiture of prohibited goods. **How could this come under the purview of a declaration of "undeclared monies" under the guise of an Inland Revenue Bill ?**

**Such disputed matters would even be in the stage of having been already proven in a Court of Law, including criminal offences, and are pending in Appeal in Superior Courts.**

On the contrary, however, under the proviso of Section 4 (3), persons who have lawfully agreed and settled with the authorities enforcing the above laws have been denied such benefit, they being discriminated and treated unequally before the law.

#### Section 5

Liability to tax  
for year of  
assessment  
2002/2003

Section 5 (1) pertains to persons, who do not have an income tax file and who are Declarants. Such persons are not liable to any prosecution or penalty, if their income tax for the year 2002/2003 is paid in full on or before 30.9.2003.

On the contrary, as per Section 5 (2) pertaining to persons, **who having been law abiding citizens have an income tax file, in complete contrast, are liable to penalties**, if their quarterly instalments and the final payment of tax for the year 2002/2003 are not paid on the due dates, except the instalment for the 1<sup>st</sup> quarter. *This transcends all logic and is unequal arbitrary treatment before the law.*

Section 5 (3) is rather hilarious, in that, it goes without saying that those who have to pay "**tax**" (vide perverse definition of the word "**tax**" in Section 13) under the laws, have to lawfully comply and pay such taxes from 1.4.2002. This is stating the obvious, inasmuch as this is what stands in the prevalent law.

It is quite curious as to what the words "**other than income tax under any other laws specified in the Scheduled hereto**" (vide – Section 5 (3)) really mean, in that, what are those "**other taxes**" in the light of the "**all encompassing**" perverse definition of the word "**tax**" given at the very end of the said "**Composite Bill**" ("**X3**"), at Section 13 ?

**Could it not be construed to mean**, that Declarants are entitled to an indemnity *in perpetuity* from paying "**tax**" under any of the laws Scheduled to the said "**Composite Bill**" ("**X3**"), for future periods after 1.4.2002, since it is stipulated, that they shall only pay all such "**other taxes**" excluding those that come under the laws Scheduled to the said "**Composite Bill**" ("**X3**")? !

#### Section 6

Secrecy

Sections 6 (1) and 6 (2) enforce absolute secrecy prohibiting any officers of the Authorities enforcing the laws Scheduled to the said "**Composite Bill**" ("**X3**") from disclosing the identity of the Declarants or any matter contained in their declarations made under Section 2. Whereas Section 2 provides for declaration only to be "solely and exclusively" made to the Commissioner General of Inland Revenue and not to any other Authorities enforcing the above laws !

For contravention of such oath of absolute secrecy, the punishment is summary trial before a Magistrate, with a fine of Rs. 100,000/- and imprisonment of one year, or both such fine and imprisonment.

On the contrary for those offenders, who have violated not only income tax laws, but also those who have perpetrated frauds, crimes and offences against the State under the above laws Scheduled to the said "**Composite Bill**" ("**X3**") are being granted absolute indemnity, immunity and pardon from any investigation, prosecution, even those found guilty in Courts of Law and have Appealed to the Superior Courts. **What a tragedy and injustice, and a travesty of justice ?**



In the context of the above punishment for breach of secrecy, ought not those persons holding political and public office, who have mooted, designed, crafted, drafted and recklessly caused the passage through Parliament of the said "Composite Bill" ("X3"), *ultra-vires* the Constitution and outside the legislative power conferred by Parliament, in breach of the solemn oath and/or affirmations, which such persons have taken under Articles 53 and/or 61 and/or 63 and/or 165 of the Constitution to uphold and defend the Constitution, *then receive far more severe punishments, for having breached solemn oaths taken / affirmations made under the Constitution ?*

In comparison, ought not such political and/or public officers stand disqualified to hold such political and/or public office under the Constitution, for having breached the solemn oath taken / affirmation made by them under the Constitution ? If not, why ?

Sections 6 (3) and 6 (4) stipulate that no Commission of Inquiry or Regulator or Court of Law shall have the right to call upon any Officer in any of the aforesaid Authorities to divulge the identity of the Declarant or any information contained in any declaration made under Section 2, whereas the declaration is "solely and exclusively" made to the Commissioner General of Inland Revenue, and not to such Authorities, as per Section 2 .

A Commission of Inquiry or Regulator is debarred from calling for any information from the Declarant.

How then could any inquiries / investigations by law enforcement authorities into other offences by the Declarant, in view of Section 4 (1), which stipulates "notwithstanding anything to the contrary in any other law", be carried out ?

Would this not mean an *estoppel* to criminal investigations, including investigations into murders, robberies, extortions, money laundering, counterfeiting, exchange control frauds, financing terrorists, contract killings, narcotics / drug trafficking, arms smuggling, etc., if those persons concerned and/or connected are shielded and protected from being questioned and details ascertained, simply because they are Declarants under the said "Composite Bill" ("X3") and "flaunt a mere acknowledgement receipt" from the Commissioner General of Inland Revenue ?

Since the Declaration under Section 2 is solely and exclusively to be made to the Commissioner General of Inland Revenue, (*or the authorised Commissioner*) and the only communication by the Commissioner General of Inland Revenue is an "acknowledgement in writing of the receipt of a declaration" in terms of Section 2 (4), then in the context of the aforesaid absolute secrecy, **how then do the other Authorities enforcing the other aforesaid laws i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance, (including the Code of Intellectual Property Act No. 52 of 1979 – S 166) obtain relevant and pertinent data for them to grant indemnity or immunity to a Declarant from any investigation or prosecution for violations of the said laws, without knowing and verifying the co-relating details in such very regard ?**

There being no nexus as above, vis-à-vis, the co-relation of the magnitude and/or number of transactions / violations / frauds / crimes / offences, would the "mere flaunting of the written acknowledgement of the receipt" of the declaration given to a Declarant by the Commissioner General of Inland Revenue, grant such Declarant unquestioned, instantaneous and automatic immunity, indemnity and pardon from all his crimes and misdemeanors under such laws, and also all other laws vide Section 4 (1) i.e. "notwithstanding anything to the contrary in any other law", regardless of such nexus / co-relationship, whatsoever, to the Declarations they had made to the Commissioner General of Inland Revenue, *since the details thereof would be hidden in secrecy by the Commissioner General of Inland Revenue, and he and his officers threatened with fines and imprisonment for any divulgence of the details of such Declaration ?*

The Commissioner General of Inland Revenue (*or the authorised Commissioner*) is debarred from ascertaining the correctness of any declaration. Section 4 (2) states that "tax specified by such person as being the amount of tax paid by him shall be accepted by the relevant authority" (The word "tax" has to be understood in the context of its *perverse* definition under Section 13). The Commissioner General of Inland Revenue in terms of Section 2 (4) is compelled to give a mere acknowledgement in writing of a receipt of a declaration. As per Section 6 (1) the identity of a Declarant and the contents of the declaration is unknown / undisclosed; and cannot be communicated to any other, including the Authorities enforcing the above other Laws.



Would this not **also include** even the Assessors enforcing the Inland Revenue Act ? *If so, how would and how could even future income tax compliance be secured and enforced correctly ?*

The only exception specifically stipulated is **“bribery and corruption”**, thereby **specifically excluding** all other crimes, such as those referred to above.

#### Section 7

##### *Avoidance of doubts*

Section 7 provides that a person could declare money or investments in his name or any other name or without any name, whereby would not those who hold political and public office, liable for offences of **“bribery and corruption”**, be able to declare any ill-gotten funds in the names of other persons, and show such funds, as loans received from such persons, thereby they escaping the provisions of the Bribery and Corruption law, by means of the provisions of the said **“Composite Bill” (“X3”)** ?

Section 7 also affords the opportunity to a Declarant to declare monies or any investment in his own name, or any other name, or and mysteriously even without any name, affording an opportunity for any person to declare another person’s monies, but in the Declarant’s name.

**The above would mean in direct conflict and contradiction with the international treaties on money laundering, to which Sri Lanka is a party.**

This would provide a **“haven”** to circumvent the very Bribery and Corruption laws, which had been sought to be excluded under Section 6, where those who holding political and public office having gained **“ill-gotten wealth”** through Bribery and Corruption, could now declare such **“ill-gotten wealth”** in the name of other persons, who do not fall within the definition of **“public servant”** under the Bribery Act, and thereby and thereafter, the concerned politician / public servants, could easily show such monies as **“loans”** received from such Declarants, *from whom no questions could be asked, in terms of Section 6.*

**This is in direct contradiction to and a means of contravening the provisions of the Bribery Act to be enforced by the Commission to Investigate Allegations of Bribery or Corruption and escaping from punishment therefor.**

Section 7 (b) is intriguing, in that, a person is not prevented from claiming or instituting proceedings for the recovery of a refund of **“tax”** (vide perverse definition of **“tax”** in Section 13) or from seeking protection or privilege under the above laws.

Would this not mean, that persons, who had made correct declarations previously to the Commissioner General of Inland Revenue or to other Authorities enforcing to the laws Scheduled to the said **“Composite Bill” (“X3”)**, who are also entitled to make a declaration under the *proviso* to Section 2 (1) in order to **“ascertain the correctness of his position,”** which the Commissioner General of Inland Revenue or the said other Authority **is compelled to accept and grant full indemnity / immunity as per Section 4 to such persons, and that thereafter, such person could proceed to recover a refund of “tax” now deemed to be an over payment, after making such Declaration under Section 2 (1) of the said “Composite Bill” (“X3”),, including the right to obtain the release of any “prohibited goods” confiscated ?**

#### Section 8

##### *Regulations.*

By Section 8, the Finance Minister has been empowered to make Regulations to give effect to the principles and provisions of the said **“Bill” (“X3”)** and that such Regulations shall come into operation on publication in the Gazette or on a later date as stipulated.

Such Regulations made by the Finance Minister, as soon as convenient after gazetting, are to be brought before Parliament for approval and any Regulation not approved by Parliament is to stand rescinded from the date Parliament disapproves the same, which date is also to be gazetted, **but without prejudice to anything done previously under such Regulation, disapproved by Parliament.**

**A significant feature is that, where Parliament disapproves a Regulation, any act which has been done under such Regulation, before it had been brought for approval to Parliament and disapproved, questionably and curiously stand valid and not invalidated.**

The above has conferred **“unchecked and unfettered”** power to the Finance Minister at his whim and fancy to wrongfully Regulate to suit and/or oblige and/or favour any particular person/s, and *even if Parliament disapproves the same, any act conferring such unlawful benefit / favour to such person/s stands valid and not invalidated.*



Section 9

*Consequence of failure to come within provisions of this Act*

Section 9 clearly reveals that the said “Composite Bill” (“X3”) is only meant to be in respect of Income Tax under Inland Revenue Act No. 38 of 2000 and not the other above laws Scheduled to the said “Composite Bill” (“X3”), in that, Section 9 states that persons, who intend to hide under the cover of the said “Composite Bill” (“X3”), should do so in accordance with the procedure and within the time specified in this Bill (“X1”), and that any person who fails to take such necessary steps to hide under the said “Composite Bill” (“X3”), would be liable to be dealt with under and in terms of the “Inland Revenue Act No. 38 of 2000” - only. What a contradiction ?

Thus Section 9 is significantly silent and avoids any reference, whatsoever, to the other laws Scheduled to the said “Composite Bill” (“X3”), encompassed under the previous Sections to grant indemnity, immunity and pardon to those who have defrauded, perpetrated frauds, crimes and offences against the state, shielding them from any investigation or prosecution, whatsoever, even under any other law – vide Section 4 (1) – “notwithstanding anything to the contrary in any other law”.

Section 10

*Transitional provisions.*

Section 10 is misleadingly titled “transitional provisions” and warrants close scrutiny.

