

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

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

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

PETITIONER

SC SD No: 11/2003

Vs.

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 is a citizen of the Democratic Socialist Republic of Sri Lanka and a Fellow Member of the Institute Chartered Accountants of Sri Lanka and the Chartered Institute of Management Accountants of UK, practising as a Consultant, having functioned as a Senior Consultant on World Bank and USAID funded economic infrastructure re-structuring projects of the Government of Sri Lanka, and as an Advisor to the Ministry of Finance.
2. He petitions Your Lordships' Court, both on his own 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)", which was presented to Parliament on 31st January 2003 and purportedly "passed" by Parliament, as morefully set out herein.

Background to the filing of this Petition

3. In or about mid March 2003, the Petitioner learnt from the media, that a Bill titled "Inland Revenue (Special Provisions)" had been passed in Parliament. Petitioner was unaware of such a Bill ***till the "passing" of the Bill was reported in the media.***
4. On coming to know of the aforesaid, he endeavoured to obtain a copy of the Bill from the Government Publications Bureau, but was informed that it had been sold out. Subsequently, he was able to obtain a photocopy of the library copy of the Bill only on **3rd April 2003** from the Government Publications Bureau. On the face of the Bill it is stated that the same has been presented to Parliament by the Minister of Finance on **31st January 2003**.
5. The Petitioner made enquiry and ascertained that the Government Publications Bureau had received copies of the aforesaid Bill only on **11th February 2003** for sale to the public, and that too, only 10 Sinhala copies, 5 Tamil copies and 15 English copies thereof had been received.
6. In the meantime, he had obtained from a source at the Inland Revenue Department, a copy of a document titled "Inland Revenue (Special Provisions)" published as a "Gazette of the Democratic Socialist Republic of Sri Lanka", with no Gazette Notification number given thereto, *and not in the format of a normal Government Gazette Notification.*
7. To the aforesaid document obtained by the Petitioner, titled as aforesaid containing a Bill, was attached a **2 page fax stating to be from the Legal Draftsman, containing Amendments to be moved at the Committee Stage of the Bill.**
8. Subsequently, on or about **25th March 2003** the Petitioner was able to obtain a printed document stated to be the "Inland Revenue (Special Provisions) Act" ***numbered in hand as 10 of 2003***, but not a published copy of the Act from the Government Publications Bureau.

The basis and the reasons for filing this Petition

9. In terms of Article 77 of the Constitution, the Hon. Attorney General is required to discharge the following duties in respect of proposed legislation:

- i.) to examine every Bill for any contravention of the requirements of paragraphs 1 and 2 of Article 82 of the Constitution **and for any provisions, which cannot validly be passed,** *except by the special majority prescribed by the Constitution.*
- ii) if he is of the opinion, that a Bill contravenes any of the requirements in paragraphs 1 and 2 of Article 82 of the Constitution or *that any provisions in a Bill cannot be validly passed except by a special majority prescribed by the Constitution,* ***to unfailingly communicate such opinion to the President;*** provided that *in the case of an Amendment proposed to a Bill in Parliament he shall communicate his opinion to the Speaker at the stage, when the Bill is ready to be put to Parliament.*
10. Therefore, in view of the foregoing **compulsory** constitutional requirements, every Bill presented to Parliament is certified after examination by the Hon. Attorney General, as not being repugnant with any provisions of the Constitution, *when in his opinion no provisions of a Bill are repugnant.*
11. a) In terms of Article 79 of the Constitution, the Speaker of Parliament is required to give a Certificate that a Bill has been *duly passed by Parliament.*
- b) Inherent in such certification of a Bill being *duly passed* would be that a *Bill has been lawfully and/or legitimately and/or constitutionally passed,* and that it is not repugnant with any provisions of the Constitution, *inasmuch as the Speaker is bound by the oath to uphold the Constitution.*
- c) The two provisos to Article 79 state that –
- “(1) 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***” and furthermore,
- “(2) 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 provisions **shall not become law until approved by the People at a Referendum.***

12. In terms of Article 75 of the Constitution, Parliament is *debarred* from enacting any law *suspending* the operation of the Constitution or any part of it.

