SRI LANKA GOVERNANCE REPORT

TRANSPARENCY INTERNATIONAL SRI LANKA

Building a Nation of Integrity

2008

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Editor's Note

This years Governance Report come after a thorough evaluation of the first Report, released exactly a year ago. This report captures key and vital areas relevant for any person or organization attempting to understand governance status in the Sri Lanka. Further the report also covers all vital sectors and key issues that took place during the last one year.

The articles produced here have been written by a mix groups of experts, some from outside and some within the staff of the TISL. They have been selected and invited to write the articles based on their proved competence. Though the view of the writer does not necessarily reflect that of the TISL, the writers' autonomy and independence was respected. In order to maintain highest possible standards, all articles were subjected to both peer review and expert review.

The Chapter on "Highlights of good governance issues" is based on a survey of media reports and research material gathered by the TISL. This chapter invites the reader to reflect on the events that took place during the year under review. In addition, complicated governance issues such as non implementation of the 17th Amendment and interference with the anti corruption commission and few alleged scandals are briefly dealt with. This chapter also raises some systemic governance issues that contributed to the present status of the country.

Chapter on Reforms on Parliamentary Scrutiny of Public Finance deals with first hand experience of the former Chairman of the COPE. This article deals with the constitutional and legal framework of the scrutiny of the public finance and then identifies the major challenges in improving same in a wider political context. The recommendations suggested in this chapter are nationally important in the wider interest of financial accountability.

"Cracks in the Foundation" focuses on few important issues covering the behavior of organs of the state. Among the issues that were dealt with, relates to the enhancement of unaccountable Executive Power weakening all possible oversight legally guaranteed. The chapter goes onto briefly deal with often quoted judicial activisms, the threats on media and international safe guards available to people in the context of governance.

The Chapter on "Corruption and its Impacts on Sri Lankan Economy", introduces a vital dimension to this report without which, the Governance Report would not be complete. Different aspects of corruption and its interrelationships to vital aspects such as 'Business Ethics' have been extensively dealt with here. All important economic insights for reducing corruption have been briefly analyzed at the end of the chapter.

The implications and exposure arising out of the Auditor General's Report last year is far reaching. The Chapter on Auditor General's Report reveals that 7190 Audit Queries have not been answered by Public Institutions.

"Awakening On sentinels" is a Chapter on Judicial Decisions against corruption and mal practices. This chapter analyzes few seemingly uncontroversial cases as well as high profile cases such as ***Lanka Marine*** case and ***Water's Edge*** judgment.

Governance of NGOS' has become a major issue for many years. A chapter is dedicated to that topic which also deals with the treatments of NGO'S as well as the newly debated "Golden Rules" to get over the governance problems that the NGOS' have faced with.

The chapter on "Governance & Corruption Indices" gives a full exposure to the reader of where Sri Lanka stands in recognized Indices during the period under review. It covers all most all the Governance Indicators, globally recognized, and which has considered Sri Lanka for the relevant surveys/studies.

TISL hopes that the Governance Report has managed to address the main areas of integrity or lack thereof and that it will be a reference point for all those who research, study, advocate and work in the field of governance.

J.C. Weliamuna
December 2008

Highlights of Governance Issues 2007 /2008

Gareesha Wirithamulla*

Introduction

Good governance encompasses accountability, transparency, citizen participation and inclusiveness[1] and calls for decisions to be implemented for the general good and welfare of the people. Poor governance undermines democracy and results in underdevelopment. Sustainable development, rule of law and an increase in the quality of life of the governed (people) are the key outcomes of good governance. Further, the "Public Trust Doctrine provides that the powers held by organs of the state are those that originate from the people and are entrusted to the legislature, executive and the judiciary only as a means of exercising governance in good faith for the benefit of the people of the country."[2] Enshrining both the above concepts, the Constitution of Sri Lanka provides that, "sovereignty includes the powers of government, fundamental rights and the franchise; is in the people and is inalienable," and thereby sets out the core objective of the governance system of the state, which is the general welfare of its people.

The purpose of this chapter is to highlight key governance-related issues which emerged during the foregoing year in order to assess the state of good governance in the public interest through the upholding of the constitutionally guaranteed sovereignty of the people.

The 17th Amendment and Independence of Public Institutions

Good governance necessitates impartiality and accountability. Hence the independence of public institutions should be safeguarded to ensure good governance.

The Parliament of Sri Lanka passed the 17th Amendment to the Constitution in September 2001 with the core objective of depoliticizing key public sector institutions by introducing a constitutional mechanism by which the appointments, transfers, promotions and disciplinary control of officers in key public institutions were brought under the purview of independent bodies.

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[1] The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), **What is Good Governance?,** http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp

[2] S.C. (F/R) No. 352/2007

One of the key features of the 17th Amendment was the establishment of a Constitutional Council to scrutinize the appointment of individuals to the independent commissions prescribed in the 17th Amendment (i.e. Public Service Commission, Finance Commission, National Police Commission, Human Rights Commission, Elections Commission etc.) appointed by the President. The Constitutional Council comprises the Speaker, Prime Minister, Leader of the Opposition, an appointee of the President, five persons nominated jointly by the Prime Minister and the Leader of the Opposition and one person nominated upon agreement by a majority of members belonging to political parties other than the parties to which the Prime Minister or Opposition Leader belong.[3]

The term of the first Constitutional Council lapsed in March 2005. Since then, the second Constitutional Council has not been constituted due to delays on the part of those vested with the constitutional responsibility of making the nominations.[4] In December 2005, the Cabinet decided to hand over the responsibilities of the National Police Commission and Public Service Commission to the Inspector General of Police and Secretaries of Ministries or heads of departments respectively.[5] In the absence of the Constitutional Council, to date the President has made a large number of appointments directly into the constitutional positions amounting to six Supreme Court Judges[6], eight Court of Appeal Judges, two Inspectors General of Police, Chairman and Members of the National Police Commission, Public Service Commission, National Human Rights Commission, two Auditor Generals and one Attorney General, evading the Constitutional provisions.[7]

In June 2006, Dr. Vishvalingam and Mr. Jeri Silva petitioned the Supreme Court, questioning the appointment of judges to the Court by the President by-passing the Constitutional Council.[8] The Supreme Court rejected the petition and ordered the Attorney General to report as to whether the petitioners had tried to abuse the judicial system by producing the petition.[9]

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[3] Article 41A (1) of the Constitution (17th Amendment)

[4] **Asian Human Rights Commission,** SRI LANKA: Undue delay in appointing Constitutional Council has "aggravated public fear", petitioners tell appeal court, - **Press Release** http://www.ahrchk.net/pr/mainfile.php/2006mr/278/

[5] Kishali Pinto-Jayawardena, Contempt of the constitution: Reaching the zenith of disregard for the rule of law in Sri Lanka, http://www.article2.org/mainfile.php/0502/228/

[6] See also http://www.bbc.co.uk/sinhala/news/story/2006/06/060630_court_appointments.html

[7] Transparency International Sri Lanka, Position Paper, The Forgotten Constitutional Council: An analysis of consequences of the non implementation of the 17th Amendment, http://www.tisrilanka.org/Position_Papers/pdf/17_amendment__Eng.pdf

[8] ibid.

[9] http://www.bbc.co.uk/sinhala/news/story/2006/06/060630_court_appointments.shtml

In the meantime, a Parliamentary Select Committee was appointed to study the shortcomings of the 17th Amendment to the Constitution and to make recommendations to correct them. The President prorogued the Parliament in May 2008 whereby all the committees should stand dissolved. The President is yet to appoint the Constitutional Council.

In July 2008, the Supreme Court granted leave to proceed with a fundamental rights petition which was filed by Dr. Sumanasiri Liyanage and Mr. Ravi Jayawardhana[10] against the non-appointment of members to the Constitutional Council. The petitioners stated that the Constitution had been breached by the non-appointment of members to the Council. That Council was set up to administer state institutions free from politicization, for which the President is responsible, and the independent commissions such as the Election Commission, Public Service Commission and Police Commission were defunct as a result of not appointing members to the Council.[11] The case is still pending in Court.

The non-implementation of the 17th Amendment to the Constitution not only raises constitutional concerns, but also grave issues of integrity arising from unsanctioned appointments which critically affect good governance and undermine the rule of law and democracy in the country.

Prorogation of Parliament & Parliamentary Oversight

On May 6, 2008, the President prorogued the Parliament with effect from midnight that day, and fixed June 5, 2008 as the date for commencement of the next session.[12] According to Article 70 (1) of the Constitution, the President may, from time to time, by Proclamation, summon, prorogue or dissolve Parliament (subject to certain limitations as stipulated in the Constitution)[13]. However, this prorogation raised many governance concerns. As a result of the prorogation, all Parliamentary Committees, Bills, motions and reports that had not been presented to Parliament lapsed, requiring reprocessing. [14]

Further, the prorogation of Parliament and the subsequent reconstitution of the Committees created an opportunity for the Government to get rid of some of the members of the previous

[10] No one above law; President can be summoned to courts, says Chief Justice, Lanka-e-News, July 31, 2008, http://www.lankaenews.com/English/news.php?id=6202
[11] ibid.
[12] http://www.parliament.lk/news/ViewNews.do?recID=NWS1183
[13] See Chapter XI of the Constitution of the Democratic Socialist Republic of Sri Lanka
[14] Dilrukshi Handunnetti, Prorogation and Stifling dissent, The Sunday Leader, May 11, 2008

Committees. For instance the Chairman of the Committee on Public Enterprises (COPE), Hon. Wijedasa Rajapakse, who had acted quite independently to highlight malpractices on the part of the Government. Upon reconstitution, Ministers John Seneviratna and Anura Priyadharshana Yapa were elected as Chairmen of the Committee on Public Enterprises (COPE) and the Public Accounts Committee (PAC), which raised concerns about the independence of the findings of the committees as they are Ministers and thereby a part of the executive. According to Parliamentary tradition, oversight committees are normally headed by members of the Opposition.[15] This undoubtedly points to the lack of will of the executive towards effective parliamentary oversight.

COPE Reports and the Aftermath

The Committee on Public Enterprises (COPE) was established in 1979 through Standing Order 126 with the objective of ensuring the observance of financial discipline in public corporations and other semi-governmental bodies in which the Government has a financial stake. The COPE consists of 31 Members reflecting the party composition in the House. The duty of the Committee is to report to Parliament on accounts examined, budgets and estimates, financial procedures, performance and management of corporations and other government business undertakings.[16]

The first report of the Committee on Public Enterprise (COPE) revealed that corruption had cost the country Rs. 150 billion[17] but there was great hope and faith that all responsible would be brought to task. The report disclosed to Parliament that corruption and malpractice had risen to dizzy heights in 26 state institutions[18] The COPE Chairman was insistent on government support to move beyond the findings.[19] After extensive discussions with the Cabinet, the President forwarded the recommendations made in the report to the Attorney General's Department to investigate the 26 institutions.[20]

In a further shocking disclosure, in August 2007, the second COPE report revealed that the country had lost 600 million rupees due to financial malpractices in another 20 state institutions.[21]

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[15] Transparency International Sri Lanka, Resign from Chairmanship of COPE & PAC, urges TISL, http://www.tisrilanka.org/Press_Releases/pr51.htm
[16] http://www.parliament.lk/committees/public_enterprises.jsp
[17] Is Sri Lanka really ready for the COPE findings?, Daily Mirror, May 24, 2007
[18] ibid.
[19] ibid.
[20] Uditha Kumarasinghe, Rajmi Manatunga and Irangika Range, COPE: Parliament to amend standing orders, Daily News, 22 August 2007 http://www.dailynews.lk/2007/08/22/pol03.asp
[21] Is Sri Lanka really ready for the COPE findings?, Daily Mirror, May 24, 2007

Meanwhile, the Speaker stated in Parliament that the Parliament would amend the existing Standing Orders of the Committee on Public Enterprise (COPE) by making avenues to implement the recommendations made by the COPE report as the Standing Orders were insufficient to take action on it.[22] Upon the release of the two reports, several politically interesting events took place including, in November 2007, the crossover of the COPE Chairman, Hon. Wijedasa Rajapakse, to the Opposition during the second reading of the Government's third budget[23]. The Chairman insisted that his proposals be implemented if he were to vote for the budget. The recommendations[24] made in the report included the expulsion of two Cabinet ministers held responsible for corruption by COPE, the removal of the Treasury Secretary and Inland Revenue Chief, the reduction of the Cabinet to 30, the slashing of the President's budget to Rs. 5 billion, the appointment of a Parliamentary Select Committee to work out a political solution, the appointment of an active Justice Minister to deal with the rising crime wave and a detailed report explaining how Rs. 29 billion allocated to the budget division was spent.

Both reports were forwarded for inquiry to the Commission to Investigate Allegations of Bribery or Corruption[25] (CIABOC) which was ordered to update the Parliament on developments once in every two weeks.

Meanwhile, the President appointed Hon. Basil Rajapakse following the resignation of Hon. Dinesh Gunewardena MP who was a member of the COPE. Further, a new Chairman, Minister W.J.M. Seneviratne, was elected to the Committee[26] upon prorogation of Parliament. Members of Parliament are collectively accountable for the people's funds. The former Chairman of COPE himself humbly and honestly admitted in his speech to Parliament in presenting the first report that it is an indictment on all 225 parliamentarians as the custodians of public finances. Hence, it was absolutely crucial to make a collective effort to correct the malpractices which may otherwise undermine the people's sovereignty.