Section 10 stipulates that no proceedings shall be instituted for recovery of any tax (vide perverse definition of “tax” in Section 13), nor any action be proceeded with, under any of the laws Scheduled to the said “Composite Bill” (“X3”), after the expiration of a period of 5-years, from which the payment of tax (vide perverse definition of “tax” in Section 13) is in default, in terms of the laws Scheduled to the said “Composite Bill” (“X3”).

This as far as "income tax" under the “Inland Revenue Act No. 38 of 2000” is concerned is contradictory to Section 9 above, in that, any actions pending in the Department of Inland Revenue or Courts of Law would automatically extinguish **after a period of 5-years from the date of the initial default** i.e. a default in 1999, the *cause of action is extinguished in Courts of law in 2004 and Courts of Law would stand impotent and the actions frustrated.*

Similarly, in respect of the other laws Scheduled to the said “Composite Bill” (“X3”), i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance (including the Code of Intellectual Property Act No. 52 of 1979 – S 166), all prosecutions for frauds, crimes and offences perpetrated in violation of such laws, **would also stand extinguished after the expiration of a period of 5-years from the date of committing of such frauds, crimes and offences.**

That is, prosecutions in respect of frauds, crimes or offences committed in 1999, even whether proven and sentences of convictions passed in Courts of law and are pending in Appeal in the Superior Courts, would stand extinguished in 2004 and Courts of Law would stand impotent and the actions frustrated.

The above should also be read and construed together with Section 4 (1) which states – “**notwithstanding anything to the contrary in any other law**”.

The above provisions would appear to be clearly to cater to some persons, who for mysterious reasons do not wish to hide under the said “Composite Bill” (“X3”), making any declaration, thereby disclosing themselves to the Commissioner General of Inland Revenue and having their name on record !

More importantly, would not Section 10 cover even the future periods ? That is, no action shall be instituted or any pending action proceeded with under those laws Scheduled to the said “Composite Bill” (“X3”), after the expiration of a period of 5-years from the date of default or offence ?

Therefore, is Section 10 really a “transitional provision” or on the contrary, is it not a provision in perpetuity limiting investigations and prosecutions in respect of any of the aforesaid Offences to be extinguished and/or frustrated after a period of 5 years making Courts of Law impotent and the actions frustrated ?

Why not have all criminal prosecutions, if not completed within a period of 5-years, also be so extinguished after period of 5 years ?

Section 11

Repeal of Act No.  
7 of 2002 and  
savings.

Section 11 repeals the Inland Revenue (Special Provisions) Act No. 7 of 2002, which had been enacted in June 2002.

On the very heels of Act No. 7 of 2002, what was the rationale and hasty necessity, only a few months thereafter, to endeavour to enact this horrendous legislation crafted, drafted and attempted to be passed covertly by Parliament *ultra-vires* the Constitution and outside the limited legislative power conferred on Parliament ?

*This had been done, amongst other persons, by those persons referred to in paragraph 12 of the Petition, some of whom are Attorneys-at-Law and President's Counsel, who have acted as aforesaid in total disregard to the unanimous determination by 7-Member Benches of Your Lordships' Court in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution, made as recently as October 2002.*

Why was such horrendous legislation so hastily endeavored to be passed violating the **Rule of Law**, and also *ultra-vires* the Constitution and outside the limited legislative power conferred on Parliament, when there was already the Inland Revenue (Special Provisions) Act No. 7 of 2002 enacted as recently as June 2002, providing for a plain and simple Income Tax amnesty ?

In fact, the **Inland Revenue (Special Provisions) Act No. 7 of 2002**, whilst not only **not including** those other laws i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance, (including the Code of Intellectual Property Act No. 52 of 1979 – S 166), **but also had not included** the several other laws such as Turnover Tax Act, National Security Levy Tax Act, Save the Nation Contribution Act, Goods and Services Tax Act, Stamp Duty Act, Finance Act, Betting & Gaming Levy Act, which are not laws to collect “**income taxes**”, but laws to generate Revenues to the State to finance public expenditure.

Section 11 also enables those persons, who had already made declarations under the Inland Revenue (Special Provisions) Act No. 7 of 2002 to amend or vary their such declarations, enabling them to encompass all such aforesaid frauds, crimes and offences perpetrated against the State, under the those other laws Scheduled to the said “**Composite Bill**” (“X3”) i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance, ((including the Code of Intellectual Property Act No. 52 of 1979 – S 166) and the other aforesaid Revenue Collection laws.

**Amazingly**, whilst Section 2 stipulates that a Declaration *exclusively and solely* has to be made to the Commissioner General of Inland Revenue, Section 11 (2) refers to notifying in writing those Authorities enforcing the above laws and those other aforesaid Revenue collection laws, requesting any *alternations, amendment or variation* of a declaration made under the **previous Inland Revenue (Special Provisions) Act No. 7 of 2002**, **whereas there was no provision, whatsoever, to have made such a declaration in the first instance previously under he said Act No. 7 of 2002 . How could then there be any alteration, variation to a declaration previously made.?**

10. The **unconstitutionality** of the respective Sections of the said “**Composite Bill**” (“X3”), as borne out by the foregoing analysis, **is summarised below**, and it is respectfully submitted that;

i) **Sections 2, 3, 4, 5, 6 and 8 of the said “Composite Bill” (“X3”):**

- the provisions of these Sections grant immunity creating a “**special class of people**”, **above the rule of law**, in violation of Article 12 (i) (*fundamental right to equality before law and equal protection of the law*) of the Constitution, which is inconsistent with Article 3 (*where sovereignty, including fundamental rights, is in the People and is inalienable*), read with Article 4 of the Constitution.



- any of the aforesaid provisions to become law constitutionally warrants a 2/3<sup>rd</sup> majority of Parliament and the approval by the People at a Referendum - *vide unanimous Determinations by the 7-Member Benches of Your Lordships' Court in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution*;

In the unanimous Determination made by a 7-Member Bench of Your Lordships' Court on or about October 2002 in respect of the Bill titled "18<sup>th</sup> Amendment to the Constitution", Your Lordships, *inter-alia*, determined that

"The effect of 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"

ii) **Sections 2, 3, 4, 6, 8 and 10 of the said "Composite Bill" ("X3"):**

- the provisions of these Sections usurp and/or alienate directly and/or indirectly by implication and/or otherwise, the sole and exclusive power vested in the Executive President under Article 34 of the Constitution, which in effect tantamounts to suspending / amending the operation of that part of the Constitution, and therefore could not have been validly enacted into law, in the context of the specific bar under Article 75 of the Constitution.
- A 7-Member Bench of Your Lordships' Court unanimously determined in respect of the proposed 19<sup>th</sup> Amendment to the Constitution that -

"Clause 6 of the Bill has the effect of suspending the operation of a part of the Constitution and cannot be validly enacted by Parliament in view of the specific bar contained in Article 75 of the Constitution"

- 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.*

- In the unanimous determination by the 7-Member Bench of Your Lordships' Court in respect of the proposed 19<sup>th</sup> Amendment to the Constitution, Your Lordships' Court *inter-alia*, determined,

"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."

"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."

".... 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."

iii) Sections 3, 4, 6 and 10 of the said "Composite Bill" ("X3"):

- the provisions of these Sections alienate the judicial power of the People, thus and thereby alienating the sovereignty of the People, and therefore are inconsistent with Article 3 read with Article 4 of the Constitution, and hence, such provisions to become law constitutionally warrants the approval by the People at a Referendum, in addition to a 2/3<sup>rd</sup> majority vote (including those not present) in Parliament in terms of Article 83 of the Constitution, as was unanimously upheld by a 7-Member Bench of Your Lordships' Court in respect of the proposed 18<sup>th</sup> Amendment to the Constitution.



Constitution, Four Lordships Court *inter-alia*, determined,

“ the proposed Article 41 J referred to above grants an immunity to the Constitutional Council, the Chairman, a Member, the Secretary or an officer, from judicial proceedings in respect of anything done or omitted to be done, attracts both objections dealt with, in the preceding paragraphs of this determination. They are;

- 1) that it would alienate the judicial power from the people;
- 2) that it creates a special class of people in violation of; Article 12(1) of the Constitution, who would not be subjected to judicial review.

For the reasons stated above we determine that there is merit on both grounds of objection and the proposed Article 41 J is therefore inconsistent with Article 3 read with Article 4 of the Constitution.”

Whereas by the provisions of the said “Composite Bill” “X3” immunity from judicial action and/or review has been granted arbitrarily.

- forfeited prohibited items, such as, drugs, narcotic, firearms, ammunition, counterfeit currency, etc. are to be released to a Declarant in contravention of relevant other laws and in breach of international treaties / international laws, including in relation to Money Laundering, and the United Nations Security Council Resolution No. 1373 on terrorism binding on the country, thereby alienating or abrogating or frustrating or suspending the judicial power of the People, which is being exercised through Courts of Law.

iv) Section 3 (3) of the said “Composite Bill” (“X3”):

- Section 3 (3) 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, money laundering, terrorist activities and/or terrorists and/or terrorist organizations, etc.

- The provisions of this Section 3 (3) pertaining to absolute immunity in perpetuity from any investigation and prosecution granted to foreign exchange transactions, as morefully explained hereinbefore, is violative of international treaties of money laundering, to which Sri Lanka is a party and is bound under international law.
- Article 27 of the Constitution enshrines the Directive Principles of State Policy and Fundamental Duties and Article 27 (15) stipulates that the *State shall endeavour to foster respect for international law and treaty obligations in dealings among nations.*
- The provisions of this Section 3 (3) also affords an "haven" for funds related to terrorist activities and terrorist organisations *in violation of the United Nations Security Council Resolution 1373 of 28.9.2001 binding on Sri Lanka, and under which Regulations have been gazetted on 16.10.2001 under the United Nations Act No. 45 of 1968; which Regulations by the provisions of Section 3 (3) would thus be frustrated or abrogated, with threat to national security.*
- The relevant regulation from Gazette Extraordinary No. 1206/14 of 16.10.2001 are quoted below:

"6. For the purpose of these regulations, the Minister does hereby provide that

- a) no person who is a citizen of Sri Lanka or residing in Sri Lanka and no citizen of Sri Lanka living outside Sri Lanka shall do, or cause to be done, any act which assists or promotes or is intended to assist or promote any act which is directly or indirectly connected with the collections of funds, for any terrorist organizations or which are intended to be used to carry out a terrorist act



- b) any funds or other financial assets or resources of persons who do, or cause to be done, any act which assists or promotes or is intended to assist or promote any act which is directly or indirectly connected with any terrorist organization or a terrorist act, or participates in, or facilitates, the commission of any terrorist act shall be frozen with immediate effect;
  - c) no citizen or any other person or body of person shall within the territory of Sri Lanka, made available directly or indirectly for the benefit of any organization or person, who commits or attempts to commit or participates in, or facilitates, the commission of any terrorist act, any funds, financial assets or economic resources.
7. Any person who contravenes the provisions of regulation 6 of these regulations shall be guilty of an offence under these regulations and shall on conviction by the High Court holden in Colombo, be liable to imprisonment of either description for a period not less than five years and not exceeding ten years.
- (a) Upon the conviction of any person for an offence under these regulations, any funds or other financial assets or resources of such person shall by reason of such conviction, be forfeited to the State.
  - (b) Any property forfeited to the State under paragraph (a) of this regulation shall -
    - (i) if not appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction, expires;

- (ii) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.

In this regulation, "relevant conviction" means the conviction in consequence of which any property is forfeited to the State under paragraph (a)."