13. Under Article 34 of the Constitution *only the President* of Sri Lanka is 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.

14. In terms of Article 28 of the Constitution, as a citizen of Sri Lanka, it is the Petitioner's fundamental duty, *inter-alia*,

- a) **to uphold and defend the Constitution and the law**
- b) **to further the national interest**
- c) **to work conscientiously in his chosen occupation; and**
- d) **to preserve and protect public property, and to combat misuse and waste of public property,**

for which reason he has filed this Application in Your Lordships' Court.

15. Article 4, read with Article 3 of the Constitution, *inter-alia*, mandates that the fundamental rights, which are declared and recognized by the Constitution shall be respected, secured and advanced by all organs of the Government, and shall not be abridged, restricted or denied, and that the ***sovereignty of the people, including the fundamentals rights and powers of Government, is inalienable.***

16. 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 coordinating 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**.
17. In terms of Article 121(1) of the Constitution, any citizen is entitled to invoke the jurisdiction of Your Lordships' Court to seek determinations, as to the constitutionality and/or validity of the provisions of any Bill presented to Parliament, within one week of it being placed on the Order Paper of Parliament.
18. Despite this, ***no copy*** of the aforesaid Bill ("**A3**") was ***made available to any member of the public within one week*** from the same being presented to Parliament, as is borne out from the facts set out above.
19. The Petitioner has set out in his Petition, how the provisions of the aforesaid Bill ("**A3**") *violates the fundamental right to equality* enshrined by Article 12(1) of the Constitution and also *violates the judicial power of the People* enshrined in Article 4(c) of the Constitution, and read with Article 3 of the Constitution, ***it alienates the sovereignty of the people***, and as such, **the same could not have been validly passed by Parliament into law**.
20. Provisions inconsistent with Article 3, read with Article 4, of the Constitution have to be passed by a special majority required under the provisions of Article 84(2) of the Constitution and approved by the people at a Referendum in terms of Chapter XIII of the Constitution.
21. It is respectfully submitted, that the provisions of the aforesaid Bill ("**A3**") directly and/or indirectly endeavour to suspend provisions of the Constitution, particularly those relating to the exclusive and sole right of the President to grant pardon (Vide- Article 34), **and Parliament is debarred from passing such provisions in terms of Article 75 of the Constitution**.
22. It is further submitted, that the provisions of the Bill ("**A3**") endeavour to transfer power that is attributed by the Constitution to one organ of the Government (namely the *Executive President*) to another organ (the *legislative – Parliament*). Such is an alienation of sovereignty of the People in terms of Article 3, read with Article 4 of the Constitution.

23. Your Lordships' determination made on or about 15th October 2002 in respect of the Bill titled "19th Amendment to the Constitution", contained, *inter-alia*, the following conclusion:

"(5) the transfer of a power which 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."

24. The summary of the determination, stated *inter-alia*, that:

"1) the effect of suspending the operation of a part of the Constitution cannot be validly enacted by Parliament in view of the specific bar contained in Article 75 of the Constitution."

"2) provisions inconsistent with Article 3 read together with relevant provisions of Article 4 have to be passed by a special majority required under the provisions of Article 84(2) and approved by the people at a referendum."

25. In the dicta of the said Order Your Lordships stated – **"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" "**

26. It is in this light, that Your Lordships' attention is drawn, to the submissions on behalf of the Petitioner, that:

a) the provisions of the Bill ("**A3**") violates the Directive Principles of State policy and fundamental duties enshrined in Article 27 of the Constitution, as morefully set out hereinbefore;

b) the aforesaid Bill ("**A3**") would result in the concentration of wealth in the hands of a privileged few to the common detriment, and contrary to the Objectives of the State, stated as aforesaid, including the *raising of the moral standards of the people* ; and

c) the aforesaid Bill ("**A3**") purportedly passed as aforesaid, is an *abdication* of "good governance" by the Government, and clearly encourages law breakers and those who perpetrate crimes, ***eroding all norms of "good governance"***, whereas Article 27 of the Constitution provides for the governance of the country for the establishment of a ***just and free society, with a just social order, raising the moral standards of the people.***