[22] Uditha Kumarasinghe, Rajmi Manatunga and Irangika Range, COPE: Parliament to amend standing orders, Daily News, 22 August 2007 http://www.dailynews.lk/2007/08/22/pol03.asp
[23] Wijedasa Rajapakse crossovers to opposition, 14 November 2007, http://www.lankanewspapers.com/news/2007/11/21443_space.html
[24] Inside Politics with Suranimala, The Sunday Leader, November 18, 2007
[25] President removes Bribery Chief, 20 February 2008 http://www.lankanewspapers.com/news/2008/2/24939.html
[26] Be judicious before branding crooks - COPE chief Ready to crack the whip, Sunday Observer, August 3, 2008 http://www.sundayobserver.lk/2008/08/03/pol04.asp

MiG-27 Deal

Sri Lanka's largest military deal, the procurement of four MiG-27 ground attack craft and overhaul of seven others now with the Air Force worth billions of rupees, has raised a number of questions.[27]

A contract between the Sri Lanka Air Force (SLAF) on behalf of the Government of Sri Lanka and the Ukranian government-owned firm Ukrinmarsh was touted as a government-to-government deal. The contract, signed on July 26, 2006, identified an offshore company, Bellimissa Holdings Limited, registered in the United Kingdom, as the 'designated party'[28] and the contract made provision for the cost of the four MiG-27s, freight and other charges to go directly to this company, which created suspicion. Meanwhile, the day before this contract was finalized, a wholly state-owned company, Lanka Logistics and Technologies Ltd., came into being and was empowered to procure all equipment and services for the armed forces and the police.[29]

It was further revealed that the MiG-27s in question were leftover from a fleet from which the Air Force carefully selected and purchased seven units earlier on two different occasions (six years previously) for much lower prices. The same had been contracted at higher prices in the current deal.[30] Under this deal, the Air Force agreed (in terms of the contract) to pay higher prices for the aircrafts which they did not deem fit to procure earlier.[31]

In the face of heavy media allegations of corruption and serious irregularities in the controversial MiG-27 procurement deal, Prime Minister Ratnasiri Wickremanayake declared in August 2007 that the Government had decided to appoint a Parliamentary Select Committee to probe matters relating to the deal.[32] However, with the prorogation of Parliament, the committees stood dissolved which necessitated fresh appointments being made. However, this has not been carried out thus far. This highlights the lack of interest and willingness of people's representatives towards holding the Government accountable, especially where huge sums of public funds are involved.

[27] Big fraud and billion-rupee scandal in latest MiG deal: Was Defence Ministry misled? Another case for presidential probe commission, The Sunday Times, December 3, 2006
[28] ibid.,"The cost of the four MiG-27s, freight and other charges will go direct to this company which the contract stipulates, '…shall be involved to provide finance needed in executing this project'".
[29] ibid.
[30] ibid., Documents obtained by The Sunday Times show that the first was on May 25, 2000 when four MiG-27 ground attack aircraft were purchased for US $ 1.75 million (or about Rs 189 million) each. The purchase price for the latest deal, four MiG-27s, is US$ 2,462,000 (or Rs 265,896,000) each. The total cost without freight works out to US $ 9,848,000 (or Rs 1,063,584,000). In terms of the contract this is for the ground attack aircraft manufactured between 1980 and 1983.
[31] ibid.,According to documentary proof obtained by The Sunday Times.
[32] Iqbal Athas, MiG deal: More twists, turns and threats, Sunday Times, August 19, 2007

Meanwhile, the Government of Ukraine had already ordered a probe into the MiG-27 deal to ascertain why it was touted as a government-to-government deal when in reality it was made through a third party - an unknown company named Bellimissa Holdings Ltd., which operated from a London address - suspecting it to be a ruse. [33]

Further, a complaint on the MiG deal was made by MPs Mangala Samaraweera and the late Sripathi Sooriyaarachchi to the Commission to Investigate Allegations of Bribery or Corruption [34] and the investigations are still pending.

US $ 500 million Loan from Private Banks

In October 2007, the Government of Sri Lanka obtained a massive loan of US $ 500 million (Rs. 56 billion) through an international bond issue. This bond issue was handled by HSBC, JP Morgan and Barclays banks. Details about the bond issue were sketchy with different government officials making different claims about its tenure and terms.[35] There was much uncertainty and lack of clarity on the applicable terms, proposed use of the funds, tenure, conditions and additional rights of government and bond subscribers[36] The Government stated that the funds realized from the borrowing were to be utilized for infrastructural development projects[37] and a list of such projects was also submitted to the media.[38]
The Deputy Finance Minister, Ranjith Siyambalapitiya, stated that the Rs. 56 billion reached the country on October 24, 2007. Of that amount, Rs. 30 billion had been transferred to settle loans obtained through Treasury Bills and Rs. 20 billion has been used to settle overdrafts of the state banks. [39] The other Rs. 6 billion was also used for similar payments. Accordingly nothing had been left for the development projects. What remains is the addition to the massive debt load of the state. [40]

The sketchy and uncertain nature of the entire loan itself and its utilization raises major concerns about the lack of transparency and accountability in the entire process.

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[33] ibid.
[34] President removes Bribery Chief, 20 February 2008 http://www.lankanewspapers.com/news/2008/2/24939.html
[35] Transnational Institute Sri Lanka, Position Paper, Foreign Borrowing of US$ 500 Million, 12th September 2007, http://tisrilanka.org/Position_Papers/pdf/posp_mil_bond_120905.pdf, (e.g. put options, early payments, recall, links to conditions of governance and changes in sovereign rating)
[36] ibid.
[37] ibid.
[38] HSBC loans to Sri Lanka: TO WHAT WHERE AND WHOM, www.monlar.org
[39] ibid.
[40] ibid.

Mihin Lanka quandary

Mihin Lanka is a state-owned budget airline which was launched in February 2007 with the objective of facilitating migrant workers and catering to the tourism industry as a low cost carrier.[41] However, the heavy losses incurred and the controversial manner in which the airline operated raised many questions in terms of transparency and accountability owing to the involvement of large sums of public funds.

The Mihin Lanka episode is a crystal clear example of lack of transparency in public institutions. The airline was said to have been launched without Cabinet approval or the required approval from the Civil Aviation Authority prior to the launch.[42] Further, the Government was accused of not disclosing to Parliament how and why the financial allocations were made towards the project.[43] Article 148 of the Constitution of Sri Lanka stipulates that, "Parliament shall have full control over public finance," and hence it is pointed out that the formation of Mihin Lanka violated the powers vested in the legislature under the Constitution[44] which undoubtedly has undermined democracy and the rule of law.

Despite state assistance, Mihin Lanka's accumulated losses by August 2007, according to the Bank of Ceylon's Memorandum of October 26, 2007 to its Credit Committee, have been Rs. 796.8 million, with the ongoing monthly loss estimated to be around Rs. 175 million.[45] However, the airline which suffered huge debts of billions of rupees was forced to suspend operations indefinitely from the beginning of May 2008 for want of aircraft[46] and its Chief Executive Officer resigned.[47]

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[41] Government Information Department , Mihin Air to take off in February , Saturday, 23 December 2006, http://www.news.lk/index.php?option=com_content&task=view&id=1351&Itemid=44 (according to Sajin Vas Gunewardena, CEO, Mihin Air)

[42] Dilrukshi Handunnetti, Mandana Ismail Abeywickrema and Arthur Wamanan
Trainee foreign pilots fly Mihin, Sunday Leader, December 16, 2007, "former Aviation Minister, Mangala Samaraweera admitted in parliament about the launch of Mihin Lanka without Cabinet approval"

[43] ibid., "JVP Parliamentarian, Wasantha Samarasinghe together with UNP MP, Ravi Karunanayake demanded answers as to how funds were raised for this project and why the financial allocations made towards the project by the government were never disclosed to parliament."

[44] ibid., "JVP Parliamentarian, Wasantha Samarasinghe "

[45] Mihin Bankrupt Rs 800 million (public money) already lost Rs 175 million ongoing monthly Losses - How much did the Rajapasses Make? What kind of shamble money management? Can you trust these guys to run a Tea Boutique along the Galle Rd?, Sunday, 20 April 2008, http://www.lankanewspapers.com/news/2008/4/26996_space.html

[46] Mihin Air grounded until further notice, Sunday, 4 May 2008, http://www.lankanewspapers.com/news/2008/5/27531.html ,"The carrier s last aircraft, an Airbus A-321 taken on wet lease from BH Air, based in Bulgaria, was reclaimed by its owners on Thursday, with all the aircraft s staff, equipment and stores."

[47] Mihin Bankrupt Rs 800 million(public money) already lost Rs 175 million ongoing monthly Losses - How much did the Rajapasses Make? What kind of shamble money management? Can you trust these guys to run a Tea Boutique along the Galle Rd?, Sunday, 20 April 2008 , http://www.lankanewspapers.com/news/2008/4/26996_space.html

Meanwhile, Hon. Sunil Handunetti stated in Parliament that the airline had suffered a loss of Rs 3,200 million, that there should be a thorough investigation into how the company collapsed and that the report should be made known to Parliament.[48] Deputy Minister of Power and Energy, Hon. Mahindananda Aluthgamage accepted the fact that the airline went bankrupt mainly because of mismanagement.[49] He further admitted that the airline had started operation without a corporate plan. This raises huge concerns about maladministration and accountability on the part of the Cabinet as well as the directors as far as the public funds are concerned. The country's debts have increased which has seriously pushed the economy back, the consequences of which future generations will have to suffer. It is also very disappointing that there have not been any investigations into the above losses but instead further moves to advance funds for the same project.

LMSL Fiasco and the Resignation of the Treasury Secretary

Lanka Marine Services Limited (LMSL), a debtless, profit-making, tax-paying fully state-owned company was privatized by the Public Enterprises Reform Commission (PERC) during the 2001 regime. The Report of the Committee on Public Enterprises (COPE) stated that the transaction had been executed blatantly without Cabinet approval, with several flaws causing loss and detriment to the Government and was therefore null and void."[50]

The Supreme Court, pronouncing the judgement in a fundamental rights application[51] filed by Mr. Vasudeva Nanayakkara in January 2008 as a public interest litigant, held that the then PERC Chairman, (Dr. P.B. Jayasundara) and the then Executive Director of JKH (Mr. Susantha Ratnayake) had acted with dishonest intent in the sale of LMSL shares.[52] The Supreme Court ordered Treasury Secretary Dr. P.B. Jayasundara to pay Rs. 500,000/- to the State, the highest ever compensation in a fundamental rights case. The Supreme Court also ordered that Lanka Marine Services, which is under John Keells Holdings (JKH) which was privatized in 2002, be handed over to the Government and ordered that the occupiers of the 8.5 acre plot of land should vacate it within one month.

[48] Mihin was Mismanaged, Government, Daily Mirror, September 24, 2008
[49] ibid.
[50] Hansard dated 12.01.2007 at pg. 35
[51] SC (FR) 209/2007 decided on 21.07.2008
[52] P.B. Jayasundara Saga and Triangle of Corruption, http://lankasun.com:8000/index.php?option=com_content&task=view&id=5601&Itemid=26, Tuesday, 05 Aug 2008

After the decision of the Supreme Court, Dr. P.B. Jayasundara extending his letter of resignation sought to be relinquished from his position as Secretary to the Ministry of Finance.[53] Meanwhile, in examining the motion filed by Vasudeva Nanayakkara MP against Dr. P B Jayasundara, the Chief Justice observed that, "Dr. Jayasundara, who had violated the oath of office that they would uphold the Constitution, should not hold public office," and ordered that Dr. P.B. Jayasundara should personally clarify to the Supreme Court whether he is still holding an executive or supervisory position in a state institution.[54]

Mockery of the Tender Procedures and the Sale of Sri Lanka Insurance

In 2003, 90% of the shares in the Sri Lanka Insurance Corporation (SLIC), the insurance giant wholly owned by government, were sold[55]amidst allegations and speculations of scandalous transactions. The COPE report revealed that the privatization of the SLIC was seriously flawed and financial advisors had estimated the value of the SLIC to be between Rs. 5,100 million and Rs. 5,400 million.[56]

Meanwhile, a fundamental rights petition was filed by Mr.Vasudeva Nanayakkara in the Supreme Court[57] challenging the sale of Sri Lanka Insurance Corporation Limited (SLIC) and seeking to annul the privatization on the grounds that the public had been defrauded and state assets had been plundered.

It was alleged that upon evaluating proposals of seventeen bidders, the Tender Board awarded the tender to a consortium of Distilleries Company of Sri Lanka Ltd., Aitken Spence Co. Ltd. and Aitken Spence Insurance (Pvt) Ltd. for which Cabinet approval was obtained. Nevertheless, in blatant violation of this Cabinet decision, the Public Enterprises Reform Commission (PERC) entered into an agreement with a consortium of Milford Holdings (Pvt.) Ltd. and Greenfield Pacific EM Holdings Ltd., two companies which never bid for the tender, for the sale of SLIC shares, which allegedly benefited one shareholder of the selected bidder, depriving the general shareholders of Distilleries Company of Sri Lanka Ltd. and Aitken Spence Co. Ltd., both public listed companies, of the benefit of acquiring SLIC to their respective companies. The same person signed on behalf of the consortium of Milford

[53] Treasury Secretary Dr. P.B. Jayasundara tenders resignation which yet to be accepted, Monday, July 28, 2008, http://www.colombopage.com/archive_08/July28162928SL.html.
[54] P.B.Issued Notice, September 29, 2008 http://www.lankadissent.com/en/index.php?option=com_content&view=article&id=1713:pb-issued-notice&catid=1:latest-news&Itemid=50
[55] to a consortium of Milford Holdings (Pvt) Ltd. and Greenfield Pacific EM Holdings Ltd.,
[56] **Sunday Times, March 18, 2007**
[57] SC FR Application No. 158/2007

Holdings (Pvt) Ltd. and Greenfield Pacific EM Holdings Ltd. which ultimately purchased the shares of SLIC and the consortium of Distilleries Company of Sri Lanka Ltd., Aitken Spence Co. Ltd. and Aitken Spence Insurance (Pvt.) Ltd. This resulted in the Government incurring heavy losses, claimed to be over Rs 3 billion.