- Section 3 (3) was not in the original Bill ("A3") part of ("X4") but was a new Section "smuggled" in surreptitiously at the Committee Stage of Parliament, and hence, had not been placed on the Order Paper of Parliament, thereby denying the constitutional right of the Citizens to have challenged the same, *vis-a-vis*, the legislative power of the People. *Section 3 (3) is inconsistent with other provisions of the said "Composite Bill" ("X3").*
  
- v) Section 7 of the said "Composite Bill" ("X3"):
  - the provisions of this Section would provide an "haven" to circumvent the Bribery and Corruption laws, where those who holding political and public office, having gained "ill-gotten wealth" through Bribery and Corruption could now declare such "ill-gotten wealth" in the name of other persons, who do not fall within the definition of "public servants" under the Bribery Act, and thereby and thereafter, the concerned politicians / public servants, could easily show such monies as "loans" received from such Declarents, from whom no questions could be asked, under Section 6.
  
  - causing wrongful or unlawful loss to the government and conferring a wrongful and unlawful benefit, favour or advantage on any person/s is an offence of corruption in terms of Section 70 of the Bribery Act, as amended by Act No. 20 of 1994, and liable to imprisonment for a term not exceeding 10-years.
  
  - under the Bribery Act a "public servant" is define to include Cabinet Ministers, Non-cabinet Ministers, Speaker, Deputy Ministers, Members of Parliament, etc.



- the provisions of this Section are in direct contradiction to and grant a means of contravening the provisions of the Bribery Act to be enforced by the Commission to Investigate Bribery or Corruption, which amendments to the Bribery Act and the establishment of the Commission to enforce this law was unanimously enacted by Parliament in October 1994.
- Those public servants, who mooted or lobbied or participated or acted to cause the unconstitutional passage of this purported legislation, which is *ultra vires* the Constitution and outside the scope of limited power conferred on Parliament and/or seek refuge under such purported legislation have committed the offence of Corruption, which Your Lordships' Court ought take judicial notice of.

vi) Section 8 of the said "Composite Bill" ("X3"):

- the provisions of this Section 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 contrary to Article 76 (3) of the Constitution in view of the *absolute nature of power given to the Finance Minister* by the provisions of this Section and hence such provision cannot become law in view of the specific bar contained in Article 76 of the Constitution.
- A7-Member Bench of Your Lordships' Court in the unanimous determination made in respect of the proposed 18<sup>th</sup> Amendment to the Constitution, *inter-alia*, held thus,

"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"

“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.”

vii) Title and the said “Composite Bill” (“X3”) in its entirety:

- though camouflaged under a misleading title as an “Inland Revenue Bill”, the scope and ambit of the provisions of the Bill shockingly go beyond the known bounds of “Inland Revenue”, and intrudes upon other laws Scheduled to the Bill.
- the provisions of the Bill create a “special class of people” transcending the Rule of Law and grants them absolute indemnity, immunity and pardon from investigation, prosecution and conviction, usurping and/or alienating and/or frustrating and/or abrogating the right of the Judiciary and the Executive, *thereby alienating the sovereignty of the People*.
- such “special class of people” created, transcending all laws (vide Section 4 (1) ) are ironically, those who have violated the law, perpetrated fraud, committed crimes and offences against society and defrauded the State and the People. This by no means is a “Tax Amnesty”.
- the foregoing has been covertly designed with ulterior motives for extraneous purposes by perversely defining the word “tax”, consistently used right throughout the Sections of the Bill, but so perversely defined only at the very end of the Bill in the “Interpretation Section 13”, wherein the interpretation of the word “tax” appallingly goes beyond the known realms of the English Language!



- the above is an act of deception and fraud perpetrated, not only on Parliament, but also on the People of this country.
- though the Title of the Bill makes pronouncement that the Bill is "with a view to securing the future compliance with the prevalent tax laws", there is no provision, whatsoever, to secure any compliance, let alone with the other laws Scheduled to this Bill, not even with the tax laws.
- on the contrary, pardon and immunity for Offences under such other laws are granted with impunity, with no suspension of sentences or undertakings obtained to re-impose such "tax", which includes penalties, punishments, etc, should there be any non-compliance in the future, which alone would only ensure any such contemplated future compliance by such miscreants.
- the provisions of the Bill undermine the arduous efforts of long years of investigations, even with risk to their lives, by public officers and law enforcement authorities and the prosecutions conducted before the judiciary into offences, crimes and frauds perpetrated against the State and would only demoralise the concerned public servants discouraging them from taking any future actions to curb offences, crimes or frauds, as they are statutorily mandated to do, violative of principles of good governance and in breach of the oath taken / affirmation made by them under the Constitution.
- the provisions of the Bill afford immunity from punishments for criminal offences and "colossal bonanzas" *ultra vires* the Constitution to a "privileged affluent few", who could easily afford to pay, whilst there are scores of poverty-stricken persons languishing in jails for non-payment of bail monies and minor fines, thus denying them equal treatment, with equality before the law and equal protection of the law.
- the provisions of the Bill, as it stands now, gives the clear signal and message that such "privileged affluent persons" could continue to commit offences, crimes and frauds and defraud the State, expecting to influence peddle, lobby and

cause "laws" to be enacted, time and again, by their political mentors, to similarly receive immunity, indemnity and pardon, *with absolute secrecy*.

- on the very heels of the Inland Revenue (Special Provisions) Act No. 7 of 2002, which had been enacted in June 2002, what was the rationale and hasty necessity shortly thereafter to covertly endeavour to enact this horrendous purported legislation, crafted, drafted and attempted to be unlawfully and unconstitutionally enacted, *ultra-vires* the Constitution and outside the scope of limited legislative power conferred on Parliament, alienating the sovereignty of the People, *which is inalienable?*

11. a) The Petitioner filed before Your Lordships' Court an Application SC/SD No. 11/2003 on 21.4.2003 praying for the reliefs contained therein challenging the validity and/or the constitutionality of the provisions of the aforesaid *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("X2(a)"/("X2(b)"), asserting that the said purported Act had not been *validly and constitutionally* passed by Parliament, in that, Parliament had acted *ultra-vires* the constitutional provisions and outside the "limited legislative power" conferred on Parliament by the People. *The Petitioner reiterates the averments contained in his aforesaid Petition and Affidavit - ("X4")*.
- b) The Petitioner subsequently by Motion dated 29.4.2003, tendered a further Affidavit dated 29.4.2003, together with Documents annexed thereto, more particularly in relation to the violation of the United Nations Security Council Resolutions No. 1373 of 28.9.2001 and the Regulations gazetted in that regard on 16.10.2001 under the United Nations Act No. 45 of 1968 in relation to the freezing and seizing of assets of terrorists and terrorist related organisations, et al. *The Petitioner reiterates the averments contained in his aforesaid further Affidavit, supported by the said Documents - ("X5")*.
- c) The Petitioner subsequently having received the Sinhala copy of the *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("X2(b)"), by Motion dated 23.6.2003 tendered a further Affidavit dated 23.6.2003, together with Documents annexed thereto, bringing to the attention of Your Lordships' Court, that the Sinhala copy (which takes precedence) of the aforesaid *purported* Act had contained additional words giving a "further dimension" included at the printing stage of the same, the said words having not been in the original Sinhala Bill, nor in the Committee Stage Amendments, and that



provisions titled "*transitional provisions*" had been made provisions in perpetuity at the Committee Stage, denying the citizens the constitutional right to have challenged the same, via-avis, the legislative power of the People. The Petitioner reiterates the averments contained in his aforesaid further Affidavit, supported by the said Documents - ("X6").

12. The Petitioner also on 15.4.2003 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 *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("X2(a)" /("X2(b)")) praying for the reliefs contained therein.
13. 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 provisions of the *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("X2(a)" / ("X2(b)")) had been mooted and/or crafted/drafted and/or endeavoured to be *unlawfully and/or unconstitutionally* enacted *ultra-vires* the Constitution and outside the scope of the limited legislative power conferred on Parliament by the People in terms of Article 4 (b) (a), read with Article 3 of the Constitution, by holders of public office acting in breach of the solemn official oath / affirmation they have taken and are bound by in terms of the Constitution.
- 14 a) The Petitioner on 25.6.2003 addressed a Letter ("X7(a)") to the Hon. Prime Minister pointing out, *inter-alia*, the *obnoxious* features and the *unconstitutionality*, including the incongruencies in the provisions of the *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("X2(a)"/("X2(b)")), forwarding copies thereof to Her Excellency the President, the Hon. Attorney General and certain others.
- b) Among those certain others to whom the Petitioner forwarded copies of aforesaid Letter dated 25.6.2003 were the following persons:
- Mr. K. Suseelar, Commissioner General Inland Revenue
  - Mr. S.A.C.S.W. Jayatilleke, Director General of Customs

- Mr. P.E. Bandara, Director General of Excise
- Mr. R. Samaraweera, Controller of Import & Exports
- Mr. H.A.G. Hettiarachchi, Controller of Exchange
- Mr. A.S. Jayawardena, Governor, Central Bank of Sri Lanka
- Mr. A. Coomarasamy, Chairman, Commission to Investigate Allegations of Bribery or Corruption

The Petitioner exhorted the aforesaid persons to concur with / refute / controvert any of the facts set out in the Petitioner's aforesaid Letter dated 25.6.2003.

None of the aforesaid persons has responded to date refuting or controverting the said facts, whereby the said facts stand admitted as correct.

15. a) Consequent to the Petitioner's aforesaid Letter ("X7(a)") the Petitioner on or about 23.7.2003 came to know from a news release issued by the Office of Her Excellency the President - ("X8"), that Her Excellency the President had forwarded a Statement to the Cabinet of Ministers, *inter-alia*, stating that the said *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("X2(a)"/("X2(b)")) had been *surreptitiously* and *hastily* "enacted, without the knowledge and approval of Her Excellency the President, and that the Cabinet of Ministers and the Legislators had not been made fully aware of its implications, and that the relevant Bill [("A3") a part of ("X4")] had not contained *the explanatory notes giving the implications of the intended legislation.*

The original Bill [("A3") a part of ("X4")] presented to Parliament on 31.1.2003, had not contained in the inner cover - the "STATEMENT OF LEGAL EFFECT".

- b) In the aforesaid Statement to the Cabinet of Ministers, Her Excellency the President had also, *inter-alia*, pointed out that;

- i. the Bill [("A3") a part of ("X4")] had been considered by the Economic Policy Committee of the Cabinet (in which the President is not represented) on 23.12.2002 and had been adopted by the Cabinet on 8.1.2003, with just 2 working days notice.
- ii. there are a number of unsatisfactory and undesirable features in the above piece of legislation.



- iii. the above legislation does not confine only to tax matters, but goes far beyond, encompassing tax disputes, levies, penalties, forfeitures and fines. This extension had been achieved by way of the interpretations given to the terms "tax" and "tax in dispute" in the Act, which include not only tax, but also matters such as levies, penalties, forfeitures and fines coming under all the legal enactments given in the Schedule, which are certainly not "tax statutes"
  - iv. the exclusive power vested in the President under Article 34 of the Constitution had been usurped, *pointing out that there are pending prosecutions in Appeal in Higher Courts of Law on convictions already made by Lower Courts.*
  - v. it is a matter of serious concern, as to how legal enactments not coming under the purview of the Commissioner General of Inland Revenue had crept into the said Bill, coupled with **Offences punishable under the Penal Code** - these legal enactments pointed out have been, the Exchange Control Act, the Import & Export Control Act, the Excise (Special Provisions) Act, the Excise Ordinance and the Customs Ordinance.
  - vi. apart from the moral, ethical and constitutional implications, the financial impact of the said Bill would adversely affect the economy of the country and the people, with losses of billions of rupees being caused to the Government, and that this legislation is inimical to the economy of the country impoverishing the masses, and that it is contrary to the canons of natural justice.
  - vii. the gravity of the violation of the United Nations Security Council's Resolutions and Government's international obligations in respect of matters, such as freezing and seizing of terrorist funds and money laundering, etc.
- c) Accordingly, Her Excellency the President had called for the immediate suspension and repeal of the aforesaid legislation.

d) Thus the Executive President, herself, has made public pronouncement of the aforesaid grave unconstitutionality, including the gravity of endeavour to restrict and/or remove and/or usurp and/or alienate the Executive Power of the President, enshrined in the Constitution.