27. A Seven-Member Bench of Your Lordships' Court has previously *unanimously determined* in respect of the Bill titled – "19th Amendment to the Constitution", and communicated to the Speaker on 15th October 2002 that *certain provisions* contained in the said Bill ***could not be validly enacted by Parliament***, thus affirming the principle that Parliament's capacity to enact laws are circumscribed by the Constitution, which confers on Parliament the powers to enact laws.

28. The Petitioner complains that the aforesaid Bill ("**A3**") has not been duly and lawfully enacted into law, in compliance with the requirements and procedure laid down by the Constitution, and further states that:

a) the aforesaid Bill ("**A3**") has been hastily and purportedly, unlawfully passed as aforesaid *devoid of warranted discussion and debate in the public domain*, notwithstanding the serious public interest in such regard.

After the Petitioner instituted this Action, a widespread media campaign was carried out by the Ministry of Finance on this purported law encouraging those who have broken the law to seek refuge under this purported law. The Petitioner asks, as to why, such media publicity was not given before the presentation of the Bill ("A3**") to Parliament, so that the people would be made aware that their sovereignty was going to be alienated, as aforesaid ?**

b) as morefully set out hereinbefore, the Petitioner was denied the constitutional right to have invoked the jurisdiction of Your Lordships' Court timeously under and in terms of Article 121 read with Article 78, of the Constitution, since as a member of the general public, he was not aware and did not have sufficient notice to be made aware of the aforesaid Bill ("**A1/A3**"), having been placed on the Order Paper of Parliament; *inasmuch as only a limited number of copies as aforesaid of the said Bill ("**A3**") had been made available to the Government Publications Bureau, and that too, only on **11th February 2003** though stated thereon that it had been presented by the Finance Minister to Parliament on **31st January 2003**, i.e. 10-days after such presentation.*

known to Petitioner, the Petitioner could and would - within the stipulated 7 days of the aforesaid Bill ("**A3**") being placed on the Order Paper of Parliament, have invoked the jurisdiction of Your Lordships' Court, to seek the determination of your Lordships' Court thereon, *in the exercise of the judicial power of the people in terms of the Constitution.*

d) in the given circumstances, it is *unjust and inequitable* for the Petitioner to have been denied the opportunity to have acted in the public interest and public good, which he is bound to uphold as aforesaid, *and to act as aforesaid in terms of Article 28 of the Constitution.*

29. The Petitioner states that, he verily believes that the Hon. Attorney General, had not as mandated by Article 77 of the Constitution examined the aforesaid Bill ("**A1/A3**") for any contraventions of the Constitution and for any provisions which cannot be validly passed, and had not made any communication of his Opinion to the President in the aforesaid circumstances, as mandated by the Constitution.

30. Furthermore, the Petitioner verily believes that the Hon. Attorney General, had not as mandated by Article 77 of the Constitution examined the Amendments ("**A2**") to the aforesaid Bill ("**A1/A3**") and communicated his Opinion to the Speaker, at the stage when the Bill was ready to be put to Parliament for its acceptance.

A copy of Letter dated 13.5.2003 addressed to the Secretary General of Parliament by the Petitioner's Attorneys-at-Law with copy to the Hon. Speaker of Parliament, for which there had been no response, whatsoever, is annexed hereto marked "**X1**".

31. In fact, according to the Petitioner's reliable information, the Speaker (who had been seriously ill) had been abroad for treatment and had returned to the island only on or about Sunday **16th March 2003** and his signature on the certification of the Bill as purportedly "passed", had been obtained on Monday **17th March 2003.**

32. The very Preamble of the aforesaid Bill ("**A3**") professes thus:

"An Act to enable persons who have not furnished a return of income and assets prior to March 31, 2002 to make a declaration in respect thereof; to make provision for the grant of certain concessions to declarants and non-declarants; to indemnify such persons against liability to pay certain taxes and against liability from investigations, prosecutions and penalties under specified statutes, with a view to securing the future compliance of such persons with the prevalent tax laws; to provide for the repeal of the Inland Revenue (Special Provisions) Act, No. 7 of 2002; and to provide for matters connected therewith or incidental thereto."