The case is still pending in the Supreme Court.

Public Purpose and Private Gain – the Golf Course Case

Two retired public servants, Sugathapala Medis and Raja Senanayake, filed a petition before the Supreme Court alleging that former President Chandrika Kumaratunga had steered a Cabinet paper[58]to grant state land near the Parliament Complex which had been taken over for public purpose to a private company. [59] The petitioners stated that the former President's act was corrupt and an abuse of power.

In October 2008, the Supreme Court[60] upholding the petition said that, "the former President had failed to function in a manner consistent with the expectations of a public officer, much less an Executive President, and in doing so, had completely betrayed the position of trust bestowed upon her by the Constitution and by the people of Sri Lanka." The Court further stressed that the exercise of presidential power was a duty that must accord with the rule of law, and all facets of the country, its land, economic opportunities or other assets were to be handled and administered under the stringent limitations of the trusteeship posed by the public trust doctrine and must be used in a manner for economic growth and always for the benefit of the entirety of the citizenry of the country.

The Court held that the former President had completely betrayed the trust bestowed upon her by the Constitution and by the people of Sri Lanka and thereby had grossly abused her power and stood in infringement of Article 12(1) of the Constitution.

Accordingly, she was fined Rs. 3 million while the fifth respondent and family friend of the former President, Mr.Ronnie Peiris, (who was said to have made a Rs. 57 million profit in the corrupt deal), was ordered to pay Rs. 2 million.

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[58]Telles Anandappa, CBK's Golf Course case: SC slams UDA as rich man's land agent, The Sunday Times, June 29, 2008 (former President Kumaratunga introduced a Cabinet Paper during her Presidency and obtained BOI (Board of Investment) approval to grant 118 acres of State land near the Parliament Complex at Battaramulla)

[59] *Susitha R. Fernando,* Golf course case: CBK says MR endorsed project, Daily Mirror, August 15, 2008,

[60] S.C. (F/R) No. 352/2007

Attacks on the Independence of the Bribery Commission

The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) Act No. 19 of 1994 was introduced by Parliament to ensure the establishment of an independent, anti-corruption commission.[61] The CIABOC is the only body in Sri Lanka solely mandated to investigate bribery and corruption and is accountable only to Parliament. Henceforth, the independence of this body is crucial to ensure accountability and thereby good governance. However, there have been several attacks on the independence of the Commission this year. Mr.Piyasena Ranasinghe, Director General of the CIABOC, was transferred by the President through a letter dated February 19, 2008[62]. It is reported that at the time of the transfer the Director General was overseeing the investigations into the controversial MiG deal (discussed earlier)[63] and the COPE report (discussed earlier).[64] It was further reported that prior to the transfer, Mr. Piyasena Ranasinghe had been requested by the President to resign from the post.[65] When he declined, the next day he was transferred to the Presidential Secretariat without any specific function and an acting Director General was appointed in his place.[66] The Director General's transfer order by the President said it had been done to facilitate the restructuring of the Commission and appoint a new person to the job.[67]

Further, no indictments on bribery charges may be filed in the absence of a permanent Director General (as according to Section 12 of the Act only the Director General can sign indictments and there is no provision to appoint an acting Director General or for an Acting Director General to sign indictments).[68] At a time when sensitive investigations are underway the transfer can be interpreted as a discouragement of possible indictments.
Mr. Ranasinghe was appointed by the previous President following Section 16 of the above Act, which states that, "the President may, in consultation with the members of the Commission, appoint a Director General to assist the Commission in the discharge of the

[61] President removes Bribery Chief, 20 February 2008 http://www.lankanewspapers.com/news/2008/2/24939.html
[62] A Statement by the Asian Human Rights Commission SRI LANKA: A fatal blow to Sri Lanka's Bribery Commission, http://www.ahrchk.net/statements/mainfile.php/2008statements/1379/
[63] President removes Bribery Chief, 20 February 2008 http://www.lankanewspapers.com/news/2008/2/24939.html, "The complaint on the MiG deal was made by MPs Mangala Samaraweera and the late Sripathi Sooriyaarachchi."
[64] ibid., "COPE report was forwarded for inquiry by the Secretary General of Parliament, Ms. Priyani Wijesekera."
[65] A Statement by the Asian Human Rights Commission, SRI LANKA: A fatal blow to Sri Lanka's Bribery Commission, http://www.ahrchk.net/statements/mainfile.php/2008statements/1379/
[66] ibid.
[67] President removes Bribery Chief, 20 February 2008 http://www.lankanewspapers.com/news/2008/2/24939.html
[68] A Statement by the Asian Human Rights Commission, SRI LANKA: A fatal blow to Sri Lanka's Bribery Commission, http://www.ahrchk.net/statements/mainfile.php/2008statements/1379/

functions assigned to the Commission by this Act." There are no provisions to remove him. Nevertheless, according to the Asian Human Rights Commission, under interpretations of the ordinance, the appointing authority may remove him by following the same procedure. [69] It is noteworthy that there cannot be an arbitrary removal without following due process even in the event of disciplinary action being taken.

Meanwhile, the Supreme Court issued an order against the recent sudden transfer of A.S.P. Premashantha, the Officer-in-Charge of the Assets Division of the Commission. The transfer order was carried out despite the fact that the Commission itself had not requested his transfer. In his petition, A.S.P. Premashantha noted that he was handling a 'sensitive investigation' at the time of the unceremonious transfer.

Two police officers filed a fundamental rights petition in the Supreme Court on the basis that they were transferred out of the Commission for pursuing the investigation into the bribery allegation against the Minister of Nation Building, Rohitha Abeygunawardena over undeclared assets estimated at more than Rs. 450 million.[70] The transferred officers were Inspectors Nihal Amarasiri and K.A. Sujatha Kumari. One of the petitioners further alleged that he was advised by a Commissioner as well as a Director to drop the case. The Court granted leave to proceed in the case.

Commissions of Inquiry and Independent Commissions

Various human rights bodies including Human Rights Watch, the Commonwealth Human Rights Initiative and the Asian Human Rights Commission have published reports and alerted the international community about the unconstitutional practices that have been taking place in Sri Lanka.[71] Meanwhile, the United Nations rejected[72] Sri Lanka's candidature for the United Nation's Human Rights Committee in 2008 because of the country's evident failure to meet the Committee's membership standards.

[69] ibid.,"There does not seem to be any charge sheet or even preliminary investigation against him. Nor has there been any decision by the Commission to remove him. This is therefore an arbitrary act of the President."
[70] **Minister quizzed over Rs. 450 m case,** Sunday Times, September 14, 2008
[71] Transparency International Sri Lanka,Position Paper , The Forgotten Constitutional Council: An analysis of consequences of the non implementation of the 17th Amendment, http://www.tisrilanka.org/Position_Papers/pdf/17_amendment__Eng.pdf
[72] http://www.hrw.org/effectiveHRC/SriLanka/factandfiction.html

The International Independent Group of Eminent Persons (IIGEP) headed by P.N. Bhagwati (retired Chief Justice of India) and including experts from the European Union, the United Nations, Australia, Canada, India, France and the United States, to oversee a Presidential Commission of Inquiry into sixteen cases of major human rights abuses in Sri Lanka, including the August 2006 massacre of seventeen local aid workers attached to a French charity *Action Contre la Faim (ACF)*[73]

The IIGEP, which has released its final report, had said in March that it would quit its operations in Sri Lanka, citing government interference.[74] The panel further said that, "the government had neglected to investigate cases with vigor where the conduct of its own forces has been called into question," and called for the establishment of a witness protection scheme.[75]

The Defence media spokesman and Minister Kehiliya Rambukwella said at a media briefing that, "government could not agree with the sentiments expressed by the committee and the group which came to the island on the invitation of the president should have acted according to the instructions of the department of the Attorney General."[76]

Media Freedom

Effective and vigilant media is a critical pillar which contributes strongly towards a nation of integrity by voicing out corrupt practices and ensuring accountability, promoton of the rule of law and good governance.

Several incidents occurred last year which are noteworthy. The International Federation of Journalists and the Free Media Movement stressed that, "the government is undermining press freedom, which is a crucial element of democratic stability." [77]

[73] IIGEP step up human rights criticism of Sri Lanka , http://www.thecolombotimes.com/2008_04_01_archive.html
[74] IIGEP questions absence of will of govt., Tuesday, April 15, 2008, http://www.thecolombotimes.com/2008/04/iigep-questions-absence-of-will-of-govt.html
[75] ibid.
[76] Bagawathi has not acted according to accepted guidelines, Defence Spokesman, Thursday, April 17, 2008, http://www.thecolombotimes.com/2008/04/iigep-questions-absence-of-will-of-govt.html
[77] Media Prevented From Reporting on Sri Lanka War Casualties , http://www.thecolombotimes.com/2008_04_01_archive.html

On September 24, 2007, the Government issued a gazette titled 'Prohibition on publication and transmission of sensitive military information'.[78] According to the Free Media Movement (FMM), the gazette, which was issued under the Emergency Regulations, forbade the reporting of information, "which pertains to any proposed operations or military activity as well as plans to buy equipment for security forces or the police."[79] Under the terms of those regulations, editors could be jailed for up to five years for breaking the censorship, together with a fine not exceeding US$50 FMM reported. Following strong protests, it is reported that the President cancelled the gazette notification a few days after its issuance.[80]

Several incidents have been reported concerning threats and attacks on journalists. A series of attacks were reported against staff members of the Sri Lanka Rupavahini Corporation (SLRC), the national television station of Sri Lanka at the SLRC's office following Minister Mervyn Silva's assault on the station's news director on December 27, 2007.[81] Further, an arson attack on the printing press of The Sunday Leader, The Morning Leader and *Irudina* was reported.[82]

J.S Tisseinayagam, the editor of www.outreachsl.com, has been detained since being taken into custody by officers of the Terrorist Information Department (TID) on March 7, 2008.[83] Tisseinayagam was initially detained under Emergency Regulations for 30 days. On April 1, the Colombo Magistrates Court granted a TID request to extend the detention order to May 5 after the Supreme Court ruling against the application for bail on March 31.

Several journalist bodies[84] appealed to authorities to make transparent the reasons for the detention and to follow due legal process.[85] After being held for five months without charge, Tissainayagam was formally indicted by the High Court of Sri Lanka under the Prevention of Terrorism Act (PTA) of 1979[86] for, "printing, publishing and distribution of the North

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[78] International Press Institute, World Press Review 2007, http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0005/KW0132/&year=2007
[79] ibid.
[80] ibid.
[81] Attacks Ease Against SLRC Workers But Tisseinayagam Remains in Custody, Wednesday, April 9, 2008, http://www.thecolombotimes.com/2008_04_01_archive.html
[82] http://www.thecolombotimes.com/2008/04/leader-press-burnt-by-govt-charges-jvp.html
Leader press burnt by Govt. charges JVP, http://www.thecolombotimes.com/2008_04_01_archive.html, "JVP Leader Somawansa Amarasinghe addressing a press conference on Wednesday blamed the government for the arson attack..."
[83] Attacks Ease Against SLRC Workers But Tisseinayagam Remains in Custody, Wednesday, April 9, 2008, http://www.thecolombotimes.com/2008_04_01_archive.html
[84] Including the IFJ and its affiliates, the Free Media Movement (FMM), the Sri Lankan Working Journalists' Association (SLWJA) and the Federation of Media Employees' Trade Union (FMETU), as well as the Sri Lanka Muslim Media Forum (SLMMF) and Sri Lanka Tamil Journalists' Alliance (SLTJA))
[85] Attacks Ease Against SLRC Workers But Tisseinayagam Remains in Custody, Wednesday, April 9, 2008, http://www.thecolombotimes.com/2008_04_01_archive.html
[86] **Indictment of Tissainayagam An Assault on Press Freedom in Sri Lanka**
20/8/2008, http://www.freemediasrilanka.org/English/news.php?id=118&section=news_in

Eastern Monthly between June 1, 2006, and June 1, 2007; alleged offences to do with bringing the Government into disrepute; and the violation of 2006 Emergency Regulations with regard to allegations of aiding and abetting terrorist organizations through raising money for the magazine."[87]

School Admissions Procedure

Grade 1 admissions to state schools have always been a subject of controversy in Sri Lanka. In a recent effort to address this issue, the Supreme Court nullified the Circular (No. 2006/523 issued by the Ministry of Education) on school admissions on March 29, 2007, and entrusted the National Education Commission (NEC) with formulating a national policy as soon as possible. [88]

The Circular (No. 2006/523) classified seven categories under which admission could be made, specifying 40% on the basis of householders children; 25% from past pupils of the school; 15% on the basis of brothers and sisters of the children receiving education in the school; 6% on the basis of children of the public officers who have received transfers and taken residence in the area in which the school is located and the children of MPs and Provincial Councilors who have to live outside their area of residence; 7% of non-householders; 5% on the basis of children of persons who are directly involved in institutions connected with school education and 2% from children of persons who have returned from abroad. [89] The court pronounced that, "the classification is based on wholly extraneous considerations".