16. A 7-Member Bench of Your Lordships' Court in the unanimous determination in respect of the Bill titled "18<sup>th</sup> 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"**

A 7-Member Bench of Your Lordships' Court in the unanimous determination in respect of the Bill titled "19<sup>th</sup> 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."**

**"These powers of government continue to be reposed in the People and they are separated and attributed to the three organs of government; the Executive, the Legislature and the Judiciary, being the custodians who exercise such powers in trust for the People.**

**The powers attributed to the respective organs of government include powers that operate as checks in relation to other organs that have been put in place to maintain and sustain the balance of power that has been struck in the Constitution, which power should be exercised only in trust for the People."**

**"..... 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"**

**".... 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."**



**“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.**

**“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.**

Your Lordships also 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” *(emphasis added)***

A 7-Member Bench of Your Lordships’ Court in the unanimous determination in respect of the Bill titled “18<sup>th</sup> Amendment of the Constitution”, *cited the following;*

**“The Rule of Law, means briefly the exclusion of the existence of arbitrariness and maintaining equality before the Law” (A.V. Dicy, Law of the Constitution, pg 120)”**

In Your Lordships’ aforesaid Determination, *vis-à-vis*, the Bill titled “19<sup>th</sup> Amendment of the Constitution”, Your Lordships lucidly stated thus:

**“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” ”**

17. It is clear from Article 4 (a) that the legislative power of the People shall be exercised, not only by Parliament, but also by the People at a Referendum.
18. Thus, the People have given only a certain “limited power” to Parliament to pass certain laws, *whilst retaining unto themselves the power to pass certain other laws*, as may be approved by the People at a Referendum.
19. Thus this Bill falls under the category of laws that Parliament cannot validly enact and therefore cannot be passed by Parliament by simple majority.

20. For the foregoing reasons, it is respectfully submitted that Your Lordships would be pleased to grant the Petitioner and the People the reliefs prayed for in the Petition.

On this 6<sup>th</sup> day of August 2003

*Arden Arslan*  
Attorneys-at-Law for the Petitioner

Settled by:

Mr Shivaan Kanag-Isvaran

Mr Viran Corea

Ms Vindya Weerasekera

Mr M A Sumanthiran

Attorneys at Law

Dr. Lakshman Marasinghe,

Emeritus Professor of Law  
Attorney-at-Law

Mr K Kanag-Isvaran

President's Counsel



**AMENDMENT BILL "X1(A)", INCORPORATING THEREINTO BY REFERENCE, THE PROVISIONS OF THE PURPORTED INLAND REVENUE (SPECIAL PROVISIONS) ACT NO. 10 OF 2003 ("X2(A)"/"X2(B")), COMPILED AS THE "COMPOSITE BILL - ("X3")**

**TITLE**

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 DECLARENTS AND NON-DECLARENTS: 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.

**SECTIONS**

**Short title**

1. This Act may be cited as the Inland Revenue (Special Provisions) Act, No. 10 of 2003.

**Declaration to be made to the Commissioner General before June 30, 2003.**

2. (1) Any person whether in Sri Lanka or abroad, who, though required under any law for the time being in force, which is specified in the Schedule hereto, relating to the imposition of tax, had not in relation to any period prior to March 31, 2002, declared to the Commissioner-General or to the relevant authority, as the case may be, all or any portion of his liability to such tax, or of the sources of his income and assets, may make a declaration of the sources of his income or assets as at April 1, 2002, to the Commissioner-General on or before June 30, 2003:

Provided however that any person who had made the required declarations to the Commissioner-General or to the relevant authority in respect of all relevant periods prior to March 31, 2002, may make a declaration under section 2 in order to ascertain the correctness of his position and the Commissioner-General or the other relevant authority shall extend the immunity referred to in section 3, to such person.

**SUBMISSIONS**

- This is to grant indemnity and immunity to a “**special class of people**” – *ironically those, who have violated the law, perpetrated frauds, committed crimes and offences, and defrauded the state and the people. **This is not an indemnity and immunity, but an impunity; and the grant of pardon, usurping the right of the President of the Republic.***
- This is to indemnify persons against liability to pay **taxes**, and against liability from investigations, prosecutions and penalties under “specified statutes” - **not disclosed in the title – why ?**
- Patently main subject matter stipulated is “**taxes**”, and therefore investigations, prosecutions and penalties referred to by implication ought relate to “**taxes**”.
- Surreptitiously, including the words “under specified statutes”, with no explicit statement that the Bill encompasses matters other than “**taxes**” has been with the willful intent to *camouflage* and *mislead*, with an **hidden agenda**. No mention or disclosure of frauds / crimes/ offences committed against the state, i.e. such as, *smuggling, exchange control frauds, illicit, distilling / bootlegging, narcotics/ drug trafficking, import / export of prohibited items such as firearms, pirating, release of forfeited goods, money laundering, ill-gotten gains from contract killings, terrorism funding, etc.*
- Falsely and misleadingly states that it is “with a view to **securing the future compliance with the prevalent tax laws**”, and therefore by implication **not any other laws, compliance therewith are therefore not secured**.
- Ironically, there is no provision, whatsoever, even to **ensure and secure future compliance** with even “**tax laws**”.
- **Clearly it is a camouflaging and misleading title – a corrupt fraud perpetrated on the people, granting immunity creating a “special class of people”, above the rule of law, in violation of Article 12 (i) (fundamental right to equality before law and equal protection of the law) of the Constitution, which is inconsistent with Article 3 (where sovereignty, including fundamental rights, is in the People and is inalienable), read with Article 4 of the Constitution; and any such provision mandates a 2/3<sup>rd</sup> majority of Parliament and the approval by the People at a Referendum – vide Supreme Court 7-Member Bench unanimous determinations in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution.**
- Also, granting **pardon** being the sole and exclusive right of the President of the Republic in terms of Article 34 of the Constitution, **such right cannot be usurped, nor suspended, in terms of Article 75 of the Constitution**, as unanimously determined by a 7-Member Bench of the Supreme Court in respect of the proposed 19<sup>th</sup> Amendment to the Constitution.
- Causing wrongful or unlawful loss to the government and conferring wrongful and unlawful benefit, favour or advantage on any person/s **is an offence of corruption** in terms of Section 70 of the Bribery Act, as amended by Act No. 20 of 1994, *and liable to imprisonment for a term not exceeding 10-years.*
- It is craftily in the **disguise** of an “**Inland Revenue Act**” – nothing apparently to do with frauds, crimes / offences against the State and the people and the **deflagration** of the **rule of law**.
- Refers to any person in Sri Lanka or abroad, even a foreigner, **including an international terrorist**, a money launderer or any fugitive from the law, etc.
- Explicitly refers to **imposition of “tax”** not declared to the Commissioner General of Inland Revenue or **to the relevant authority** (as defined in Section 13).
- The **relevant Authorities** do not impose **taxes**, but levy duties and impose fines, and institute prosecutions for frauds, crimes and offences **punishable with imprisonment**.
- Declarent to make a declaration **exclusively to the Commissioner General of Inland Revenue** to “ascertain the correctness of his position”.
- However, *there is no provision empowering the Commissioner General of Inland Revenue “to ascertain the correctness of such position”* in a declaration of a Declarent. **This is patently fraudulent.**
- In fact, Section 2 (4) stipulates that the Commissioner General of Inland Revenue **shall** within 30-days **acknowledge in writing** any declaration.

**AMENDMENT BILL "X1(A)", INCORPORATING THEREINTO BY REFERENCE, THE PROVISIONS OF THE PURPORTED INLAND REVENUE (SPECIAL PROVISIONS) ACT NO. 10 OF 2003 ("X2(A)"/"X2(B")), COMPILED AS THE "COMPOSITE BILL - ("X3")**

**SUBMISSIONS**

- (2) For the purposes of this section "sources of income" shall include any income received by way of cash or in any other form and "assets" shall include, immovable property, movable property, bank balances, treasury bills, fixed deposits, time deposits or any other form of deposit and money given by way of security or loans and cash in hand.
- (3) Cash in hand as at April 1, 2002, which has subsequently not been spent, should be invested or deposited into a bank, prior to the making of the declaration in terms of this section.
- (4) The Commissioner-General or an officer not below the rank of Commissioner, specially authorized by him in writing in that behalf, shall within thirty days of the receipt thereof, acknowledge in writing any declaration received in terms of subsection (1).

**Immunity granted to persons making the declaration.**

3. (1) Any person making a declaration in terms of section 2, shall enjoy full immunity from liability to pay tax under any law specified in the Schedule hereto or from any investigation or prosecution for any offence under any law specified in the Schedule hereto, in relation to any period ending on or before March 31, 2002 in so far as such declaration relates to-
  - (a) non-payment of taxes:
  - (b) the sources of income or assets declared.
  - (c) The profits or income earned from which such assets were funded;
  - (d) The manner in which such assets were funded:
  - (e) Any matter related to or incidental to any of the above.
- (2) The relevant authority, charged with the administration of the Acts specified in the Schedule hereto, shall ensure that full immunity as specified above, be granted to the person making the declaration in terms of section 2.
- (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 subsection (1), as if such transaction has taken place on or before March 31, 2002.

- A Declarant could declare all forms of assets, including even unconfirmed monies *purported* to have been given as loans as at 31.3.2002.
- On declaration to the Commissioner General of Inland Revenue, **with no questions asked**, the Commissioner General of Inland Revenue or **other relevant authority** (as defined in Section 13) **shall extend full immunity** as per Section 3 to the Declarant from liability to make any payments to the state **and from any investigation or prosecution for any offence** under any law, specified in the Schedule, *inter-alia*, **in respect of the manner in which any assets were funded or any matter related or incidental thereto, i.e. whether criminal or otherwise, including the grant of pardon.**
- **The above grants immunity creating a "special class of people", above the rule of law, in violation of Article 12 (i) (fundamental right to equality before law and equal protection of the law) of the Constitution, which is inconsistent with Article 3 (where sovereignty, including fundamental rights, is in the People and is inalienable), read with Article 4 of the Constitution; and any such provision mandates a 2/3<sup>rd</sup> majority of Parliament and the approval by the People at a Referendum – vide Supreme Court 7-Member Bench unanimous determinations in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution; in addition there is the specific bar under Article 75 of the Constitution to suspend / alienate the granting of pardon by the President of the Republic.**
- Would it not also be possible for a person to declare movable assets (other than cash) but comprising stocks, debts receivable, etc., of considerable amounts as per his declaration, and continue not to pay any income tax in the future years on the basis that he finances himself, as well as others, on such fictitious assets declared as at 31.3.2002 ?
- Similarly, could not a person declare a huge loss as at 31.3.2002 as per his declaration and continue not to pay income taxes in the future years carrying forward such fictitious loss declared, to be set-off against future income ?
- The Declarant is to enjoy **full immunity** from liability to pay any "**tax**" under any law prescribed in the Schedule or from any investigation or prosecution for any offence under any laws specified in the Schedule.
- There is no question of payment of "**tax**" under certain laws specified in the Schedule i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance (including the code of Intellectual Property Act No. 52 of 1979 – S 166). Whilst the Customs Ordinance, levies duties, all these laws prohibit and/or debar committing of certain acts to **uphold the rule of law**, violation of which attracts liability to be prosecuted and be fined / imprisoned in the very interest of **maintaining the rule of law and social order.**
- The Authorities enforcing the above laws, which are not "**tax laws**" as purported, are compelled to ensure under Section 3 (2) **that full immunity** is granted to any person making a declaration in terms of Section 2, which is to be made to the Commissioner General of Inland Revenue.
- **There is no nexus** between the facts disclosed to the Commissioner General of Inland Revenue and **the magnitude and/or number of offences** under the aforesaid **Non-tax laws**. The Commissioner General of Inland Revenue under Section 2 (4) **is only required to give an acknowledgement in writing.**
- The above **acknowledgement in writing** is a blanket certificate to grant immunity from ***investigation or prosecution*** from any offence under the aforesaid **Non-tax laws** and/or on the sources of income or assets declared (*whether from drugs, arms dealing, money laundering, contract killings, terrorism or even robberies, etc*) .
- It also provides that no ***investigation or prosecution*** can be carried out into ***the manner in which assets declared were funded***, even if they are stolen goods or ill-gotten gains from above criminal offences, or any other matter related or incidental to the income / assets declared and their sources / funding, with such powerful all encompassing "**immunity certificate**", which is a mere written acknowledgement.
- This will estop ***investigation or prosecutions*** under criminal law of this country, if any offence relates to a Declarant, who exhibits such **acknowledgement in writing** from the Commissioner General of Inland Revenue ***merely showing that he is a Declarant.***