33. However, under the guise of the misleading and/or misrepresenting and/or camouflaging title "Inland Revenue (Special Provisions) Bill" ("**A3**"), which on the face of it held out that the same was to provide an Income Tax amnesty, ***the said Bill had surreptitiously encompassed several other laws dealing with illegal acts, offences and/or crimes against society.***

34. In fact, the aforesaid Bill ("**A3**") unlawfully purportedly "passed" as aforesaid, under the aforesaid misleading and/or misrepresenting and/or camouflaging title – "Inland Revenue (Special Provisions)", contained serious violations and/or negations of effect of substantial provisions in the following statutes, which had been enacted in the national and public interest:

- i. Customs Ordinance (Chapter 235)
- ii. Excise Ordinance (Chapter 52)
- iii. Excise (Special Provisions) Act No. 13 of 1989
- iv. Import and Export Control Act No. 1 of 1969
- v. Exchange Control Act (Chapter 423)

Also, the Code of Intellectual Property Act No. 52 of 1979 - vide Section 166, it is stipulated that it formed a part of the Custom Ordinance.

35. The aforesaid Statutes provide for the imposition of duties and/or penalties and/or fines ***and also sentences of imprisonment***, and *not only taxes and penalties*, as stated in the Preamble of the aforesaid Bill ("**A3**").

36. Thus, it is respectfully submitted that the aforesaid Preamble is designed to camouflage and mislead the actual effect and scope of its provisions.

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

- i) smuggling, including smuggling of restricted / prohibited items, such as drugs and narcotics, firearms and security sensitive equipments.
- ii) violations of the provisions of the Intellectual Property Act enacted to protect consumer interests, *inter-alia*, preventing unlawful/spurious products and/or imitations in the market
- iii) distilling of illicit brew of liquor such as *Kasippu*, etc and bootlegging,
- iv) dealing in narcotics, cannabis, opium and cultivating of ganja
- v) import and/or export of items prohibited in the national or public interest
- vi) Exchange Control violations detrimental to the national economy
- vii) Money laundering in connection with narcotics, drug peddling, human trafficking and **terrorism** *banned under international conventions / treaties entered into by Sri Lanka.*

Some of the aforesaid offences are Scheduled Offences under the Criminal Procedure Code, for which a Magistrate is not empowered to grant bail and are punishable under the provisions of the Penal Code and therefore cannot be given any ***immunity and/or pardon***, whatsoever, from prosecution, conviction and imprisonment ***under the guise and ruse of an Income Tax amnesty.***

38. Hence, it is submitted that **by the aforesaid Bill ("A3"), endeavour has been made to usurp and/or curb the executive power of the people to be exercised solely and exclusively by the President of Sri Lanka under and in terms of the Constitution, which is in blatant violation of Article 4 of the Constitution, read with Article 3, of the Constitution.**

39. ***Thus, Your Lordships' attention is drawn, to the fact that this is an unconstitutional endeavour to alienate the sovereignty of the people, which is inalienable.***

40. Hence, it is respectfully urged that ***the aforesaid Bill ("A3") is unlawful, unconstitutional and has not been validly enacted by Parliament into law.***

41. The aforesaid attempt to usurp and/or curb the executive power of the people to be exercised solely and exclusively by the President of Sri Lanka under the Constitution in blatant violation of Article 4 of the Constitution, read with Article 3, of the Constitution is borne out and evident from the following:

a) **Section 6(4)** of the aforesaid Bill ("A3") stipulates –

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

b) **Section 4 (1)** the aforesaid Bill stipulates -

"(1) Any investigation or prosecution shall notwithstanding anything to the contrary **in any other law**, be withdrawn." [*Emphasis added*]

c) thus and otherwise Courts of law and law enforcement authorities would be impeded in the pursuit of investigations and prosecutions of offenders involved in criminal acts against society as aforesaid. This would also be in contravention of international conventions and treaties, to which Sri Lanka is a party, which conventions and treaties also enable investigations by international criminal investigation authorities, such as *Interpol* - **Vide Article 27 (15) of the Constitution.**