According to the judgement, "the present situation resulted in a gross abuse of the process of admission of students." [90] The Supreme Court further stated that, "the assignment of quotas to past pupils and brothers and sisters is an unreasonable classification which negates equal access to education being the objective of the law."

The NEC formulated the policy in April 2007, and on June 19, 2007 the proposal was presented to the Supreme Court. The Supreme Court finalized the policy by July 30, 2007. [91] Meanwhile, the Past Students Association filed a petition against the new Circular which resulted in the Supreme Court on August 22, 2007 ordering the Secretary of the Ministry of Education to issue a new Circular. [92]

[87] **ibid.**
[88] Shanika Sriyananda, National policy for school admissions: pros and cons, Sunday Observer June 10th 2007
[89] Shanika Sriyananda, National policy for school admissions: pros and cons, Sunday Observer June 10th 2007
[90] ibid.
[91] Isuri Kaviratne, Schools: Muddle over who's in who's out - Parents hit out at interviews and other irregularities, Sunday Times, January 13, 2008
[92] ibid.

The amendments proposed by the Ministry of Education were discussed and it was decided to grant 35 marks for the children of past students, 30 marks for children not of past students, 5 marks for public servants' children and 5 marks on a sibling basis, 20 marks for residency in the area and 20 marks for student's activities.[93] New school admissions were made based on the new Circular.[94]

Crisis at the National Blood Center

The sources further revealed that the officers bring plasma pheresis packets from India and sell them at exorbitant rates, and that some of the plasma pheresis packets have passed their expiry date but are nevertheless brought into the country and used on patients.[95] Officials denied these allegations. Another main allegation was over the use of expired apheresis kits on donors and critically-ill patients.[96] Officials denied these allegations. Another main allegation was over the use of expired apheresis kits on donors and critically-ill patients.

After weeks of media exposure over the scandals, investigations revealed 44 expired apheresis kits, allegedly damaged, in two rooms very close to the Director's office.[97] The NBC Director had no explanation for the expired kits which had been damaged.

Following an investigation carried out on the issue of finding expired blood plasma transfusion equipment at the Blood Bank premises at Narahenpita by a team appointed by the Ministry of Health, the NBC Director, Dr. Mangalika Bindusara, Dr. K.M.I.L.A. Nazir and two storekeepers have been interdicted.[98]

Further probes are also underway by the Auditor General's Department and the Commission to Investigate Allegations of Bribery or Corruption on the above issue. [99]

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[93] ColomboPage News Desk, Sri Lanka, Final circular on Grade 1 admission on Wednesday, Monday, August 27, 2007, http://www.colombopage.com/archive_07/August27134239SL.html
[94] Isuri Kaviratne, Schools: Muddle over who's in who's out - Parents hit out at interviews and other irregularities, Sunday Times, January 13, 2008
[95] Risidra Mendis , Blood going down the drain at the Blood Bank, Wednesday, February 27, 2008, http://www.themorningleader.lk/20080227/news.html
[96] ibid.
[97] Kumudini Hettiarchchi, Shake-up at Blood Bank; but more to do, http://sundaytimes.lk/080824/News/sundaytimesnews_24.html
[98] Blood Bank officers interdicted, Daily Mirror, Tuesday, September 02, 2008
[99] Kumudini Hettiarchchi, Shake-up at Blood Bank; but more to do, http://sundaytimes.lk/080824/News/sundaytimesnews_24.html

Hon. Vijitha Herath MP, in a Parliamentary debate on the blood transfusion equipment controversy, stated that the Health Ministry started focusing on the issue only after it was revealed by the media. He called on the Health Minister, Nimal Siripala De Silva, to tender a public apology to the nation on the issue.[100]

There is a further allegation that the Government is planning to privatize the NBC through the Blood Transfusion Bill which is to be presented to Parliament shortly. Accordingly Section 4-1 provides for the issue of licenses to the private sector to open private blood banks and collect plasma. This will result in the decline of the standards in the collection of blood.[101]

Conclusion

The above report clearly indicates the pathetic state of governance in the country. According to the Corruption Perception Index (CPI) 2008 compiled by Transparency International (TI), Sri Lanka occupies the 92nd position among 180 countries with a low score of 3.2, indicating a serious corruption problem in the country's public sector.[102] According to the incidents highlighted above, it is apparent that corruption has not only cost people rupees and cents but the alienation of their 'inalienable sovereignty' critically affecting the governance structure of the country.

Most issues highlighted above call for the need of a right to information law which would provide the legal machinery for people to access information. This would provide greater transparency and accountability[103] and enable people to exercise their sovereignty effectively. It further highlights the dire need to strengthen the pillars of good governance especially the anti-corruption institutions including the Auditor General's Department, the Commission to Investigate Allegations of Bribery or Corruption, the media and civil society and, most importantly, Parliamentary oversight. Civil society should play a better role in bringing about change by effectively influencing policy makers to improve the system, as ultimately it is the public who elect the policy makers through franchise.

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[100] Kelum Bandara and Yohan Perera, Govt. plans to privatise Blood Bank says JVP, Daily Mirror, Saturday, September 13, 2008

[101] ibid.

[102] For more details visit www.tisrilanka.org

[103] Sri Lankan judge calls for freedom of information law, as reported Lanka Business Online, 25 Aug, 2008, http://www.rtiindia.org/forum/6433-sri-lankan-judge-calls-freedom-information-law.html, (Justice Marsoof said in the inaugural K C Kamalasabayson, P.C Memorial Oration

Awakening of the Sentinels: Recent Judicial Decisions Against Corruption and Malpractice

Thishya Weragoda*

Introduction

Much has been spoken of the corruption and malpractice rampant in society, and the governance issues that have arisen as a consequence and plagued the history of post-independence Sri Lanka. However, very few steps have been taken by the executive organs of state to curb this menace although there is sufficient machinery to address the issue effectively.

The year in review was significant in addressing the issue of corruption in Sri Lanka. Many judicial decisions have addressed the issue of corruption and the Supreme Court has developed the jurisprudence in this area, emphasising the upholding of the rule of law and the responsibilities of those who hold power in trust for the people. Further, this trend of making a frontal attack on corruption and malpractice and promoting good governance could be clearly seen in certain decisions given in the early part of 2007. In order to assist understanding and appreciation of the judicial thought process, certain judgements falling outside the scope of the year in review are also considered in this chapter.

In giving these judgements, the Supreme Court on more than one occasion ventured beyond the scope of the applications before the Court to address the issue of corruption and the promotion of good governance. Although such a process is undesired and may be considered as *obiter,* the reasoning and the intention behind the decisions do indeed justify the ends it has reached.

However, whether such penetrating judicial decisions should be made is a question that needs prudent attention. The impact and effects of such decisions on the jurisprudential landscape in the long run and its sustainability need to be carefully assessed. The question as to whether unelected judges should be involved in deciding what the right executive decision is has to be addressed.

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The Speed Limit Judgement,[1] Lanka Marine Services Ltd. Case,[2] President's Entitlement Case[3] etc., have addressed everyday corruption and irregular practices in the police and schools to the highest echelons of the Republic, each case involving public funds ranging from a few thousand to millions of public funds.

This chapter looks at some of the more significant judicial decisions and assesses the principles resorted to and the reasoning of the Courts. It is submitted, however, that this chapter is not an exhaustive study of all cases in regard to the promotion of good governance in Sri Lanka.

From Utopia to Dystopia: the Sri Lankan Reality

The fundamental principle of any constitution is that it is only as good as those who implement it, for without implementation it is nothing more than paper and ink. No matter how well penned the governing principles of a constitution may be, it is left at the mercy of those who take that which is written in idealistic form to apply to a non-idealistic, human world. The utopia of good governance envisaged in a constitution meets with dystopia at the stage of implementation.

It is the hope of every nation that they will be governed well by their sovereign or elected representatives. However, taking into account the harsh human realities of greed, ambition and conflicting interests, it is inevitable that corruption and malpractice are as part of a constitution as the hard cover with which its tangible form is bound.

Legislatures are elected based on popularity. Decisions of every legislature are *de facto* made with the motive of survival *via* re-election. In the name of democratic rule and good governance, the allocation of power and assignment of executive personnel (who except for the Cabinet of Ministers and the Chief Executive are career civil servants), since they are not a democratic representation of the people, is handed over to the overall discretion and controlling power of a few elected executives. The end result is that the career executives make decisions which fall in line with the policies of their elected masters, who themselves are in an internal battle for survival through elections, party politics and various other external pressures.

[1] Padma Wijesooriya and another v. Thilekaratne and others [SC(FR)/298/2005, SCM 25.01.2008]
[2] Vasudeva Nanayakkara v. K.N. Choksy and others [SC(FR)/209/2007, SCM 21.07.2008]
[3] H. Senerath v. Chandrika Bandarnaike Kumaratunga [SC(FR)/503/2005, SCM 03.05.2007]

For this reason, it is necessary to have upper guardians who are above being partisan, unfettered by the pressures of popularity and re-election, learned in the subject and whose only policy interest is that of protecting the spirit of the constitution and the promotion of equality and justice.

It is a universally held view, and at the very root of the doctrine of the separation of powers, that the judiciary shall act as a check and balance on the executive and the legislature to ensure that they do not abuse the powers held for and on behalf of the people. The Sri Lankan Constitution provides for this review process in terms of writ applications under Article 140 and fundamental rights applications under Article 126, both of which provide for applications by aggrieved parties or public-spirited individuals to challenge decisions and actions of public officials or those acting with the authority of the State.

Padma Wijesooriya and another v. Thilekaratne and others (Speed Limit Case)

This fundamental rights application was filed by a husband and wife who admitted to the manufacture and sale of illicit liquor. They claimed that the respondents were attached to the Puttalam Police and to the Saliyawewa Police Post, and that they were coerced into regularly bribing and providing sufficient 'collection cases' to some of the respondents in exchange for turning a blind eye to the manufacture of illicit liquor.

The petitioners claimed that one respondent tried to enter their house in the middle of the night with improper motives and that the petitioners with the aid of the neighbours assaulted the intruder. Later, however, more police officers (other respondents) arrived at the location and thereafter further assaulted the petitioners and attacked the house.

The Supreme Court, after reviewing the affidavits tendered by the parties held that, "As noted above, the version of the petitioners is more probable and this is yet another instance of the 'collection of a case' and also of a bribe[4]." Upholding the right to equal protection under the law, the court held that, "*The petitioners have apparently eked out a living by selling UML and thereby transgressed the law.* But, as regards the incident in the night, their attack on the 3rd respondent who entered the house is justified as being in the exercise of the right of private defence. *On the other hand the conduct of the respective Police Officers is corrupt, immoral and criminal, and descends way below the minimum standard of a civilized society let alone that of a disciplined Police Force*[5]." [emphasis added]

[4] ibid at p. 7
[5] ibid

The Court recognized that infringement of rights guaranteed under Articles 12(1), 13 (1) and (2) and Article 11 is widespread, that only very few persons take the trouble to invoke the jurisdiction of the Courts and that many lament and suffer in silence leading to a feeling of hopelessness and disbelief in the rule of law and the guarantee of fundamental rights.

Having held that the rights of the petitioners guaranteed under Articles 11, 12(1) had been violated by the corrupt and immoral practices of the respondent police officers, the Supreme Court ventured into a discussion and determination of the issue of the unauthorized posting of speed limits on highways. However, this was not raised in the matter before the Court.

Citing the provisions of the Motor Traffic Act relating to limits and the regulations made by the Minister, the Court noted that unauthorized signposts had been erected by the police, contrary to the limits provided by law. Further, taking into account the fact that high penalties had been imposed by law; that the enforcement of such laws in such an errant manner would only lead to abuse and corruption; that different signposts at different places would allow police officers on the roads to take bribes from hapless motorists due to the confusion, the Court held that all such signposts with incorrect speed limits were illegal and must therefore be removed.

Rodrigo v. Imalka, S.I. Kirulapone and others[6] (Checkpoint Case)

The petitioner was stopped at a checkpoint and later arrested on the alleged grounds of possessing a forged temporary driving licence. The Court, after reviewing the affidavits filed by the respondents held that, "the facts presented…reveal a clear instance of the abuse of power, rampant dishonesty and corruption and also misuse of the process of law that take place at 'checkpoints' that have sprouted up. The tragedy is that a multitude of offences have been committed by police officers whose duty it is to use their 'best endeavours' and ability to prevent all crimes, offences and public nuisance."[7]

Although not stressed as a right which was violated, the petitioner sought to canvas that certain other executive and administrative actions purportedly made in the interest of national security must also be considered in this application as an issue of public interest.

[6] Rodrigo v. Imalka, S.I. Kirulapone and others [SC(FR)/297/2007, SCM 03.12.2007]
[7] ibid. at pp. 9 -10

The issues that were raised were:

1. restriction of freedom of movement that results at checkpoints by checking all vehicles
2. total prohibition of parking of vehicles on certain roads
3. intermittent stoppage of all traffic to permit 'VIP Movements'

Referring to the issue of checkpoints, the Court held that according to law, a public road cannot be obstructed for purposes of maintenance or repair only, and checkpoints that are, "obstructing public roads have been done by officials whose duty is to uphold the law, in flagrant violation of the law itself." The Court remarked that, "No person who has committed an offence, let alone a terrorist would ever drive up to such a 'check point' and virtually submit himself to be arrested."