## SUBMISSIONS

- The above grants immunity creating a "special class of people", above the rule of law, in violation of Article 12 (i) (fundamental right to equality before law and equal protection of the law) of the Constitution, which is inconsistent with Article 3 (where sovereignty, including fundamental rights, is in the People and is inalienable), read with Article 4 of the Constitution; and any such provision mandates a 2/3<sup>rd</sup> majority of Parliament and the approval by the People at a Referendum – *vide Supreme Court 7-Member Bench unanimous determinations in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution*; in addition there is the specific bar under Article 75 of the Constitution to suspend / alienate the granting of pardon by the President of the Republic.
- In addition, this would estop prosecutions successfully concluded in criminal courts, against which Appeals are pending in Superior Courts, and would therefore tantamount to the grant of a pardon, which is a right exclusively and solely vested in the President of the Republic under Article 34 of the Constitution.
- The unanimous determination by a 7-Member Bench of the Supreme Court in respect of the proposed 19<sup>th</sup> Amendment to the Constitution, *inter-alia*, determined
  - “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.”
  - “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.”
  - “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”
- Can the judicial power of the People enshrined in the Constitution to be exercised through Courts of Law in trust for the people, be thus caused to be abdicated or nullified or thus and otherwise abrogated ? *Definitely not.*
- This is an alienation of the judicial power of the people to be exercised in their trust by the judiciary and thereby the sovereignty of the People being alienated violating Articles 3 and 4 of the Constitution. Such sovereignty being inalienable, the aforesaid provision would require a 2/3<sup>rd</sup> majority of Parliament and Referendum as per the unanimous determinations by 7-Member Benches in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution.
- Section 3 (3) is not in the Inland Revenue (Special Provisions) Bill (“A3”) and therefore was not placed on the Order Paper of Parliament.
- Section 3 (3) granting the most amazing and damning immunity with impunity under the Exchange Control Act has been *smuggled* in as a New Clause at the Committee Stage of Parliament, as evidenced by the “Amendments” listed in (“A2”).
- Section 3 (3) affords an immunity for any Exchange Control fraud, violation / transaction perpetrated after 31.3.2002 i.e. even now, since such transaction is deemed to have taken place before 31.3.2002. Why ?
- Another interpretation could be that any future transaction in respect of any foreign assets, purported or otherwise, declared by a Declarant as at 31.3.2002, would be granted full immunity to the Declarant in terms of Section 3 (1), in perpetuity.
- For example, could not a Declarant declare a large purported foreign debt due as at 31.3.2002, and any income arising therefrom or repatriation of such purported monies in the future, be entitled to full immunity in perpetuity from all laws in the Schedule including any investigations or prosecutions under any laws in relation thereto ?
- Does not this provision provide opportunity for any person to declare that he has large funds abroad, with some person/s and/or institution/s amounting to, say US \$ 500 Mn., in his declaration made under Section 2 of the Bill; and thereafter regularly channel foreign exchange earnings and/or other receipts of that person and/or in his name into the country, with no questions being able to be asked of such foreign exchange funds being channelled into the country, regarding its source, whether dubious or otherwise. Thus enjoying full immunity from any investigation or prosecution in the undetermined future.
- In addition to complete exemptions from future income taxes on such remittances, this would also violate international treaties on money laundering, to which Sri Lanka is a party.
- This could and would include funds related to terrorism in violation of the United Nations Security Council Resolution 1373 of 28.9.2001 binding on Sri Lanka, and under which Regulations have been gazetted on 16.10.2001 under the United Nations Act No. 45 of 1968; which Regulations too would thus be frustrated, with the threat to national security.

**AMENDMENT BILL "X1(A)", INCORPORATING THEREINTO BY REFERENCE, THE PROVISIONS OF THE PURPORTED INLAND REVENUE (SPECIAL PROVISIONS) ACT NO. 10 OF 2003 ("X2(A)"/"X2(B")), COMPILED AS THE "COMPOSITE BILL - ("X3")**

**SUBMISSIONS**

Investigations, prosecutions & c. to be withdrawn.

4. (1) Any investigation or prosecution which has commenced in relation to any period ending on or before March 31, 2002, against the person making the declaration in terms of section 2 or any penalty which has been imposed on such person, but which has not been paid, under any of the laws specified in the Schedule hereto shall notwithstanding anything to the contrary in any other law, be withdrawn.
- (2) Where there is any tax in dispute under any of the laws specified in the Schedule hereto, pertaining to tax, in respect of any period ending on or before March 31, 2002, in relation to a person who has made a declaration in terms of section 2, then the tax specified by such person as being the amount of tax payable by him shall be accepted by the relevant authority, charged with the administration of the Acts specified in the Schedule hereto, as being correct and reflecting the final tax liability of that person in respect of such period:  
Provided that no tax in dispute, which has been settled with the agreement of the person making the declaration in terms of section 2, shall be re-opened.
- (3) Where there is any tax in dispute under any of the laws specified in the Schedule hereto, pertaining to tax, in respect of any period ending on or before March 31, 2000, in relation to a person who has not made a declaration in terms of section 2, then the tax specified by such person, as being the amount of tax payable by him shall be accepted by the relevant authority, charged with the administration of the laws specified in the Schedule hereto, as being correct and reflecting the final tax liability of that person in respect of such period:  
Provided that no tax in dispute, which has been settled with the agreement of the person who has not made the declaration in terms of section 2, shall be re-opened.
- (4) For the purposes of subsection (2) and subsection (3) above, "tax specified" shall include any specified tax paid in terms of chapter XIII of the Inland Revenue Act, No. 38 of 2000, by any person for the year of Assessment 2001/2002, on or before September 30, 2002.

- The above grants immunity creating a "special class of people", above the rule of law, in violation of Article 12 (i) (fundamental right to equality before law and equal protection of the law) of the Constitution, which is inconsistent with Article 3 (where sovereignty, including fundamental rights, is in the People and is inalienable), read with Article 4 of the Constitution; and any such provision mandates a 2/3<sup>rd</sup> majority of Parliament and the approval by the People at a Referendum – *vide Supreme Court 7-Member Bench unanimous determinations in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution.*
- Any pending **investigation or prosecution** against a Declarant or any penalty or fine imposed on a Declarant, which is unpaid under any of the laws in the Schedule, that is including under these **Non-tax laws** i.e. *Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance* (including the code of Intellectual Property Act No. 52 of 1979 – S 166) shall stand withdrawn, **notwithstanding anything in any other law** i.e. immunity from all laws !
- In other words, any fraud or crime committed by the person arising out of and/or connected with any matter under any of the above **Non-tax laws** will **stand pardoned notwithstanding any other law, including the Penal Code.**
- **The mere production of the written acknowledgement from the Commissioner General of Inland Revenue given to a Declarant, affords such Declarant an all encompassing pardon and/or immunity from all frauds, crimes and offences against society, and Courts of law are rendered impotent in violation of Article 4 and 3 of the Constitution, where the judicial power of the people are to be exercise through courts of law, in trust for the people.**
- Section 4 (2) stipulates that any "tax" in dispute of a Declarant, then that the "tax" **dictated by the Declarant** is compelled to be accepted by the relevant Authorities administering and enforcing, in addition to the **tax laws** the other aforesaid **non-tax laws** i.e. *Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance.* (Including the code of Intellectual Property Act No. 52 of 1979- S 166).
- In the context of the perverse definition of the word "tax" beyond the realm of the English language, **given at the very end of the Bill ("A3")**, this would enable a **Declarant to define** his own fine/s and/or reclaim, as a matter of right, *all forfeited goods. Would not this also include arms, ammunition, narcotics, drugs, etc ?* After all Section 4(1) stipulates. **Notwithstanding anything to the convening any other law.**
- Section 4 (3) gives the same aforesaid indemnity, immunity and/or **pardon to persons who are not Declarants**, (*who obviously do not wish to be identified as Declarants and wish remain hidden*) in respect of "**taxes disputed**" by such persons up to the year ended 31.3.2000. They also would be entitled to **define** his own fine/s and/or reclaim, as a matter of right, *all forfeited goods. Would not this also include arms, ammunition, narcotics, drugs, etc.*
- The above would include dues / defrauds under the Turnover Tax Act, the National Security Levy Act and Goods and Services Tax Act, where monies have already been collected from the consumer public and are monies that legitimately belong state and the public. These monies could not be lawfully retained by those, who had collected such monies, as agents for the state. **They have no title thereto.**
- The very word **dispute** bears out that the relevant Authorities responsible for administering and enforcing, not only **tax laws**, but also other aforesaid **non-tax laws**, in conducting their official duties in due conformity with the law, have discovered and disputed and consequently imposed penalties / fines, including the forfeiture of goods.
- Such **disputed** matters could even be in the stage of **having been already proven in a Court of Law, including criminal offences**, which are now in Appeal in Superior Courts.
- **This would estop prosecutions successfully concluded in criminal courts on which Appeals are pending in Superior Courts; and would therefore tantamount to a pardon, which is a right exclusively and solely vested in the President of the Republic under Article 34 of the Constitution.**
- The unanimous determination by a 7-Member Bench of the Supreme Court in respect of the proposed 19<sup>th</sup> Amendment to the Constitution, *inter-alia*, determined

"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."

"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."