- d) the aforesaid Bill ("**A3**") would also undermine the arduous efforts of long years of investigations, by public officers of the aforesaid statutory authorities and other law enforcement agencies of the government, carried out into major frauds, knowingly and deliberately perpetrated against the State by unscrupulous persons, denying legitimate revenue to the government and through it to the people of this country.
- e) the provisions of the aforesaid Bill ("**A3**") would only demoralize the public servants serving in the aforesaid statutory authorities and the relevant law enforcement authorities, **discouraging them from taking any future actions to curb crimes against society**, as they are statutorily mandated to do, *contrary to the principles of good governance by any responsible government and in breach of the oaths / affirmations taken by each and everyone of them under the Constitution.*

42. The aforesaid Bill ("**A3**") purportedly passed as aforesaid by Parliament,

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

in addition to the taxes, levies and penalties imposed under the several other Acts specified in the Schedule to the Bill ("A3") to be enforced by the Commissioner General of Inland Revenue, which are not Income Taxes but revenue collections to the State to be made from the public, such as Stamp Duty, Turnover Tax, Goods and Services Tax , etc.

43. In any case, it is submitted that the aforesaid Bill ("A3") has not provided for and cannot annul duties and/or fines imposed under other Statutes and/or by Courts of law thereunder.
44. The aforesaid Bill ("A3") **does not specify the nexus and/or co-relationship** between the value or volume of monies/assets declared by a person to the Commissioner General of Inland Revenue for Tax amnesty **and** the corresponding transactions and/or crimes perpetrated under the aforesaid other statutes and the values thereof.

(E.g. - the nexus and co-relationship between the declaration of Rs. 1 Million. for Tax amnesty and 10 different Customs violations and/or Exchange Control violations attracting fines of Rs. 400 Million.)

45. Monies collected by persons under the following statutes contained in the Schedule to the aforesaid Bill ("A3"): i.e.,
- i) The Turnover Tax Act No. 69 of 1981
 - ii) The National Security Levy Tax Act No. 52 of 1991
 - iii) The Goods and Services Tax Act No. 34 of 1996

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

These indirect taxes have been duly paid by the consumer public to be paid to the State. The persons, who are to be granted amnesties in relation thereto do not have the right to retain the same with themselves, ***even if it is now not payable to the State on account of such amnesty and ought refund same, if at all, to the consumer public from whom they have collected such monies on behalf of the State.***

46. It is respectfully urged, that:

- a) if the amnesties as proposed under the aforesaid Bill are granted, the State would be denied of considerable revenues of national economic proportions;
- b) some of the aforesaid revenues, would be on fines to be collected on prosecutions pending before Courts of law and prosecutions successfully concluded. There is no rationale or logic, whatsoever, to defraud the country and the public of such legitimate revenues
- c) the aforesaid monies receivable would become funds of the Consolidated Fund as enshrined in Articles under Chapter XVII of the Constitution, and as such, belong to every citizen of this country, including the Petitioner, ***who has a right and interest thereto.***
- d) not only was the aforesaid Bill ("**A3**") hastily and purportedly "passed" as aforesaid, devoid of public disclosure and debate, but also, the Finance Minister, has failed to provide estimated and/or reckoned figures of revenue losses to the government, consequent to the enactment of aforesaid Bill, as he ought to have, *inasmuch as relevant revenues and expenditure estimates are disclosed in the budgetary provisions.*
- e) the aforesaid revenue streams that are reckoned and anticipated to be collected by the relevant statutory authorities, as aforesaid, would have also taken into reckoning the aforesaid revenues, and reckoned in the budgetary revenues included in the Budget for the year 2003, *which have already been approved by Parliament*
- f) the Finance Minister, has failed to specify, as to how such reckoned revenue stream shortfalls for the year 2003, would be bridged and from what sources
- g) the Petitioner states that he reliably understands that the Government had expected to collect in the year 2002, 84% Tax revenue from indirect taxes. He understands that actual revenue was *Rs. 20,000 million below* anticipated revenue. In such context, it is clearly and obviously not in the public interest to waive such colossal sum of revenue, as aforesaid, that too, *to wrongfully and unlawfully enrich a privileged few law breakers.*