With regard to the prohibition of parking of vehicles on main roads, the Court held that it is not the SSP Traffic which is empowered by the Motor Traffic Act to place such boards; only the Local Authorities who are empowered to take such action. The Court recommended and directed in terms of Article 126(4) that such illegal signboards should be removed and, if necessary, proper orders be made in terms of the Motor Traffic Act.

Referring to the fundamental principle of equality in a democratic society, the Court held that obstruction of traffic for VIP movement was an infringement of the fundamental rights of the citizens and therefore the Inspector General of Police and the Secretary to the Ministry of Defence were directed to ensure that such obstructions do not occur, and that if the safety of any person requires such restrictions, it should be done in a manner that causes the minimum of inconvenience to the general public.

Vasudeva Nanayakkara v. N.K. Choksy and others[8] (Lanka Marine Services Limited Case)

The petitioner, a public-spirited individual, an Attorney at Law and a trade union activist, filed an action against the privatization of the bunkering operations done at the Colombo Port by the Government's Lanka Marine Services Ltd. (LMSL). Serious allegations were levelled against the then Chairman of the Public Enterprises Reform Commission(PERC), the state agency entrusted to assist and advise the Government on privatization matters, and a Director of John Keells Holdings Ltd. (JKH), who bought the privatized LMSL at a cost of Rs.

[8] Vasudeva Nanayakkara v. N.K. Choksy and others [SC(FR)/209/2007, SCM 21.07.2008]

1.2bn. A further allegation was made that land of over 8 acres in extent was transferred after 2 ½ years to JKH on the basis of a payment of Rs. 1.2bn, whereas no such consideration was ever paid. Further, certain tax benefits were given to JKH.

The Court noted that the Government of Sri Lanka intended to liberalize the bunkering industry by licensing three suppliers and to continue with the monopoly of LMSL at the Port of Colombo for one year within which LMSL was to be privatized. It envisaged that the competitive process would bring in the necessary expertise to the sector so that the service would be operated with due compliance with international safety and environmental standards.[9]

However, on analysis of the facts and evidence before the Court, it held that the former Chairman of PERC had, "in fact put this process of 'liberalizing' in cold storage and moved at express speed," in the opposite direction of privatizing LMSL with the monopoly intact. The haste with which the valuation of the business was carried out through a private bank when the sale of LMSL had not been authorized by the Cabinet also came under severe scrutiny by the Supreme Court. The Court further criticized the effects of the sale of LMSL, stating that a profit-making, tax-paying state enterprise was converted into a profit-making, private enterprise not paying tax, and that the objective of enhanced revenue yield was effectively lost due to tailor-made regulations to fit JKH acquisition. Referring to this state of affairs, the Court commented that, "this process, to say the least, makes a mockery of the rule of law and the equal protection of the law. If the law can be bent and amended to suit an individual purpose and to confer a benefit to any party that was not due under the existing law, the hallowed principle of equality before the law will be denied of its essential and abiding meaning."[10]

Next, the Court held that the transfer of land of over 8 acres was illegal on the basis that there was no consideration actually paid to the Government, and the value of the property was not assessed in the business valuation carried out by DFCC Bank. Further, it was held that the Chairman of PERC was not authorized to agree to such a sale of land.

Citing correspondence between the Chairman of PERC and a Director of JKH, the Court held that they were acting in collusion and thereby undue benefits were given to JKH.

[9] ibid. at p.12
[10] ibid. at p.29

Basing itself on the rule of law and the principle that the state and its officials are the guardians to whom the people have committed the care and preservation of the resources of the state, the Court held that there was a, "confident expectation that the executive will act in accordance with the law and accountability in the best interest of the people of Sri Lanka." Therefore, the Court held the presidential grant of land, the Common User Facility Agreement and the agreements between the Board of Investment and LMSL to be null and void.

M.T.M. Ashik and others *v.* R.P.S. Bandula and others[11] (Noise Pollution Case)

The permit issued under the Police Ordinance to a local religious institute was terminated purportedly on the basis that it was causing a public nuisance, according to complaints by some local residents. These complaints were allegedly made as a result of rivalry between two competing religious institutes in Weligama. The complaint made was on the basis that by refusing to issue a loudspeaker permit, the police had violated the petitioner's fundamental rights guaranteed by Article 12 (1) of the Constitution.

Citing the provisions of the National Environmental Act[12], the Court held that the emitting of noise at high volume is illegal and that though there are tolerable noise levels prescribed for industrial noise, there are no tolerance limits for community (non-industrial) noise emission.

The Court held, citing Bonser C.J.[13] that, "… the idea must not be entertained that a noise, which is an annoyance to the neighbourhood, is protected if it is made in the course of a religious ceremony,"[14] and went on to hold that the sovereignty of the people is in common to all, devoid of any race, religion, language etc., and especially in the case of preserving the environment and public health there should be no exceptions to accommodate one religious group over another.

In his judgement, the Chief Justice referred to the disturbance to the environment in the early hours of the day calling for prayers by one religion and the chanting of sermons by another. His Lordship the Chief Justice stated that, "there must necessarily be a close proximity between the person chanting and the person who is listening. Blaring forth…. and disturbing the stillness of the environment, forcing it on ears of persons who do not invite such chant is the antithesis…"[15]

[11] SC(FR)/38/2005 [S.C.M. 07.11.2007]
[12] Act No. 47 of 1980
[13] Marshal v. Gunaratne Unnanse [(1895) 1 NLR 179]
[14] ibid at p. 180
[15] Ashik v. Bandula, *op. cit.* at p. 9

On this basis, the Court held that the fundamental right of equal protection of people before the law had been violated by the executive through the non-formulation of noise emission guidelines, and on that basis held that emission of noise by the use of amplifiers and loudspeakers should be considered as a public nuisance and police should take appropriate action against such acts. Secondly, that the use of amplifiers and loudspeakers etc., is prohibited from 10PM to 6AM, and for special religious purposes the police may allow special permits after ascertaining the views of the neighbours of such an institute. Thirdly, permits may be issued effective from 6AM to 10PM strictly on the condition that noise emissions should not extend beyond the precincts of the premises. Fourthly, if permits are issued, police should post officers in the vicinity to ensure that the conditions imposed are not breached.

H. Senerath *v.* Chandrika Bandarnaike Kumaratunga[16] (President's Entitlement Case)

The petitioner claimed that whilst in power the former President of the Republic had appropriated unto herself certain benefits under the President's Entitlement Act to which she was not entitled, or in excess of such entitlement under the Act. The President had requested 1½ acres of land at Madiwela for the construction of a residence for herself upon retirement and that such grant be made in lieu of certain allowances under the President's Entitlement Act, including the pension and official residence and allowances for maintenance.

The Memorandum forwarded to the Cabinet for approval referred to the cost of providing accommodation in Colombo and the fact that the President had suffered an assassination attempt and therefore stated that, "the value of the land requested is insignificant," compared to the entitlements she had forfeited and was willing to forego.[17] The petitioner alleged that the land sought to be vested on a 'freehold basis' was developed by the State at a cost of Rs. 800 million.

However, a subsequent Memorandum proposed the allocation of a residence at the expense of the State for the retiring President along with a security detail of 198 personnel, eighteen vehicles and eighteen motorbikes. The Court held that this Memorandum had been submitted suppressing the previous grant of land at Madiwela in lieu of the official residence and pension, and that the former President was fully aware of such fact when she submitted a Note to the Cabinet of Ministers for consideration.

[16] [SC(FR)/503/2005, SCM 03.05.2007]
[17] ibid. at p. 6

Remarking on the action of the then President, the Court stated that, "the 1st respondent without any recourse to tender procedure and in flagrant violation of the guidelines which she herself laid down as Minister of Finance, personally selected a contractor and agreed on the price payable." [18] The Court further stated that, "… the entire sequence of events in regard to premises No. 27 Independence Avenue, is an abuse of authority on the part of the 1st respondent and marked by a serious deception i.e. the suppression in both papers to the Cabinet of the previous free grant of the Madiwela land in lieu of the entitlement to a pension and a residence."[19]

The Court remarked that, "In official matters the general rule is that a person would refrain from participating in any process where the decision relates to his entitlement or in a matter where he has a personal interest. *Nemo debet sua judex* is a principle of natural justice which has now permeated the area of corporate governance as well. This salient aspect of good governance has been thrown to the winds by the 1st respondent in initiating several Cabinet Memoranda during her tenure of office and securing for herself purported entitlements that would if at all enure only after she lays down the reigns of office… To add insult to injury the 1st respondent herself submitted a Note… that she intends 'to play a meaningful role in the public affairs'... and requires staff. Whilst there may be no objection to any person playing a meaningful role in public affairs the wrongful act…. is the procurement of land, premises for residence, staff (security and personnel) and vehicles contrary to the provisions of Act No. 4 of 1986."[20]

For these reasons the Court held that the petitioners' fundamental right to equality had been violated by the grant of benefits to the 1st respondent, the former President, contrary to the provisions of the President's Entitlement Act.

Personal Responsibility of Public Officials

An important aspect in recent decisions has been the fact that public officials have been held personally accountable for infringements and ordered to pay relatively high compensation to the aggrieved parties. In the Speed Limits Case,[21] the police officers were ordered to pay compensation of Rs. 150,000/- and in the LMSL case[22] the former Chairman of PERC was ordered to pay Rs. 500,000/- as compensation to the State. In the Checkpoint

[18] ibid. at p.12
[19] ibid. at p.13
[20] ibid. at p.15
[21] Padma Wijesooriya v. Thilakaratne, *op. cit.*
[22] Vasudeva Nanayakkara v. N.K. Choksy and others, *op. cit.*

Case[23] four respondent police officers were ordered to pay Rs. 75,000/- each. This indeed should have a deterrent effect on public officials when acting in such an errant manner. In the President's Entitlements Case, the former President was ordered to return all property granted to her except for what she was entitled to under the Act,[24] and ordered to pay 100,000/- as costs to the petitioner, a public-spirited individual who sought a declaration that she was not entitled to certain benefits under the President's Entitlement Act. The former President was also required to return all benefits allocated to herself in contravention of the President's Entitlement Act.

In the LMSL case,[25] the Court remarked that every public officer takes an oath to uphold and protect the Constitution and the Republic of Sri Lanka and that the actions of the former Chairman of PERC were totally contrary to the interests of the State. For that reason he should be disqualified from holding any public office.

The concepts embodied in this remark open the door for aggrieved parties or concerned citizens to challenge the holding of office by public servants exposed of corruption or malpractice. However, whether proceedings of this nature could be considered as part of the matter before Court remains to be decided upon.

One approach that could be adopted is to institute proceedings by way of a writ of *Quo Worranto,* challenging the authority of the public servant in question as to why he holds office upon being disqualified by reason of violating the provisions of the Constitution.

Another approach would be to declare the holding of office by such officials as unconstitutional in cases in which they have been found to have violated the provisions of the Constitution. Further, it is suggested that once a public official is found to have grossly violated the Constitution, such acts should prohibit the officials from holding any future office in public service.

In **Laughs v. Consumer Affairs Authority**,[26] the Supreme Court held that, "it is imperative that appointments should not be made solely on political grounds, personal friendship or relationship of any person, but in the public interest. Partisan appointment of incompetent persons to such offices…would deny the people equal protection," of the law, guaranteed in Article 12(1). Such an enlightened approach by the judiciary is an exemplary precedent for the future safeguarding of the public interest.

[23] Rodrigo v. Imalka, S.I. Kirulapone and others, *op. cit.*
[24] Presidents' Entitlement Act No. 4 of 1986
[25] LMSL Case *op. cit.*
[26] Laughs Gas v. Consumer Affairs Authority of Sri Lanka [SC (FR) 163/07, S.C.M. 24.09.2007]

In a further order made in the LMSL Case, the public servant concerned was ordered to appear in Court and explain if he continued to hold any paid public office or advisory role for the Government.

An aspect not assessed in the LMSL judgement was the role played by the Cabinet of Ministers through approving the Cabinet papers. The Cabinet of Ministers are the ultimate authority who approved the said contract of sale and, as such, cannot be completely exonerated from liability. They hold the ultimate responsibility for all decisions taken and cannot at any point claim that they were acting on the instructions or advice of a public official who was acting in collusion with a director of a private entity.

However, in the President's Entitlement Case,[27] the Court held that allocations in contravention of the President's Entitlement Act were illegal. Unfortunately, there have been no references made to the Commission on Bribery or Corruption to look into the matter further and criminally prosecute parties found to have engaged in malpractice. In this discussion, it is necessary to assess the status of the immunity granted to the President of the Republic in all actions whether done in a private or official capacity. Article 35 clearly states that the President is immune from suit during office. There have been many judicial decisions which mooted this issue.[28] However, if the present judicial thinking is applied, it is submitted that the President cannot shield behind this immunity if he or she has been acting in violation of the Constitution and abusing the sovereign powers of the people. Although the President cannot be disqualified from holding office (as he or she may be removed only by impeachment in terms of the Constitution), his or her actions could be questioned in a court of law for abuse of power. If this position is achieved, many executive decisions will be open for scrutiny without fear or favour to any person.

Nullifying of State Contracts

An important aspect of the LMSL case[29] was that although the Court found that the sale of LMSL shares to JKH was marred by irregularities, the share transfer was not annulled, but the transfer of the said land was annulled and JKH was required to vacate the premises. Similarly, the grant of investment and tax relief to LMSL by the Board of Investment were quashed and the Commissioner General of the Inland Revenue was directed to recover all taxes due to the State.