## SUBMISSIONS

“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”

- **Can judicial power of the People enshrined in the Constitution to be exercised through Courts of law in trust for the people, be thus caused to be abdicated or nullified or thus and otherwise abrogated ?**
- This would be an alienation of the judicial power of the People to be exercised in their trust by the judiciary, and the sovereignty of the People being alienated, violating Articles 3 and 4 of the Constitution. Such sovereignty being inalienable the aforesaid provision would require a 2/3<sup>rd</sup> majority of Parliament and Referendum, as per the unanimous determination by 7-Member Benches in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution.
- However, those persons who have settled and lawfully agreed with the relevant authorities administering and enforcing the aforesaid tax laws and non-tax laws, *have not been granted such immunity, indemnity and/or pardon*, denying them the fundamental right to equality guaranteed under the Constitution.
- **The above grants immunity creating a “special class of people”, above the rule of law, in violation of Article 12 (i) (fundamental right to equality before law and equal protection of the law) of the Constitution, which is inconsistent with Article 3 (where sovereignty, including fundamental rights, is in the People and is inalienable), read with Article 4 of the Constitution; and any such provision mandates a 2/3<sup>rd</sup> majority of Parliament and the approval by the People at a Referendum – vide Supreme Court 7-Member Bench unanimous determinations in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution; in addition there is the specific bar under Article 75 of the Constitution to suspend / alienate the granting of pardon by the President of the Republic.**

### Liability to tax for year of assessment 2002/2003

5. (1) Any Person who is liable to pay income tax in respect of the Year of Assessment 2002/2003, and who has made a declaration in terms of section 2, and who does not have an income tax file opened in his name, in the Department of Inland Revenue, shall not be liable to any prosecution or penalty if such income tax for such year of assessment is paid in full on or before September 2003.
- (2) (a) Any Person who is liable to pay income tax, in respect of the first quarterly installment for the Year of Assessment 2002/2003, and who has an income tax file in his name in the Department of Inland Revenue, has either not paid or under paid such tax, shall not be liable to any prosecution or penalty if such instalment of income tax for such year of assessment is paid in full or in such part as is unpaid on or before September 30, 2003.
- (b) Such person as is referred to in paragraph (a) shall pay all other quarterly instalments and the final payment for the Year of Assessment 2002/2003 on the dates on which the same is due in terms of the Inland Revenue Act, No. 38 of 2000. Any default in these payments shall result in the enforcement of the penalties attached to the tax in default under such Act.
- (3) Any person who has made a declaration under section 2 and is liable to pay any tax other than income tax under any of the laws specified in the Schedule hereto, for any period commencing on April 1, 2002, shall pay all such taxes as provided for in the aforesaid laws.

- Section 5 (1) refers to persons who do not have an income tax file and who are liable to pay income tax in respect of the Year 2002/2003 and who are Declaimants, and such persons are not liable to any *prosecution* or penalty if such income tax is paid in full on or before September 2003.
- On the contrary, Section 5 (2) refers to persons, who having been law abiding citizens have an income tax file, and such persons are ironically in complete contrast liable for penalties to be imposed, if their quarterly instalments and the final payment of tax for the Year 2002/2003 are not paid on the due dates in terms of the Inland Revenue Act, *except the 1<sup>st</sup> quarterly instalment*.
- The above transcends all logic and equitability, in that, those who have unlawfully not had income tax files are given an undue concession / advantage for the Current Year 2002/2003, over those who have been lawfully having income tax files, **denying them the fundamental right to equality guaranteed under the Constitution.**
- **The above grants immunity creating a “special class of people”, above the rule of law, in violation of Article 12 (i) (fundamental right to equality before law and equal protection of the law) of the Constitution, which is inconsistent with Article 3 (where sovereignty, including fundamental rights, is in the People and is inalienable), read with Article 4 of the Constitution; and any such provision mandates a 2/3<sup>rd</sup> majority of Parliament and the approval by the People at a Referendum – vide Supreme Court 7-Member Bench unanimous determinations in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution.**
- Section 5 (3) is quite hilarious, in that, it goes without saying that those who have to pay “taxes” under the laws have to lawfully comply and pay the requisite taxes. **This is stating the obvious.**
- It is curious as to what the words “other than income tax” under any of the laws specified in the Schedule hereto” really mean, in that what are those other taxes in the light of the all empowering unbelievable definition of the word “tax” given at the very end of the Bill (“A3”) or would it mean that, Declaimants do not have to pay future income taxes after 1.4.2002 ?

### Secrecy

6. (1) Any authority empowered to administer the laws referred to in the Schedule hereto and all other officers engaged in the administration of the provisions of such laws shall at all times preserve and aid in preserving absolute secrecy in respect of the identity of the declarant and any matter of thing contained in any declaration made by any person in terms of section 2.

- Sections 6 (1) and 6 (2) endeavour to enforce absolute secrecy prohibiting any officers of the relevant authorities engaged in the administration of the tax laws and non-tax laws from disclosing the identity of the Declaimants **or any matter contained in their declarations** made in terms of Section 2.
- For contravention of such oath of absolute secrecy, the punishment is summary trial before a Magistrate, with a fine of Rs. 100,000 and imprisonment of one year, or both such fine and imprisonment.

## SUBMISSIONS

**AMENDMENT BILL "X1(A)", INCORPORATING THEREINTO BY REFERENCE, THE PROVISIONS OF THE PURPORTED INLAND REVENUE (SPECIAL PROVISIONS) ACT NO. 10 OF 2003 ("X2(A)"/"X2(B)'), COMPILED AS THE "COMPOSITE BILL - ("X3")**

- (2) Any oath of secrecy taken by any of the officers referred to in subsection (1) under any of the laws referred to in the Schedule hereto, shall be deemed to be an oath of secrecy taken under this Act and any person who acts in contravention of such oath shall be guilty of an offence under this Act and shall on summary trial before a Magistrate, be liable to a fine not exceeding one hundred thousand rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.
- (3) No Commission of Inquiry or Regulator, established or appointed under any written law for the time being in force shall be entitled to call upon a declarant or any person referred to in subsection (1) to divulge the identity of the declarant or any information contained in any declaration made under section 2.
- (4) No Court of Law shall call upon any person referred to in subsection (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.

- On the contrary for those offenders, who have violated not only the **tax laws**, but also those who have perpetrated frauds, crimes and offences against the state under the **Non-tax laws** i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance, (including the code of Intellectual Property Act No. 52 of 1979 – S166) **are being granted absolute indemnity, immunity and pardon from any investigation, prosecution**, even those found guilty in the Magistrates' Courts or Higher Courts, and are pending in Appeal before Superior Courts. **What a tragedy and injustice, and a travesty of justice ?**
- Those persons holding high political and/or public office, who had mooted, designed, crafted, drafted and recklessly caused the passage of this **constitutionally ultra-vires** Bill ("A3") through Parliament, in violation, breach and contravention of the **solemn oath and/or affirmations**, which such persons had taken under Articles 53 and/or 61 and/or 63 and/or 165 of the Constitution to uphold and defend the Constitution, **should then receive far severe punishments for having violated such solemn oaths / affirmations taken under and in terms of the Constitution of the Republic.**
- In comparison, what should the fines and jail sentences be for having breached / violated such solemn oaths / affirmations taken under the Constitution ? **Ought not such high political and/or public officers stand disqualified to hold such political and/or public office under the Constitution now ? If not, why ?**
- Sections 6 (3) and 6 (4) stipulate that no Commission of Inquiry or Regulator or Court of Law shall have the right to call upon any officer in any of the aforesaid Authorities to divulge the identity of the Declarant or any information contained in any declaration made under Section 2. A Commission of Inquiry or Regulator is debarred from calling for any information from the Declarant. **How could then any inquiries / investigations by law enforcement authorities take place ? No they cannot !**
- **Would this not mean that criminal investigations, including investigations into robberies, money laundering, counterfeiting, exchange control frauds, financing terrorist, contract killings, narcotics / drug trafficking, arms smuggling, etc., would come to a standstill, if those persons concerned and/or connected are shielded and protected from being questioned and details ascertained, simply because they are Declarants under Bill ("A3") ?**
- **Can judicial power of the people enshrined in the Constitution to be exercised through Courts of law in trust for the people, be thus caused to be abdicated or nullified, or thus and otherwise abrogated ?**
- **This would be an alienation of the judicial power of the people to be exercised in their trust by the judiciary, and the sovereignty of the people being alienated in violation of Articles 3 and 4 of the Constitution. Such sovereignty being inalienable, the aforesaid provision would require a 2/3<sup>rd</sup> majority of Parliament and a Referendum as per the unanimous determinations by 7-Member Benches of the Supreme Court in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments.**
- **The above grants immunity creating a "special class of people", above the rule of law, in violation of Article 12 (i) (fundamental right to equality before law and equal protection of the law) of the Constitution, which is inconsistent with Article 3 (where sovereignty, including fundamental rights, is in the People and is inalienable), read with Article 4 of the Constitution; and any such provision mandates a 2/3<sup>rd</sup> majority of Parliament and the approval by the People at a Referendum – vide Supreme Court 7-Member Bench unanimous determinations in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution; in addition there is the specific bar under Article 75 of the Constitution to suspend / alienate the granting of pardon by the President of the Republic.**
- Since the declaration under Section 2 is **solely and exclusively** to be made to the Commissioner General of Inland Revenue, and the only communication by the Commissioner General of Inland Revenue **is an acknowledgement in writing of the receipt of a declaration** in terms of Section 2 (4), then in the context of the aforesaid **absolute secrecy** how then do the other authorities enforcing the **non-tax laws** i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance, (including the code of Intellectual Property Act No. 52 of 1979 – S 166) receive relevant and pertinent data for **them to grant indemnity or immunity to a Declarant from any investigation or prosecution for violations of the said laws, without knowing the co-relating details in such regard.**
- **There being no nexus** as above, *vis-à-vis*, the co-relation of the magnitude and/or number of transactions / violations / frauds / crimes / offences, is it that the **mere flaunting** of the **written acknowledgement** of the **receipt of the declaration** given to Declarants by the Commissioner General of Inland Revenue, would grant such Declarants **unquestioned, instantaneous and automatic immunity, indemnity and pardon** from all his crimes and misdemeanors under such laws, and also all other laws *vide Section 4 (1)*, regardless of such nexus / co-relationship, whatsoever, to the declarations they had made to the Commissioner General of Inland Revenue, since the details thereof **would be hidden in secrecy** by the Commissioner General of Inland Revenue, **and he and his officers threatened with fines and imprisonment for any divulgence of the details of such declaration ?**
- The only exception specifically stipulated is **bribery and corruption** **thereby specifically excluding all other crimes**, including grant of **pardon**, such as those referred to above.



## SUBMISSIONS

AMENDMENT BILL "X1(A)", INCORPORATING THEREINTO BY REFERENCE, THE PROVISIONS OF THE PURPORTED INLAND REVENUE (SPECIAL PROVISIONS) ACT NO. 10 OF 2003 ("X2(A)"/"X2(B")), COMPILED AS THE "COMPOSITE BILL - ("X3")

### Avoidance of doubts.

7. For the avoidance of doubts it is hereby declared that –

- (a) reference to a person holding money or having any investment shall include a reference to the person holding the money, or investment in his name or any other name or without any name;
- (b) nothing in this law shall be read and construed as preventing any person from claiming or instituting proceedings for the recovery of a refund of tax due to him, or from seeking protection or a privilege under any of the laws referred to in the Schedule hereto.