h) in addition to colossal revenue losses to the government, as aforesaid, commission of such acts of smuggling, under-invoicing, illegal disposal of BOI products to the local market, etc., cause undue and unfair competition to local industries, causing losses thereto and closures thereof, resulting in the loss of employment opportunities, in direct violation of the Directive Principles of State Policy and Objectives enshrined in Article 27 of the Constitution.

47. The following matters also warrant Your Lordships' consideration:

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

- f) in the context of the Prime Minister's Address to the Nation marked "B" to the Petition, it is beyond any comprehension, rationality and logic, *as to how such bonanzas of billions of rupees are surreptitiously being attempted to be conferred upon a privileged few law breakers, denying the revenue that rightfully belong to the people of this country, who are said to be gravely indebted as aforesaid with the per capita debt level rising* .

48. In this context, Your Lordships' attention is also drawn, to the fact that:

- a) "Corruption" was defined by the replacement of Section 70 of the Bribery Act, by the following new Section, as per the Bribery Amendment Act No. 20 of 1994.

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

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

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

- b) also as per the Bribery Amendment Act No. 20 of 1994, *the definition of a "Public Servant" was expanded to include, inter-alia, a Cabinet Minister, Non-Cabinet Minister, Speaker, Deputy Minister, Member of Parliament, Servant or Employee of the State, etc.*

- c) both the aforesaid Acts for the establishment of a Permanent Commission to Investigate Bribery or Corruption and to include "Corruption" as an offence punishable under the said law as aforesaid, were passed *unanimously* in Parliament.
- d) accordingly, the very acts perpetrated by those persons, who were instrumental and/or involved in mooted and/or lobbying and/or formulating and/or causing the purported "passing" of the aforesaid Bill ("**A3**"), with the knowing intention of conferring benefit on a privileged few and thereby causing colossal loss to the Government, ***is a contravention of the aforesaid "Corruption" provision unanimously enacted by the Parliament.***

49. Furthermore:

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

- ii) the **Chairman of the Commission to Investigate Bribery or Corruption** should require the Commissioner General of Inland Revenue to communicate any such declarations made by any persons, coming within the meaning of "public servant" as aforesaid.

50. Your Lordships' attention is **further** drawn, to the fact that:

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

b) the aforesaid Sub-section 3 of Section 3, **not contained in the aforesaid Bill ("A3")** reads thus:

"3. Any transaction taking place **on or after March 31, 2002**, in connection with any asset declared for the purposes of the Exchange Control Act (Chapter 423) under Section 2 of this Act, shall be afforded the same immunity referred to in Sub-section 1, as if such transaction has taken place on or before March 31, 2002" **[emphasis added]**.

c) The Petitioner verily believes that, the **Hon. Attorney General**, *had not made communication of his Opinion to the Hon. Speaker* on the aforesaid proposed Amendments, *as mandated under Article 77(2) of the Constitution* and **nor had the Speaker received the same**.

d) the aforesaid **Sub-section 3**, included as aforesaid, shockingly **affords immunity** to any Exchange Control **violation and/or fraud perpetrated** even today and/or **even at a future date**, since such transaction **would be deemed to have taken place before 31st March 2002**.

e) *in other words it gives a carte blanche open ended licence to perpetrate Exchange Control violations and/or frauds, which could and would involve, inter-alia, transactions pertaining to narcotics / drugs peddling, human trafficking, terrorism and/or terrorists and/or terrorist organizations, etc.*