[27] H. Senerath v. Chandrika Bandarnaike Kumaratunga [SC(FR)/503/2005, SCM 03.05.2007]
[28] Senasinghe v. Karunatilaka, 2003 (1) Sri L.R. 172 per Fernando J.; E.F.W. Silva v. Shirani Bandaranayake, (1997) 1 Sri L.R. 92 per separate opinion of Perera J.
[29] LMSL Case, *op. cit.*

At the same time, the Court declared the Common User Facility Agreement (CUF) as null and void and directed the Sri Lanka Ports Authority to enter into a fresh agreement with all parties holding licenses on equal terms without any preference to LMSL.

The importance of the directions given by the Supreme Court is that it did not annul the sale of LMSL shares. Recognizing that a determination by the Courts would result in restoration of *status quo ante,* the Court held that it would be equitable in the circumstances to hold that the share transfer is not illegal if severed from the other illegal acts cited above.

It is welcome that the Supreme Court did not annul the sale of LMSL *in toto*. If the entire transaction was annulled, it would have raised many issues in terms of private sector investment in government contracts and privatization procedures. The judgement, whilst hitting hard at corruption and malpractice, also ensures that the corporate world is not severely affected by government takeovers.

If the entire sale of LMSL was rendered illegal, then the corporate world might feel uneasy in dealing with the State. If the entire contract was annulled, it is submitted that investor confidence in the Government may have been seriously affected and could have lead to economic instability. Therefore the Court holding that the share transfer should remain unaltered is a welcome move; it has understood and accepted the economic realities of the modern world. However, this decision will give rise to further litigation challenging the validity of state contracts and may affect investor confidence in the entire system of governance.

It must be noted that many corporate governance and social responsibility standards clearly state that corporate entities should not engage in corruption or malpractice to further their objectives.[30] From such a perspective, these judgements reemphasise the role of non-corrupt investments. Further, the judicial thought process clearly emphasises that a law-abiding investor has nothing to fear, for he is well protected by the long arm of justice. It is submitted that an investor who follows the proper procedure in obtaining the necessary approval from all required parties need not bribe or otherwise fund executives or legislators to fast-track his project. If the investor's hands are clean, then he can vitiate any discrimination or abuse meted out to him without any fear of losing his investment.

[30] UN Global Compact, OECD guidelines for Multinationals, SEC rules. Etc.

Justice must not only be done but be seen to be done

Although decisions of the Supreme Court have promoted the concept of good governance and fought corruption, whether the concept that justice must not only be done but seen to be done needs to be assessed. In **Bandaranaike v. de Alwis**,[31] the Supreme Court held that right-minded men must not be left to wonder whether something improper happened in the proceedings, and that they should not be allowed to look askance at other decisions. Therefore, it is important that the means to the end are justified as much as the ends to the means.

In Padma Wijesooriya v. Thilakaratne, the Speed Limits Case, the matter before the Court was a rights violation application based on certain actions of some police officers. However, the Court ventured into addressing rampant corruption by police officers on traffic violations. Although the end result was welcomed with open arms, whether the Court could make orders on matters not pleaded before the Court nor prayed for is questionable.

On the other hand, such criticism could be countered on the basis that matters the Court attempted to address were matters of public interest and importance, and therefore in terms of Article 126(4) the Court has the power and the jurisdiction to determine such matters, even though the petitioners may not have sought a declaration to that effect.

The position taken in the Checkpoint Case[32] seems to be that matters of public importance must also be considered as co-related in the application. It is submitted that this approach is better suited to an inquisitorial system of adjudication. In this case, the petitioner and the respondents agreed that certain matters which were not part of the original application should be addressed as matters of public importance. This, in fact, can be justified on the basis that as a citizen had raised issues of public importance, the Court adjudicated on that basis.

This indeed is a pendulum swing in the Supreme Court's determination of rights applications. The Court has adopted a very broad, purposive approach in interpreting the rights of citizens. This trend is much welcomed since the Supreme Court in its early jurisprudence was restrictive in interpreting issues of *locus standi* and mandatory time bars etc.

[31] Felix Dias Bandaranaike v. K.C.E. de Alwis, [(1982) 2 Sri L.R. 664]
[32] Rodrigo v. Imalka *op. cit.*

Governed by the Unelected ?

Strong criticism laid against these decisions of the Court has been that the Courts are interfering excessively with the executive branch of the State; that they are unnecessarily restricting or traversing the powers and functions of the executive; that the state is moving towards a kritocracy and that the Courts are usurping the powers of the executive.

However, recent decisions of the Supreme Court have not usurped any of the powers of the executive. The Supreme Court has been reviewing the actions and decisions of the executive to assess objectively whether the acts have been authorized and permitted by law. One can go further by saying that the judiciary, to fulfil its true role in the separation of powers and to uphold the rule of law, must use not only that which is produced by the legislature as the criterion of justice, but they must employ, primarily, the yardstick of the constitutional spirit.

As the judiciary is unelected and do not stand to be re-elected, their decisions are not subject to the usual pressures faced by the executive and legislature. Decisions made can be objectively, guided by the interest of society and justice. In an ideal world, all three organs of state would perform all their functions with these interests in mind. However, when political reality meets governing ideology, there is a definite conflict of interests. Decisions are made and policies formulated in the interest of the party and the next election.

The separation of powers in the modern day is nothing more than merely complete independence of the judiciary. Executive decisions and legislation prior to enactment are under the complete purview of the judiciary, thus ensuring that the 'least dangerous branch of government' with no motive other than the pursuit of justice will determine the rights of the citizens.

Another important aspect that needs attention is that of directives issued by Court. In terms of Article 126(4), the Supreme Court is empowered to issue directives to the executive to mete out just and equitable remedies in case of fundamental rights violations. A more recent trend of the Court has been to issue directives under these provisions to ensure that strict compliance is maintained in relation to orders issued and judgements made by the Court.

In the Noise Pollution Case,[33], the Court ordered that the police should post its officers to ensure that noise pollution does not occur when permits are issued for special purposes. In the ongoing Sand Mining Case[34] many directives have been issued to the relevant authorities to ensure strict compliance with the orders made thus far.

This raises another gamut of issues on the part of the executive. For example, each time a police permit is issued for a religious institution to use amplifiers, police personnel must be posted in the vicinity to ensure strict compliance. Although such measures are most welcome, whether the executive has the financial and other resources necessary to effectively carry out such measures has not been sufficiently addressed. If the executive was to provide such extensive compliance, the police may have the practical difficulty of finding sufficient staff to carry out other important functions. If additional funding is needed for these purposes, the executive is faced with the burden of funding, which may indeed result in a reduction of budgetary allocations for other important public service areas, for example education or health.

A Brighter Today and a Gloomy Future

When one reviews the process of appointments by the executive, one clearly sees that in the real political context of a country where pivotal positions are given according to the whims and fancies of elected leaders, it is the judiciary and only the judiciary who have the power to safeguard the public from gross and callous abuse. Similarly, when public funds are being plundered, corruption and malpractice is rampant and there is no attempt to promote good governance, it is the judiciary as the bastion of justice and equality that must step into protect the public.

It is accepted that in a democracy that functions as it ought, the role of the judiciary is no more than a meter of the scales of justice, interpreting and deliberating on the laws posited by the legislature and performing its role as the final decision maker in the system mechanised by the executive. However, it is submitted that when the legislature makes laws according to a political agenda and not with the future of its people at their core, and when executives function through systems which foster corruption and malpractice, the sleeping sentinels of the judiciary must be awoken and take on an added role.

[33] M.T.M. Ashik and others *v.* R.P.S. Bandula and others *op. cit.*
[34] SC(FR)/87/2007

It is submitted that in both utopian democracy and political reality the judiciary is not an aggressor against the legislature or the executive. Instead, it must be emphasised that the judiciary is the last and ultimate defender of the liberties of people. They are defenders, not attackers. When the organs of state turn against the people who elected them, it is the judiciary who remain as the last bastion of liberty. The judiciary must then use the word of the constitution as a sword against those who violate it and simultaneously must protect the hapless populace with the elusive shield which is the spirit of the constitution.

Hamilton in *The Federalist* stated, "No legislative act therefore contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorise, but what they forbid."[35] This statement is equally applicable to the executive which exercises the executive powers of the people.

If one were to submit a comparison of the judicial role to a simplistic mechanical apparatus in the system of governance, the judiciary is a 'safety valve'. If, as one school of thought proposes, the judiciary should be no more than stewards of justice who dispense judgements when called upon to do so, then it is similar to a safety valve which is not connected to the system, but operated at the behest of other forces and not the vital pressures of the system.

If, as another school of thought encourages, the judiciary must be extremely proactive and constantly expanding its scope of law-making, it would be the same as having a safety valve which is constantly open irrespective of the pressures of the system. Both of these extremes would negate the purpose of the judiciary, on the one hand a puppet, on the other a usurper.

The ideal of the judiciary in such a crude analogy would be as a sensitive safety valve which responds in action according to the needs of the system, whether by vigilant observance or by emphatic pronouncement. In such an analogy, the judiciary should, once it has responded to the pressures of the system and rectified the situation, return to its previous dormant observatory role.

[35] Hamilton A., *The Federalist,* No. 78, 1788 May 28 at pp. 524-525 found at <http://press-pubs.uchicago.edu/founders/documents/v1ch17s24.html> (last accessed 2008-10-11)

Such blossoms of forward-thinking judgements should be commended and appreciated in this new and promising garden of justice. However, one must point out that with these seeds of liberty of judicial activism, are spawned the spores of certain malignant parasites.

On the one hand, in the short term a highly proactive judiciary can, even with the best of intentions through its orders, judgements and directives, supplant and infringe on the purview of the executive. The Newtonian reaction to such usurpation is passive resistance and a complete stagnation of the executive machine. The executive and public officials would not hesitate to use such a *status quo* to justify inaction and indecision by pronouncing the judiciary as its new masters. The judiciary would be made a scapegoat and a usurper of the other two organs of state.

Yet the greater danger that would outgrow these temporary fruits of justice is the inherent danger within the system itself. If the people rely on, and give their consent to such broad-sweeping influences of the judiciary to the point of governance by the judiciary, then the path to total democratic catastrophe has been embarked upon. In a system where the higher judiciary, who are non-elected, are appointed by the executive and legislature, who in turn are politically elected, it would naturally flow in the course of time that non-elected public servants who 'fall in line' with the agenda of the politically elected will eventually be seated on the bench. When a bench is so comprised, the organ that was meant to be the check and balance of the executive and legislature, protecting the liberties of the people, will become no more than a justification and rubber stamp of the other two organs, and a mere tyrannical puppet.

Conclusion

Recent judicial activism has sent shockwaves through the highest echelons of power, and given a sense of relief and hope to the general public that the state machinery is being forced to act according to the rule of law. This recent trend is in stark contrast to the conservative, non-confrontational approach of the judiciary observed in the past. However, this activism has raised eyebrows in some quarters as to whether the society is heading towards a kritocracy, and this is an aspect the judiciary has to take cognizance of whilst giving effective and proper relief to the grievances of people.

Thus in conclusion, it is most respectfully submitted, that the enlightened strength of proactive judiciary maybe its own Achilles heel, for it must be remembered that even though evil has no greater ally than good men who remain silent, the path to evil could also be paved with good intentions.

Cracks in the Foundation
The Breakdown of Accountability Systems in 2007/2008

Suzie Beling*

A strong house is always built on a strong foundation. This chapter will seek to examine the state of the foundation on which good governance is built. The writer will present the basic structure of governance in Sri Lanka as set out in the Constitution, and examine various incidents that have occurred during the year against the backdrop of a system of accountability and checks and balances. It is the writer's contention that while some incidents appear harmless, when viewed as part of the larger framework of governance they all contribute to a breakdown of the system. Unless their contribution to this breakdown is understood, people may wait until it is too late to stop the cracks that are being formed in the foundation.

The *Grundnorm* or cornerstone on which governance is founded is the Constitution. Sri Lanka is a democratic state and, as recognized by Article 3 of the Constitution, sovereignty is vested in the people and exercised through the executive, legislative and judicial arms of government. This separation of powers is created in order that each arm of government acts as a check and balance on the others. Every vibrant democracy has an active media through which people are made aware of the acts or omissions of their government. The formation of the United Nations and the common acceptance of a global framework of rights provide an international structure of accountability. This chapter will examine each of these mechanisms.

The Exercise of Sovereignty
The Executive

The Sri Lankan Executive comprises the President and Cabinet of Ministers. It is the executive that controls all government procurements and makes vital policy decisions with regard to the running of the country. It must be mentioned that the writer will not deal with all incidents of corruption individually (this will be done in the other chapters), but will focus on how various seemingly innocent decisions taken during the last year have actually made big cracks in the foundation of democracy and good governance.

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The President

The President of the Republic is the Head of State, Head of the Executive and of the Government, and the Commander-in-Chief of the Armed Forces.[1] The President is *responsible to Parliament* for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any written law, including the law for the time being relating to public security.[2] Notwithstanding the accountability envisioned by Article 42 of the Constitution, there are no recorded incidents of the President being called to account to Parliament for his acts or omissions, or of the existence of any routine system whereby such accountability could be demanded.