### Regulations.

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

- Even then, Section 7 of the Bill provides that a person could declare money or investments in his name or any other name or without any name, whereby would not those who hold political and public office, liable for offences of bribery and corruption, be able to declare any ill-gotten funds in the names of other persons, and show such funds, as loans received from such persons, thereby they escaping the provisions of the Bribery and Corruption Laws, by means of the provisions of Bill ("A3") ?
- Section 7 very liberally affords the despicable opportunity to a Declarant to declare money or any investment in his own name, or any other name, or and mysteriously **even without any name, affording an opportunity for any person to declare another person's monies, but in the Declarant's name.**
- This would provide a **haven** to circumvent the very Bribery and Corruption laws, which had been sought to be excluded, where those who holding political and public office having gained enormous wealth through Bribery and Corruption could now declare such ill-gotten monies in the name of other persons, who do not fall within the definition of "public servant" under the Bribery Act and thereby and thereafter, the concerned politician /r public servants, could easily show such monies as "loans" received from such Declarants, **from whom no questions could be asked**, under Section 6.
- **This is in direct contradiction to and a means of contravening the provisions of the Bribery Act to be enforced by the Commission to Investigate Bribery or Corruption.**
- Section 7 (b) is also mysterious, in that, a person is not prevented from claiming or instituting proceedings for the recovery of refund of "**tax**" (as defined in Section 13) or from seeking protection or privilege under the "**tax laws**" and **non-tax laws**.
- Would this mean, that persons, who had made normal declarations previously to the Commissioner General of Inland Revenue in respect of the "**tax laws**" or to the relevant Authorities in respect of the "**non-tax laws**" upto 31.3.2002, who are also entitled to make a declaration under the *proviso* to Section 2 (1) in order to "ascertain the correctness of his position," which the Commissioner General of Inland Revenue or the relevant Authority is compelled to accept and grant full indemnity / immunity as per Section 4 to such persons, and that thereafter, *such person could proceed to recover a refund of tax now deemed to be an over payment, after making such declaration under Section 2 (1) of the Bill ("A3") ?*
- The Finance Minister has been empowered to make **Regulations** to give effect to the **principles and provisions** of Bill ("A3") and that such **Regulations** shall come into operation on publication in the Gazette or on a later date as stipulated.
- Such **Regulations** made by the Finance Minister, **as soon as convenient after gazetting**, are to be brought before Parliament **for approval** and any Regulation not approved by Parliament is to stand rescinded from the date Parliament disapproves the same, which date is also to be gazetted, **but without prejudice to anything done previously under such Regulation, disapproved by Parliament.**
- Such curious and significant feature, where Parliament **disapproves** a Regulation, **any act which has been done** under such Regulation, before it had been **brought for approval to Parliament and disapproved**, *questionably and curiously* **stand valid and not invalidated.**
- The above has conferred **unchecked and unfettered** power to the Finance Minister to wrongfully Regulate to suit and/or oblige and/or favour any particular person/s, and even if **Parliament disapproves the same**, any act conferring such unlawful benefit / favour to such person/s **stands valid and not invalidated.**
- **The above grants immunity creating a "special class of people", above the rule of law, in violation of Article 12 (i) (fundamental right to equality before law and equal protection of the law) of the Constitution, which is inconsistent with Article 3 (where sovereignty, including fundamental rights, is in the People and is inalienable), read with Article 4 of the Constitution; and any such provision mandates a 2/3<sup>rd</sup> majority of Parliament and the approval by the People at a Referendum – vide Supreme Court 7-Member Bench unanimous determinations in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution; in addition to there is the specific bar under Article 75 of the Constitution to suspend / alienate the granting of pardon by the President of the Republic.**
- **Furthermore**, the Finance Minister has **usurped** the legislative power of the people, that is to be exercised by Parliament, and such power usurped, alienates the sovereignty of the people and is violative of Article 3, read with Article 4, of the Constitution, whereby sovereignty is inalienable.

## SUBMISSIONS

AMENDMENT BILL "X1(A)", INCORPORATING THEREINTO BY REFERENCE, THE PROVISIONS OF THE PURPORTED INLAND REVENUE (SPECIAL PROVISIONS) ACT NO. 10 OF 2003 ("X2(A)"/"X2(B)'), COMPILED AS THE "COMPOSITE BILL - ("X3")

- Also 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 contrary to Article 76 (3) of the Constitution in view of the **absolute nature of power** given to the Finance Minister by Section 8 of Bill ("A3").
- A 7-Member Bench of the Supreme Court in the unanimous determination made in respect of the proposed 18<sup>th</sup> Amendment to the Constitution, *inter-alia*, held thus,

“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.”

**Consequence of failure to come within provisions of this Act..**

9. Any Person who intends to avail himself of the provisions of this Act, shall do so in accordance with the procedures and within the time period specified in this Act. Any Person who so fails to take the necessary steps in terms of this Act, shall be liable to be dealt with in terms of the provisions of the Inland Revenue Act, No. 38 of 2000.

**Transitional provisions.**

10. No proceedings shall be instituted for the recovery of any tax nor shall any pending action be proceeded with under any of the laws referred in the Schedule hereto, after the expiration of a period of five years from the date on which the payment of tax is in default, in terms of the respective laws.

- **Section 9 clearly reveals** that this Bill ("A3") is only meant to be in respect of Income Tax under Inland Revenue Act No. 38 of 2000 and not the other **non-tax laws and other Statutes scheduled**, in that, Section 9 states that persons, who intend to hide under the cover of this Bill, should do so in accordance with the procedure and within the time specified in the Bill ("A3"), **and that any person who fails to take such necessary steps to hide under this Bill would be liable to be dealt with under and in terms of the Inland Revenue Act No. 38 of 2000 - only.** What a contradiction ?
- Thus Section 9 is significantly silent and avoids any reference, whatsoever, to the "**non-tax laws**" encompassed under the previous Sections to grant indemnity, immunity and **pardon** to those who have defrauded, perpetrated frauds, crimes and offences against the state, shielding them from any **investigation or prosecution**, whatsoever.
- The Section 10, misleadingly titled "**transitional provisions**" warrants close scrutiny and a careful understanding.
- The "**transitional provision**" in the Bill ("A1") (part of ("X4")) had been converted to be **provisions in perpetuity** at the Committee Stage of Parliament - vide- ("A2") of ("X4"), however overlooking to change the short title – "transitional provisions"
- Section 10 stipulates that no proceedings shall be instituted for recovery of any **tax, nor any action be proceeded with**, under any of the **tax laws** and **non-tax laws** in the Schedule, **after the expiration of a period of 5-years**, from which the payment of **tax is in default**, in terms of the **tax laws** and **non-tax laws** in the Schedule.
- This as far as **tax laws** particularly " Inland Revenue Act No. 38 of 2000" are concerned is contradictory to Section 9 above, in that, any actions pending in the Department of Inland Revenue or Courts of Law would **automatically extinguish after a period of 5-years from the date of the initial default** i.e. a default in 1999, the cause of action is extinguished in Courts of law in 2004 and Courts of Law would stand impotent and the actions frustrated.
- Similarly in respect of **non-tax laws** i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance (including the code of Intellectual Property Act No. 52 of 1979 – S 166), all prosecutions for frauds, crimes and offences perpetrated in violation of such laws, **would also stand extinguished after the expiration of a period of 5-years from the date of committing of such frauds, crimes and offences.**
- That is prosecutions in respect of frauds, crimes or offences committed in 1999, even whether proven with convictions in Courts of law and are pending in Appeal in the Superior Courts, would stand extinguished in 2004 and Court of Law would stand impotent and the actions frustrated.
- The above would also be true in respect of all Statutes in the Schedule, excluding only the Inland Revenue Act No. 38 of 2000, *in respect of which Section 10 is in contradiction with Section 9.*
- The above provisions would appear to be clearly to cater to some persons, *who for mysterious reasons* do not wish to hide under Bill ("A3") making any declaration, thereby disclosing themselves to the Commissioner General of Inland Revenue and **having their name on record.**
- Would not Section 10 **cover even the future** ? That is, no action shall be instituted or any pending action proceeded with under those Statutes in the Schedule to Bill ("A3"), **after the expiration of a period of 5-years from the date of default or offence** ?
- **Why not then have all criminal prosecutions, if not completed within a period of 5-years also be extinguished** ?



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AMENDMENT BILL "X1(A)", INCORPORATING THEREINTO BY REFERENCE, THE PROVISIONS OF THE PURPORTED INLAND REVENUE (SPECIAL PROVISIONS) ACT NO. 10 OF 2003 ("X2(A)"/"X2(B)'), COMPILED AS THE "COMPOSITE BILL - ("X3")

- **The above would estop prosecutions successfully concluded in criminal courts, on which Appeals are pending in Superior Courts and would therefore tantamount to a pardon, which is a right exclusively and solely vested in the President of the Republic under Article 34 of the Constitution.**
- The unanimous determination by a 7-Member Bench of the Supreme Court in respect of the proposed 19<sup>th</sup> Amendment to the Constitution, *inter-alia*, determined,
  - “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.”
  - “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.”
  - “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”
- Can judicial power of the people enshrined in the Constitution to be exercised through Courts of law in trust for the people, be thus caused to be abdicated or nullified, or thus and otherwise **abrogated** ?
- In addition this would be an alienation of the judicial power of the people to be exercised in their trust by the judiciary, and the sovereignty of the people being alienated in violation of Articles 3 and 4 of the Constitution. Such sovereignty being inalienable the aforesaid provision would require a 2/3<sup>rd</sup> majority of Parliament and referendum as per the unanimous determination by 7-Member Benches of the Supreme Court in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments. **in addition to there is the specific bar under Article 75 of the Constitution to suspend / alienate the granting of pardon by the President of the Republic.**
- Section 11 repeals the Inland Revenue (Special Provisions) Act No. 7 of 2002, **which had been enacted in June 2002**. i.e. just 7-Month prior to Bill (“A3”).
- **On the very heels of this Act, what was the rationale and hasty necessity to endeavour to enact this perverse Bill (“A3”) crafted, drafted and attempted to be unlawfully and unconstitutionally enacted, *ultra-vires* the Constitution, only a few months thereafter ?**
- **This had been done, amongst other persons, by those persons referred to in paragraph 46 of the Petition, *some of whom are Attorneys-at-Law*, who have acted as aforesaid in total disregard to the dicta of the Supreme Court 7-Member Bench determinations in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution, *made recently as October 2002*.**
- Why was Bill (“A3”) so hastily endeavored to be enacted into law violating the rule of law of the Constitution, also *ultra-vires* the Constitution, when there was already the Inland Revenue (Special Provisions) Act No. 7 of 2002 enacted recently as June 2002 **providing for a plain and simple Income Tax amnesty** ?
- In fact, the Inland Revenue (Special Provisions) Act No. 7 of 2002, whilst not only **not including** any of the “**non-tax laws”** scheduled in Bill (“A3”), **even** does not include the several other Statutes, such as Turnover Tax Act, National Security Levy Tax Act, Save the Nation Contribution Act, Goods and Services Tax Act, Stamp Duty Act, Finance Act, Betting & Gaming Levy Act, which are not Statutes to collect “**income taxes”** but Statutes to generate Revenues to the State to finance public expenditure.
- Section 11 also enables those persons, who had already made declarations under the Inland Revenue (Special Provisions) Act No. 7 of 2002 to amend or vary their such declarations, enabling them to encompass all such aforesaid frauds, crimes and offences perpetrated against the State, under the “**non-tax laws”** in the Schedule i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance, ((including the code of Intellectual Property Act No. 52 of 1979 – S 166) **and the other aforesaid Revenue Collection Statutes**.
- Amazingly, whilst Section 2 stipulates that a declarations exclusively and solely has to be made to the Commissioner General of Inland Revenue, Section 11 (2) refers to **notifying in writing authorities administering the “non-tax laws” and other Revenue Collection Statutes, requesting any alternations, amendment or variation of a declaration made under the previous Inland Revenue (Special Provisions) Act No. 7 of 2002**, where there was no provision, whatsoever, to have made such declaration previously under Act No. 7 of 2002 . **What a blunder and a howler** .?

### Repeal of Act No. 7 of 2002 and savings.

11. (1) The Inland Revenue (Special Provisions) Act. No. 7 of 2002 is hereby repealed.
- (2) Every declaration made in terms of section 2 of the Inland Revenue (Special Provisions) Act, No.7 of 2002 prior to the repeal, shall notwithstanding such repeal be deemed to be a declaration made in terms of section 2 of this Act, and shall for the purpose of the granting of any immunity or exemption from liability in terms of this Act, be considered for all purposes as if it were a declaration made under section 2:

Provided that any person whose declaration is deemed to be accepted in terms of this section, may, if he so desires notify the Commissioner-General or the relevant authority as the case may be, in writing, within a period of three months from the date of the coming into operation of this Act, requesting any alteration, amendment or variation of such declaration in order to bring it into conformity with the provisions of this Act.