- f) the aforesaid controversial and **perverse Sub-section 3** *is not contained in the aforesaid Bill ("A3") and therefore **would not have been placed on the Order Paper of Parliament in terms of Article 78 of the Constitution.***
- g) the aforesaid **material omission** would render that the **"entirety of the Bill ("A3")" was not placed on the Order Paper of Parliament, as mandated by Article 78 of the Constitution .**
- h) in addition to the grounds stated hereinbefore, in the given facts and circumstances as aforesaid, the Petitioner is entitled to invoke the jurisdiction of Your Lordships' Court to seek a determination on the aforesaid Bill ("**A3**").

51. It is further submitted, that:

- a) the Preamble of the aforesaid Bill ("**A3**") specifically state that provisions of the said Bill are being enacted –

"with a view to securing the future compliance of such persons with the prevalent tax laws" - [Emphasis added]

- b) there is **no provision, whatsoever**, in the aforesaid Bill ("**A3**") *to ensure the **securing of future compliance by such persons***, on whom such bonanzas are to be conferred. Whereas on the contrary, the said Bill ("**A3**") had *provided for Exchange Control **violators and frauds to continue to so violate and defraud the State, deeming their such acts to have been committed prior to 31st March 2002.***
- c) in the case of criminal offences referred to hereinbefore, there is **no provision for the suspension of the fines and/or sentence to be re-imposed, should such defaulters/fraudsters, who are to be pardoned, would perpetrate such similar fraud in the future**
- d) even in the instances of waiving revenue collections, there **is no provision to obtain even an undertaking in law from such persons, that such revenues waived would be re-imposed, should such persons similarly violate the revenue laws in the future, to secure future compliance by such persons as so recited in the said Bill ("A3") as aforesaid.**

- e) on the contrary, *as it stands now*, the ***clear signal and message would be that such persons could continue to defraud the state, expecting to influence peddle, lobby and cause laws to be enacted, time and again, by their political mentors, to have such revenue defrauded waived and crimes forgiven / pardon.***
- f) **Significantly, the aforesaid Preamble only contemplates securing future compliance with prevalent Tax laws and not compliance with those other Statutes scheduled to the aforesaid Bill ("A3")**

52. This being the case, Your Lordships' attention is respectfully drawn to:

- a) Section 8 of the aforesaid Bill ("**A3**"), which states thus;

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

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

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

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

- b) the aforesaid Section has conferred ***unchecked and unfettered*** power on the Finance Minister, to make Regulations in respect of all matters required, and that such Regulations would come into operation, as published in the *Gazette*.
- c) Sub-section (3) of Section 8 requires the Finance Minister, **as convenient**, **after** the publication of the said Gazetted Regulations, to place such Regulations before Parliament **for approval**.

- d) Questionably, the aforesaid Sub-section (3) also stipulates that the Gazetted Regulations by the Finance Minister, and **not approved** by Parliament **will be deemed to be rescinded from the date of such disapproval by Parliament, without prejudice to anything previously done under such Regulations disapproved by Parliament.**
- e) the above confers on the Finance Minister ***unchecked and unfettered*** power to wrongfully regulate ***to suit and/or oblige and/or favour any particular person/s,*** and **even if Parliament disapproves** such Regulations, **the acts perpetrated under such unlawful Regulations not approved by Parliament stand lawful, in clear violation of legislative power of the Parliament.**
- f) the legislative power of the people is to be exercised by Parliament in terms of Article 4 of the Constitution, ***and the said provisions have thereby alienated the sovereignty of the people, which is inalienable in terms of Article 3 of the Constitution.***
- g) Furthermore, the above is grossly violative of Article 76(1) of the Constitution which stipulates that **“Parliament shall not abdicate or in any manner alienate its legislative power”**
53. It is further respectfully submitted, that merely on a technicality, where there has been no challenge to a Bill presented in Parliament within 7 days of such presentation, due to an impossibility or frustration or otherwise, the mere “passing” of a perverse and/or unlawful and/or unconstitutional Bill by Parliament, ***without adherence to the mandated constitutional provisions in such regard, cannot make such Bill a constitutionally valid and/or a legitimate piece of legislation.***
54. In view of the gravity and seriousness of the matters averred hereinbefore, and to protect public interest and uphold public good as enshrined in the Constitution, ***Your Lordships also being bound by solemn oath of office to defend and uphold the Constitution and to ensure that the judicial power of the people and their sovereignty is not alienated,*** it is respectfully submitted that Your Lordships’ Court possesses inherent judicial powers, which Your Lordships may exercise, in the interest of upholding and defending the Constitution, thereby protecting and safeguarding the inalienable sovereignty of the people.