The President of Sri Lanka, by virtue of Article 35 of the Constitution, is immune from suit in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity.[3] This principle of unfettered and untrammelled Presidential immunity has often been a stumbling block in ensuring that all acts of the President are in keeping with the Constitution[4].

The Cabinet

The Cabinet of Ministers is appointed by the President and is charged with the direction and control of the Government of the Republic, and is *collectively responsible to Parliament*.[5] The spirit of responsibility of the Cabinet, however, has largely been quenched by the rapid and suspect expansion of the Cabinet from 26 Ministers in November 2005 to a total of 107 at the end of 2008.[6] In the context of a Parliament of 225 Members, it seems strange to think of accountability where over half the Parliament is part of the Cabinet and many of the balance are part of the ruling party. It would be pragmatic to assume, particularly given lack of information to the contrary,[7] that Parliament does not in fact exercise any control over the Cabinet.

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[1] Article 30 of the Constitution

[1] Article 42 of the Constitution

[2] This however does not preclude the court from striking down unlawful acts of the President and does not mean that the AG is not answerable on behalf of the President in instances where the President exercises the functions set out to a Minister.

[3] The concept of Presidential Immunity was discussed and new inroads were made, in the judgement of Justice Shirani Thilakawardene in the recent case of *Sugatheepala Mendis v Chandrika Kumaratunga* (SCFR/ 352/2007). However, as the case dealt with a situation that was not strictly covered by Article 35 of the Constitution, the effect of judgement on Presidential Immunity is yet to be seen.

[4] Article 43 of the Constitution

[5] 'Mega Cabinets in Sri Lanka' (Report No.1) Perceptions and Implications, Transparency International Sri Lanka, Position Paper (www.tisrilanka.org)

[6] This could also be inferred from the recent judgements of the Supreme Court that have pointed to serious frauds being wrought by the Cabinet, which has not received any clear censure or call to accountability from Parliament!

The Further Strengthening of the Over-Mighty Executive

The Non-Appointment of the Constitutional Council

The 17th Amendment to the Constitution was passed on September 24, 2001 with the objective of depoliticizing the public sector and creating truly independent commissions. Whilst the objective was indeed laudable, the mechanism was passed hastily, with little deliberation and was far removed from practical realities. To date the system has not functioned properly.

Under the 17th Amendment, a Constitutional Council comprising the Prime Minister, Speaker, Leader of the Opposition, one person appointed by the President, five people appointed by both the Prime Minister and Leader of the Opposition, and one person nominated upon agreement by the majority of the Members of Parliament belonging to political parties or independent groups other than the respective political parties or independent groups to which the Prime Minister and the Leader of the Opposition belong, was to be appointed. This representative Council would be responsible for appointments to key posts and to the independent commissions. The Constitutional Council's term expired in 2005. No subsequent appointments have been made to the Council, leaving it defunct.[8] This lacuna has had a domino effect as from that date there has been no valid appointing authority for the independent commissions specified in the 17th Amendment. The President has dealt with this problem by taking on these powers to himself and has been responsible for many adhoc appointments to the independent commissions. This pragmatic move, which is antithetical to the very spirit of the 17th Amendment, has resulted in a lack of faith in the continued independence of these commissions.

In addition to appointing independent commissions, the Constitutional Council is responsible for appointing some of the key people who exercise control in government, for example, the Attorney General, the Auditor General, the Inspector General of Police, the Ombudsman and the Secretary General of Parliament.[9] During the course of this year the President unilaterally appointed the Attorney General, the Auditor General, the Inspector General of Police and the Secretary General of Parliament, contrary to the provisions of the 17th Amendment.

[8] For a detailed history on the Constitutional Council see TISL position paper "The Most Critical Constitutional Issue in Sri Lanka and the Responses of the Stake Holders" – www.tisrilanka.org
[9] Article 41C of the 17th Amendment to the Constitution

The 17th Amendment was made hastily, and without due consideration or deliberation, to address an existing problem with regard to the lack of independent mechanisms to investigate complaints against government. The circumvention of these mechanisms, either by a lack of consensus or clear refusal to appoint, can only be interpreted as an intentional, defiant act by the executive, marking its refusal to be made accountable to the independent commissions. It is a rejection of the system in favour of continued unfettered rule by the executive.

In January 2006, the non-appointment of the Constitutional Council was challenged by the Centre for Policy Alternatives in case number CA Writ 184/2006, where the petitioners prayed for a Writ of Mandamus compelling the appointment of the Constitutional Council, and a Writ of Prohibition prohibiting the appointment of any members of the National Police Commission and *a certiorari* quashing any unconstitutional appointments that had already been made. This case has also not yet been decided and was delayed by a reference to the Supreme Court as the Court of Appeal felt that it required an interpretation of the Constitution. It was subsequently sent back to the Court of Appeal as the Supreme Court was of the view that the case did not call for the interpretation of any constitutional provisions

Thereafter, around August 2008, two electors filed a Fundamental Rights Application in the Supreme Court, citing the President as a party and stating that the non-appointment of the Constitutional Council was a violation of their fundamental rights (SCFR 297/2008). At present, all the necessary nominations have been conveyed to the President in the manner envisaged by Article 41A(5) of the 17th Amendment. However, the President has failed to make the respective appointments. Article 41A(5) clearly states that upon receiving a written communication of such nominations, the President, "*shall forthwith* make the respective appointments" (emphasis added). The language of the 17th Amendment does not envisage the President exercising any discretion in appointing the persons nominated. Indeed any bargaining or bartering prior to making these appointments would be against the spirit of the 17th Amendment itself as its purpose is de-politicization, independence and representation; to permit the President to determine the appointee would be contrary to the said objectives. Unfortunately, the case has not yet been argued on the basis of constitutional principles; instead, a bargaining process or settlement is currently being negotiated under the supervision of the Supreme Court. While this effort may indeed be the most practical and pragmatic way to achieve a consensus and amicably resolve any dispute between the President and those entitled to nominate members to be appointed, it is debatable as to whether the President being 'satisfied' with the nominees is itself contrary to the spirit of

the 17th Amendment which seems to envision the parties and the President having opposite views, and these differences being reflected in the make-up of the Constitutional Council.

The Human Rights Commission

a) Although the case filed in court with regard to Cabinet's delegation of the powers of the then independent National Police Commission and the Public Services Commission had been negated by the President's unconstitutional appointment of a new National Police Commission and Public Services Commission, the Centre for Policy Alternatives, in a desperate attempt to save the independence of the commissions, filed a quo warranto action against the appointment of the Human Rights Commission[10]. This case is also still pending in the Court of Appeal. However one might argue that as two years have already passed, it is doubtful if the outcome will be anything more than academic.

The Compromising of the Bribery Commission

The Bribery Commission is an independent organization created by a distinct statute. In the fight against corruption, the independence of the Bribery Commission is crucial to its continued validity and existence. The main purpose of the Commission is to look into corrupt acts of the *government,* gather information and prosecute offenders. However, similar to previous years, the investigating officers this year were still under the control of the Police Department and the Bribery Commissioners were not permitted to initiate investigations without a formal complaint.

During the period under consideration, the independence of the Bribery Commission was compromised by the sudden and baseless transfer of the Bribery Commissioner and two officers who were involved in investigating sensitive corruption scandals in which the government was to be held accountable.

On 18 February, 2008, the President summoned the Bribery Commissioner - who at the time was handling sensitive investigations, including an investigation into the MIG aircraft deal - and in a manner contrary to all acceptable legal norms asked him to resign from his post. As no reasons were given for this request, the Bribery Commissioner refused to resign at the whim of the executive. The very next day, the said Commissioner, was transferred to

[10] CA (Writ) 890/06

the Presidential Secretariat on the basis that it was necessary in order to facilitate the restructuring of the Commission. No further reasons were given. Interestingly, another officer was appointed Acting Director General, bypassing the most senior Deputy Director General. No reasons were given for this appointment.[11] This transfer came in the wake of discussions about the prosecution of officers on the basis of facts set out in the controversial Report of the Committee on Public Enterprises. At the time, the Director General was also overseeing investigations into the scandal regarding the MIG deal.[12]

These officers, who were suddenly transferred out of the Commission without any such request being made by the Commission, are said to have been in charge of investigations into a particularly sensitive case. These officers have stated in sworn evidence that at the time of the transfer they were handling investigations into a 'sensitive case' and have alleged that the transfers were directly related to their work. Upon their petitioning the Supreme Court an order was made against the transfer.[13]

The Amendment to the Rules Made in Terms of the Public and Judicial Officers (Retirement) Ordinance

The terms of office for public or judicial officers is stated in the rules made under the Public and Judicial Officers (Retirement) Ordinance. Through Gazette Extraordinary No.1562,[14] the executive sought to vest powers in the President to, "*if he considers it expedient* [to] extend the age of compulsory retirement of any Public Officer appointed by the President" (emphasis added). Thus through the Gazette the executive sought to vest absolute, unfettered discretion in the hands of the President as to how long a public or judicial officer should serve his term in office, and thereby to bypass existing legislation.

By virtue of this Gazette, the President extended the service of the Attorney General, who was due to retire in August 2008, for a period of six months. Interestingly, the extension given was for six months and not for the customary one year. This Gazette paved the way for bargaining with regard to extensions of service for particular officers, and proved a greater incentive for public officers to take decisions that would please the authority extending their term of office.

[11] 'Transfer of the Director General of the Commission to Investigate Allegations of Bribery or Corruption'- Urgent Position Paper, Transparency International Sri Lanka, 28.02.2008, www.tisrilanka.org
[12] For more details please see the Chapter 'Highlights of Governance Issues 2007/2008
[13] SCFR 359/2008
[14] (Extraordinary) Gazette notification, No.1562/1 of 11th August 2008

This Gazette was subsequently challenged in the Supreme Court[15]and interim relief was granted staying the operation of the Gazette. As a result of the interim relief granted, the extension of the Attorney General's term of office was held invalid. Although the executive did respond in court, stating that they would immediately revoke the Gazette and replace it with a new one (the contents of which they were unwilling to disclose to court), court ordered that as the matter was before court, no new Gazette could be added in place of the one under consideration. The final determination of the Court is yet to be made.

The Finance and the Appropriation Bill for the Year 2008

The basis of parliamentary control of the political executive is through the conventions of individual ministerial accountability. However, a firmer basis is parliamentary control of finance.[16] As set out in Article 148 of the Constitution, it is Parliament that has full control over public finance. Further, under Article 150 of the Constitution, all withdrawals from the Consolidated Fund must *only* be by the Minister of Finance after approval has been duly obtained from Parliament. Additionally, while there is provision for a contingency fund, Article 151 of the Constitution clearly provides that where the Minister of Finance is satisfied that there is an urgent expenditure and no other possible avenue is available, the Minister, with the consent of the President, can advance the necessary sum, and must thereafter present a supplementary estimate to Parliament for the purpose of replacing the advanced amount.

The safeguards mentioned specify that the Minister of Finance must firstly satisfy himself of the need for an expenditure that has not been budgeted, and must then obtain the consent of the President. This first step is negated by the fact that the President himself is the Minister of Finance. In addition to this, the Constitution provides an additional safeguard of ensuring that a supplementary estimate be placed before Parliament justifying the expense envisioned.

The 2007 Appropriation Bill authorized the raising of loans on behalf of the government and further provided that money transferred by order of the *Secretary to the Treasury or any other officer authorized by him* in respect of (a) an approval for the reallocation of unexpended recurrent expenditure to the capital expenditure, or (b) the transfer of recurrent expenditure or capital expenditure. Further, under 'development activities' each additional expense

[15] SC(FR) 359/2008
[16] Somasunderam M, 'The Third Wave: Governance and Public Administration in Sri Lanka' ICES, Colombo

should be *deemed to have been covered* by a supplementary estimate submitted by the appropriate Minister which term may be reasonably interpreted to mean a *Minister other than the Finance Minister*.

The 2007 budget was challenged by the Centre for Policy Alternatives.[17] However this did not result in any significant amendments being made to the budget. Through the budget the executive overcame and managed to effectively sidestep mandatory provisions of the Constitution. In the light of the well established doctrine of separation of powers, it is difficult to see how Parliament by passing the budget could have delegated the control they had, as the said control was mandated in the Constitution itself.

The Prorogation of Parliament

On the May 6, 2008, hot on the heels of a heated debate in Parliament regarding the issues that had come to light in the COPE report, the President unaccountably and without notice to any of the parties concerned, prorogued Parliament for no stated reason. Much speculation about the reason for this prorogation followed, but whatever the reason may have been, the effect of the prorogation was the ending of debate on some important issues and the reconstitution of the Parliamentary oversight committees.

The Legislature

The legislative power of the people is exercised through Parliament, comprised of the elected representatives of the people. In this electoral process the voter is first given the choice of a political party and thereafter of three persons from within the panel of candidates for that party. The allocation of seats is on the basis of votes given to each of the contesting parties. The system places significant emphasis on the people's preference for particular parties rather than individuals. This is often based on election manifestoes and the personal views and attitudes held by a party and of the individuals that make up the relevant party. At the time of an election, people, by the act of casting their vote, indicate their approval of one party's policies and also, in some instances, indicate their disapproval of the previous regime or of any other party's ideologies. It is through the franchise that people indicate their satisfaction or dissatisfaction with an existing party. People have also been known to use the franchise merely to ensure that extremist parties do not get a majority in government. Thereby people do make definite decisions as to the composition of government and the majority it receives. It is in this context that one must view the high-stake games of musical chairs that have taken place in the Sri Lankan Parliament.

[17] SC (SD) .....