## SUBMISSIONS

**AMENDMENT BILL "X1(A)", INCORPORATING THEREINTO BY REFERENCE, THE PROVISIONS OF THE PURPORTED INLAND REVENUE (SPECIAL PROVISIONS) ACT NO. 10 OF 2003 ("X2(A)"/"X2(B")), COMPILED AS THE "COMPOSITE BILL - ("X3")**

**Sinhala text to prevail in case of inconsistency.**

12. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

**Interpretation.**

13. In this Act -

“**Authority**” includes any Department charged with administering the laws referred to in the **Schedule**;

“**company**”, “**body of persons**” and “**partnership**” shall have the same meaning as in the Inland Revenue Act, No. 38 of 2000;

“**Commissioner-General**” shall have the same meaning as in the Inland Revenue Act, No. 38 of 2000;

“**immovable property**” includes any building in Sri Lanka or abroad, whether constructed or under construction ;

“**investigation**” shall include inquiry, questioning, search or any other similar action under the laws referred to in the Schedule;

“**money**” includes all sums of money whether expressed in Sri Lanka rupees or in foreign currency;

“**movable property**” includes all movable property in Sri Lanka or abroad but does not include money;

“**offence**” includes any offence whatsoever in any of the laws referred to in the Schedule;

“**person**” shall include a company or partnership or a body of persons;

“**tax**” shall include any tax, levy, penalty (including any penalty in respect of any offence), forfeiture or fine, payable or levied under any of the laws referred to in the Schedule hereto :

“**tax in dispute**” shall include any tax assessed under any of the laws referred to in the Schedule to this Act, which has not been accepted by the Commissioner-General, the relevant authority or the person concerned.

➤ The Sinhala text (“**X2(b)**”) includes the additional words “නේ වෙනත් කටයුතු පැවරීම” in Section 10 which are not contained in the English text (“**X2(a)**”) nor in the Sinhala text of the Bill (“**H1**”) part of (“**X6**”)

➤ This includes the Director General of Customs, the Director General of Excise, the Controller of Exchange, the Governor of the Central Bank, as Chairman of the Monetary Board, Controller of Imports & Exports,

➤ -

➤ -

➤ Includes buildings in foreign countries, including those under construction – *thus immunity for future transactions.*

➤ Very wide and extensive in scope preventing any action, including questioning or searching to enforce the rule of law – eg. Kassipudens have to be raided, prohibited goods have to be searched, information has to be obtained for inquiries / investigations, etc..

➤ -

➤ Would include debts / purported debts receivable or loans / purported loans receivable, fictitious, movable assets, read with [Section 3 (1)] ?

➤ Very wide and extensive in scope preventing any action to enforce the rule of law, even re – illegal activities and prohibited goods.

➤ -

➤ The definition of “**tax**” goes beyond the known bounds of the meaning of the word “**tax**” in the English language, including therein penalties for offences, forfeiture of goods, (how could confiscation of prohibited items, drugs / narcotics, firearms, ammunition, counterfeit currency, etc, be taxes ?) fines imposed and read with the provisions of the Bill (“**A3**”) would include sentences of imprisonment for crimes perpetrated, including criminal / illegal activities, and dealing in prohibited goods.

➤ The Customs Ordinance Schedule also includes the enforcement of the Code of Intellectual Property Act No. 52 of 1979 – S 166.

➤ **Tax in dispute** includes purported taxes to be imposed by relevant Authorities, who actually do not impose tax but impose duties, fines and penalties and confiscates / forfeits prohibited goods and, prosecutes for frauds, crimes and offences, with punishments of fines and sentences of imprisonment. How could these be “**tax in dispute**” ?

### SCHEDULE

(Sections 2, 3 4 and 6)

1. The Turnover Tax Act, No.69 of 1981.
2. The National Security Levy Act, No. 52 of 1991.
3. The Goods and Services Tax Act, No. 34 of 1996.



**AMENDMENT BILL "X1(A)", INCORPORATING THEREINTO BY REFERENCE, THE PROVISIONS OF THE PURPORTED INLAND REVENUE (SPECIAL PROVISIONS) ACT NO. 10 OF 2003 ("X2(A)"/"X2(B")), COMPILED AS THE "COMPOSITE BILL - ("X3")**

4. The Stamp Duty Act, No. 43 of 1982.
5. The Finance Act, No. 11 of 1963.
6. The Save the National Contribution Act, No. 5 of 1996.
7. The Inland Revenue Act, No. 28 of 1979.
8. The Inland Revenue Act, No. 38 of 2000.
9. The Surcharge on Wealth Tax Act, No. 25 of 1982.
10. The Surcharge on Wealth Tax Act, No. 8 of 1989.
11. The Surcharge on Wealth Tax Act, No. 26 of 1982.
12. The Surcharge on Wealth Tax Act, No.12 of 1984.
13. The Surcharge on Wealth Tax Act, No. 7 of 1989.
14. The Surcharge on Wealth Tax (Amendment) Act, No. 17 of 1991.
15. The Surcharge on Wealth Tax (Amendment) Act, No. 32 of 1992.
16. The Surcharge on Wealth Tax (Amendment) Act, No. 28 of 1993.
17. The Surcharge on Wealth Tax (Amendment) Act, No. 23 of 1994.
18. The Surcharge on Wealth Tax (Amendment) Act, No. 13 of 1995.
19. The Surcharge on Income Tax Act, No. 6 of 2001.
20. The Betting and Gaming Levy Act, No. 40 of 1988.
21. The Estate Duty Act, No. 13 of 1980.
22. The Exchange Control Act, (Chapter 423).
23. The Import and Export Control Act, No. 1 of 1969.
24. The Excise (Special Provisions) Act, No. 13 of 1989.
25. The Excise Ordinance (Chapter 52).
26. The Customs Ordinance (Chapter 235).

**SUBMISSIONS**

### **ENTIRETY OF BILL (“A3”)**

In addition to the excerpts from the unanimous Determinations made by 7-Member Benches of the Supreme Court in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution cited in relation to the respective Sections of the Bill (“A3”), the following excerpts are cited in relation to the entirety of the Bill (“A3”), **provisions of which are *ultra-vires* the Constitution.**

**“The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution” – re – Proposed 18<sup>th</sup> Amendment to the Constitution**

**“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.” - re - Proposed 19<sup>th</sup> Amendment to the Constitution**

**“..... 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” - re - Proposed 19<sup>th</sup> Amendment to the Constitution**

**“.... 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.” - re - Proposed 19<sup>th</sup> Amendment to the Constitution**

**“ 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” - re - Proposed 18<sup>th</sup> Amendment to the Constitution**

**“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” – ( Indian Judgment) – re - Proposed 19<sup>th</sup> Amendment to the Constitution**

**“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” ” – re - Proposed 19<sup>th</sup> Amendment to the Constitution**

**Final Determination – re - 18<sup>th</sup> Amendment to the Constitution**

We therefore determine that the proposed Article 41(K)1 is inconsistent with Article 3 and 4 of the Constitution. The proposed Article therefore is required to be passed by the special majority in terms of paragraph 2 of Article 84 and approved by the people at a Referendum by virtue of the power of Article 83.

The proposed Article 41J referred to above, which grants an immunity to the Constitutional Council, the Chairman, a Member, the Secretary or an officer, from judicial proceedings in respect of anything done or omitted to be done, attracts both objections dealt with, in the preceding paragraphs of this determination. They are;

- (1) that it would alienate the judicial power from the people;
- (2) that it creates a special class of people in violation of Article 12(1) of the Constitution, who would not be subjected to judicial review.

For the reasons stated above we determine that there is merit on both grounds of objections and the proposed Article 41J is therefore inconsistent with Article 3 read with Article 4 of the Constitution.

For the reasons stated above, the Bill, in its present form, requires approval by People at a Referendum in addition to a two-thirds majority vote (including those not present) in terms of Article 83 of the Constitution.

**Final Determination – re - 19<sup>th</sup> Amendment to the Constitution**

1. That Clause 6 of the Bill has the effect of suspending the operation of a part of the Constitution and cannot be validly enacted by Parliament in view of the specific bar contained in Article 75 of the Constitution.
2. Clauses 2, 3, 4 and 5 contain provisions inconsistent with Article 3, read together with relevant provisions of Article 4 and as such have to be passed by a special majority required under the provisions of Article 84(2) and approved by the People at a Referendum.

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.***

**The Bill (“A3”) contains provisions debarred by Article 75 of the Constitution, and also contains provisions inconsistent with Article 3, read together with Article 4, of the Constitution, and therefore requires a 2/3<sup>rd</sup> majority of Parliament (including those not present) and the approval by the People at a Referendum.**

The Bill (“A3”) had been purportedly passed with **97 votes for** and **49 votes against**, - *vide* Hansard Column 1873 of Document marked “G”, **which is not a 2/3<sup>rd</sup> majority of Parliament in terms of Article 83 of the Constitution.**

**Therefore Bill (“A3”) has not become law** - *vide* Article 83 of the Constitution, ***inasmuch as there is no 2/3<sup>rd</sup> majority of Parliament and approval by the People at a Referendum.***

**Article 83 of the Constitution stipulates thus:**

“83. Notwithstanding anything to the contrary in the provisions of Article 82 –

- (a) **A Bill** for the amendment or for the repeal and replacement of or **which is inconsistent with any of the provisions of Articles 1, 2, 3, 6, 7, 8, 9, 10 and 11, or of this Article, and**  
 (b) .....

**shall become law if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present), is approved by the People at a Referendum and a certificate is endorsed thereon by the President in accordance with Article 80.** – [Emphasis Added]

Therefore explicitly it is admitted that Bill (“A3”) **has not become law** as per provisions of Article 83 cited above.

**Article 79 of the Constitution stipulates thus:**

“79. The Speaker shall endorse on every Bill passed by Parliament a certificate in the following form:-

“ This Bill (here state the short title of the Bill” has been duly passed by Parliament”.

Such certificate may also state the majority by which such Bill was passed:

Provided that where by virtue of the provisions of Article 82 or **Article 83** or Article 84 or Article 123 (2) **a special majority is required for the passing of a Bill, the Speaker shall certify such Bill, only if such Bill has been passed with such special majority;**

**Provided further that where by virtue of Article 83, the Bill or any provision thereof requires the approval of the People at a Referendum, such certificate shall further state that the Bill or such provision shall not become law until approved by the people at a Referendum.”** – [Emphasis Added]

**Article 80 (3) of the Constitution stipulates thus:**

“3 Where a **Bill becomes law upon the certificate of the President or the Speaker**, as the case may be, **being endorsed thereon**, no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any grounds whatsoever”. [Emphasis Added]

In this instant case Bill (“A3”) **has not become law as mandated by Article 80 (3)** and the Speaker has not made such aforesaid **mandated certification** in terms of Article 79, and therefore **Article 80 (3) grants jurisdiction to the Supreme Court to inquire into and pronounce upon or in any manner call in question the validity of the provisions of Bill (“A3), inasmuch as the Bill (A3”) has not become law, as aforesaid.** *The provisions of Article 84 also supports such legal position.* **Article 154G (2) and (3) written into the Constitution by the 13<sup>th</sup> Amendment to the Constitution, further endorses that – “No Bill ..... shall become law, unless .....”**

It is respectfully submitted that the totality of constitutional law, would not only be the Articles of the Constitution, itself, but also include the Supreme Court Determinations already made in relation to the Constitution, in this instance, more particularly, the Determinations made in respect of the proposed 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution, and other internationally recognised authorities on public and constitutional law.