55. A **SPREAD-SHEET** containing the **serious implications** and **constitutional violations** of the several **Sections** of the Bill "A3" is appended hereto for the convenience of Your Lordships Court, with also summary of excerpts from the unanimous Determinations of 7-Member Benches of Your Lordships Court made in respect of the proposed 18th and 19th Amendments to the Constitution, **and Constitutional Provisions, which grant Your Lordships Court jurisdiction to inquire into and pronounce upon and in any manner call in question the validity of the said Bill ("A3") becoming law.**

Analysis of the Relevant Constitutional Provisions in respect of the Review of Legislation

56. The Constitution of the Democratic Socialist Republic of Sri Lanka promulgated in 1978, confers the power to legislate on the institution of 'Parliament'. Article 4 of the Constitution clearly recognizes that 'the legislative power of the People' is a part of the 'Sovereignty of the People' and sets out the manner in which it shall be exercised, as follows:
57. Article 4(a): the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People and the People at a Referendum.
58. The Constitution in several Articles which follow, sets out the manner in which the legislative power of the People is to be exercised, inclusive of specific, express procedure to be followed by the several organs of government, which constitute 'safeguards' to ensure that any legislation may be scrutinized by the Supreme Court in the event of their inconsistency with any provision(s) of the Constitution. It follows, that to circumvent, dismantle or disregard this procedure, would violate the very sovereignty of the People *vis-à-vis* the legislative power.
59. It is respectfully submitted that to properly consider the Constitutionality of the manner of enactment of the said Statute, the following considerations are essential and basic:
1. The Constitution does not recognize the old British notion of 'Supremacy of Parliament' even in the exercise of 'legislative power', which belongs to 'the People'. Instead, in Sri Lanka, one witnesses the concept of the 'Supremacy of the Constitution'. Parliament in the exercise of its powers and functions, must act – and be viewed in this light.

2. The provisions of the Constitution recognize that it is the People who are sovereign, in that it is to them that Sovereignty belongs. (Vide - **Articles 3 & 4** of the Constitution).
3. It is pertinent to note that Parliament is *one* of the institutions exercising the inalienable 'Sovereignty of the People'. The People themselves participate in this process through Referendum in some instances when the proposed legislation is inconsistent with certain entrenched provisions of the Constitution and thus determined by Your Lordships' Court to require one. Therefore, even the notion of the 'Supremacy of Parliament' does not extend with all its fullness to our Parliament.
4. The Constitution (being supreme) has clearly stipulated certain meets and bounds upon Parliament in the exercise of the legislative power of the People, which Parliament must strictly adhere to, in terms of the oaths / affirmations taken under the Constitution. Parliament is also estopped from enacting certain types of legislation as may be seen from the following:

Article 75:

Parliament shall have the power to make laws, including laws having retrospective effect and repealing or amending any provision of the Constitution, or adding any provision to the Constitution.

Provided that Parliament shall not make any law –

(a) **suspending the operation of the Constitution or any part thereof;**

or

(b) repealing the Constitution as a whole unless such law enacts a new Constitution to replace it.

Article 76 also places prohibition on **Parliament from alienating or abdicating its powers**, or setting up any authority with any legislative power whilst providing *inter alia* for Parliament to empower through legislation, any person or body to make subordinate legislation for prescribed purposes.

Article 157 is yet another example of the fetters placed on the Parliament to enact laws.