A Strong Government and the Weakening of the 'People's Choice'

During the year, many members of the United National Party (UNP) opposition crossed over to the government, and at one point this was even reported to have occurred in a mass crossover when 19 members of the UNP and 6 members of the Sri Lanka Muslim Congress joined the government en bloc. Further, the Janatha Vimukthi Peramuna (JVP) sought to distance itself from the United People's Freedom Alliance, on which ticket it was elected, and the JVP itself split into the JVP and the NFF. Another notable example was the crossover of Mr. Wijedasa Rajapakse, chairman of the Committee on Public Enterprises. Many of these crossovers arose in the context of key legislation that needed to be passed by the government and were accompanied by a hand-out of ministerial portfolios.

These crossovers raise a number of issues. Firstly, and most importantly, one must consider the reason for the crossovers. While this writer is in agreement with the idea that Members of Parliament are indeed more than mere cogs in the party wheel, and should be allowed to vote according to their conscience, their crossing over to the other side and seemingly swearing allegiance to the hand that feeds them, as opposed to the voters they represent, is something that needs to be examined carefully.

The crossovers seem to indicate that the Members of Parliament concerned had already made a decision that they would vote with the government on a number of issues. This could also be seen as the Members of Parliament acting merely as pawns in the hands of government. It is submitted that in a situation where debate and a difference of view within one's party is allowed and one cannot be expelled from the party merely for holding different views, there is no need to completely divorce oneself from the party on whose ticket one was elected. Any such crossover would only be a move made to strengthen the hand of the government and one could reasonably question the motives of any opposition member who wished to embark on that.

Secondly, these crossovers have resulted in a weakening of the Opposition. A weak Opposition weakens the quality of debate. It also enables the government to speedily pass laws as most are passed on the basis of a simple majority. Most importantly, the lack of a strong Opposition enables the government to pass the Appropriation Bill. The passing of the Appropriation Bill is crucial to the continuous functioning of the government as, by virtue of Article 49(2) of the Constitution, in the event of Parliament rejecting the Statement of Government Policy or the Appropriation Bill, the Cabinet of Ministers stands dissolved.[18]

As under the 1978 Constitution, judicial review of legislation has been done away with. Once Parliament has passed any law, the Supreme Court has been advisedly shy to review the said legislation.[19] It is therefore imperative that all legislation be subject to strict scrutiny by Parliament. It is arguable as to whether this could be done in an objective manner when a great majority of Parliament has decided that they will be 'yes men' to the government. This lack of a voice of dissent, or indeed of the lack of teeth to any form of dissent is indeed alarming, as it leaves open the door for any drastic legislation to be passed without adequate redress being available to the people.

Parliamentary Oversight Committees

The reports of independent, honest parliamentary oversight committees are critical as they are able to monitor government in a more comprehensive manner than the average citizen; they have access to all the information necessary to ensure proper monitoring. These committees are further given wide powers to summon officials, call for confidential documents and accounts and conduct investigations.[20] During the year under consideration two of the permanent committees, namely the Committee on Public Enterprises and the Public Accounts Committee, published reports that disclosed much corruption in government

The Committee on Public Enterprises (COPE)

The Committee on Public Enterprises, which consists of 31 members reflecting the party composition in the House, is established under Standing Order 126 at the beginning of each parliamentary session. The committee stands dissolved on the prorogation of Parliament. The Chairman of the Committee is elected by its members at the first session and its quorum is four.[21]

The duty of the committee is to report to Parliament on accounts examined, budgets and estimates, financial procedures, performance and management of corporations and other government business organizations.

[18] It is suggested that the mass crossover of MPs a few weeks prior to the placing of the Appropriation Bill on the order paper of Parliament must be examined in the light of Article 49 of the Constitution.
[19] It is however noted that in the recent case SC Reference 3/08, the Supreme Court dealing with mandatory sentencing that removed judicial discretion in sentencing held that where any ordinary law contravenes the Constitution, the Constitution would prevail. While this has been hailed by some as dicta that permits judicial review of legislation the writer is somewhat skeptical regarding the precise boundaries of the judgement.
[20] See specifically Standing orders 125 and 126 of the Standing Orders of the Parliament of the Democratic Socialist Republic of Sri Lanka as amended up to February 26, 1993.
[21] Standing order 126 of the Standing Orders of the Parliament of the Democratic Socialist Republic of Sri Lanka as amended up to February 26, 1993.

The Second Report from COPE of the 6th Parliament (2nd Session) covering the period July 2006 to July 2007 was released in August 2007. This report highlighted many specific incidents of corruption and mismanagement of funds by the government. It pointed out that in 2007 the Treasury had spent a sum of Rs. 20 billion without the approval of Parliament. The report further revealed a staggering 6 billion rupee loss suffered by twenty state institutions due to corruption and mismanagement. The report included details of the investigation and the particulars of the Ministries involved.

While no action was taken with regard to the corruption highlighted in the report,[22] in October 2007, about two months after it was tabled, the Urban Development Minister suddenly stepped down from COPE and the *President's brother joined the Committee*.

After much heated debate as to whether a further committee should be appointed to investigate the allegations made by COPE, Parliament finally decided to complain to the Commission on the Investigation of Bribery or Corruption regarding corruption and mismanagement at sixteen public institutions probed by COPE. In addition, findings on several other institutions found to be inefficient and mismanaged were sent to the relevant Ministers and Secretaries to take action.

Coincidentally, a few days after this decision, on February 18, 2008, the President summoned the Director General of the Bribery Commission, asked him to resign and subsequently transferred him out of the Bribery Commission.

The Attorney General thereafter suggested that the Bribery Commission should never have been given powers to prosecute and stated that the Attorney General, acting on a presidential directive would, in consultation with the Bribery and Corruption Commission, identify major cases which would be prosecuted by the Attorney General's Department. The Attorney General traditionally appears for the State and for its Ministers and therefore a prosecution by the State itself could hardly be considered fully transparent. While it may be suggested that the Attorney General's Department is independent of the State, or that the State itself could prosecute the errant officers, it is to be noted that due to the high level at which the said corruption was discovered, and the sensitivity of the report, an independent prosecution far removed from the State would have been preferable. Recent reports, however, show that the Bribery Commission has been mandated by the Supreme Court to take action with regard to these proven incidents of corruption at the highest levels.[23]

[22] The only cases that have been filed to date have been filed by Private parties, appearing in the Public Interest

[23] For example the order made to the Bribery Commissioner with regard to the investigation of allegations made against the former Secretary to the Treasury, P.B. Jayasundera

The Public Accounts Committee (PAC)

The task of the Committee on Public Accounts is to probe the managerial efficiency and financial discipline of the government, its Ministries, Departments, Provincial Councils and Local Authorities. The Committee is established at the beginning of each Parliamentary Session under Standing Order 125 and consists of 31 Members. It reflects the party composition in Parliament and its quorum is four.

The duty of the Public Accounts Committee is to examine the sums voted by Parliament along with the report of the Auditor General, which is in six volumes. In the course of its deliberations the Committee obtains evidence from the Secretaries to the Ministries, who are the Chief Accounting Officers, Heads of Departments and other responsible officers. The Committee also regularly summons the Directors General of Public Finance, State Accounts and National Budget, or their nominated representatives.

The Report of the Committee on Public Accounts was released on November 29, 2007, and highlighted the VAT fraud. The Attorney General subsequently filed an indictment before the Colombo High Court against two tax officers and twelve businessmen in respect of this fraud and a Presidential Commission was appointed to investigate the allegations.

The Effect of the Prorogation of Parliament

Parliament was prorogued on May 6, 2008 until June 5, 2008 for no stated reason. The effect of this prorogation was that any pending reports and bills were cancelled and the parliamentary oversight committees lapsed. Thus ended the Chairmanship of Wijedasa Rajapakse of COPE, and the Chairmanship of Mahindananda Aluthgamage of PAC. They were replaced by W.D.J Seneviratne and Anura Priyadharshana Yapa who are both members of the Cabinet. This could be seen to affect the parliamentary oversight committees both in the immediate compromise of their independence and in the message sent with regard to any future positive action. Although one cannot say that merely because the said Ministers are part of the government they are not independent, the manner and timing of their appointment leave room for suspicion.

The Judiciary

The judiciary, the third arm of government, is different from the other two as it does not work together with the executive and the legislature. The main goal of the judiciary is to ensure that the Constitution is upheld and that the other two arms of government do not overstep the boundaries set for them by the people. In carrying out this task, the judiciary considers both the letter and the spirit of the Constitution and its foundational principles. Although there is a system of appeal within the judicial system itself, no other organ of government exercises control over the judiciary. The only manner by which Parliament can control the judiciary is either by impeachment of judges of the Superior Courts[24] or by passing legislation contrary to judicial decisions.[25]

The past year has been hailed by some as a year of extraordinary judicial activism.[26] The Superior Courts made many orders against corrupt officials and even went as far as to direct the Bribery Commissioner to take necessary legal action against such persons, and to prohibit them from holding public office. Thus in the past year the judiciary has seemingly shown an interest in cleaning up the government. There has been a general feeling that the Supreme Court is the saviour of the people and the last bastion where justice may be obtained

While in some instances the outcomes of these decisions are laudable, it has raised a few questions about procedure, and the inconsistent manner in which liberal judicial attitudes have been adopted. The judiciary does not have the power to legislate or to change the words of the Constitution, however repugnant they may seem. Even in times of crisis it is not up to the judiciary to change the Constitution.[27] Therefore in most instances the judiciary has to leave legislation to Parliament (despite its deficiencies) and cannot in any way take over the task of the executive or the legislature; it can only force them to exercise their discretion in a manner that benefits the people and fulfils their role under the Constitution.[28] This rather cumbersome process often creates a climate for circumvention in the interest of obtaining speedy remedies. It is submitted that although Sri Lanka may currently be going through a period of emergency or crisis, the final goal is a functioning democracy. The breaking down of systems of accountability will not assist us in reaching that goal.

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[24] Article 107 of the Constitution

[25] This would however result in a stalemate and a standoff between the executive and the judiciary.

[26] For a detailed description of relevant cases see "Awakening of the Sentinels: Recent Judicial Decisions against Corruption and M alpractice."

[27] While it is true that in a time of crisis people do appreciate any short term benefit one must always remember that when it comes to judicial precedent, the future is always at stake.

[28] This also is sometimes critically referred to as 'government by mandamus'.recedent, the future is always at stake.m benefit one must always rememer much corruption in

Judicial activism is often negatively defined as judges creating or amending existing legislation to fit their own notions of societal needs. The up side of this is that many societal needs and grievances not addressed elsewhere would be addressed in the Supreme Court, thereby providing redress to many who would otherwise have no redress. The problem, however, is that this does break down the system of accountability that is currently (at least in theory) in place. One is tempted to ask the age old question, *Quis custodiet ipsos custodes?* or, *Who will guard the guards themselves*? While the effort of the Supreme Court may have resulted in providing justice to those who have suffered at the hands of the executive, it is questionable as to whether the new role of the Supreme Court augurs well for accountability.

Threats to Lawyers

The proper functioning of the judiciary is dependent on the existence of an effective system of justice which includes both the bench and the bar. In the context of the adversarial system practiced in Sri Lanka, judicial intervention is mandated either by parties bringing their grievances before the Court or by the President consulting the judiciary on the interpretation of the Constitution. People's grievances are brought before court through lawyers. Although in some instances citizens can represent themselves in court, this is generally done through lawyers who have dedicated themselves to the task of studying the law. The right to representation by a lawyer has, in some jurisdictions even been recognized as a basic right that must be afforded to all citizens and is often tied up with the rights of natural justice that *must* be afforded to all citizens. In this context the lawyer's right to practice without fear and to represent his client is a vital precondition to the rights of people to receive redress for the violation of their rights, or for the executive's excess of powers.

This year, many incidents were reported of lawyers and clients who took up cases against the government receiving death threats. Two notable incidents were the grenade attack on the house of Mr. J.C. Weliamuna, Attorney-at-Law, and a general notice sent to the Registrars of all magistrates courts in Colombo and to a number of human rights lawyers threatening all lawyers who appear for 'terrorists'.[29]

[29] Although these incidents do not fall strictly within the time period specified, the writer believes that it is important that they be highlighted in this report.

The fact that no arrests have been made following the attacks and threats has resulted in a pervading sense of fear among some lawyers and clients. This in turn has resulted in the average citizen being afraid to make any politically-charged complaints or to file cases even when their rights have been abused. Whereas it is a generally accepted principle that every man, even a 'terrorist', has a right to representation and a fair trial, the curbing of this right leads to many avenues of abuse. If lawyers do not appear for these people this means that judges are not being allowed to properly evaluate the evidence and distinguish the true criminal from the innocent victim. This leaves the door open for personal grudges being vented and for innocent citizens to be persecuted by those who disapprove of their actions.

With the general pervading sense of fear increasing during the year under consideration, situations needing redress are swept under the carpet, leading to a lack of transparency and accountability.

The Media as the Voice of the People

Another casualty of the past year was the freedom of the media. The media is an institution that is vital to people's fundamental rights of *thought, conscience and expression,* and the general repository of the *freedom of information*. It is through the media that the general public is made aware of the actions or inactions of government and is thereby able to respond. It is the media that raise the alarm when government contravenes the law, and it is through this that people exercise their sovereignty by taking up those matters with their elected representatives. Thus to curb the freedom of the media in an undemocratic manner is to curb the rights of people to control their government.

In addition to the heightening of general violence against journalists, two signal incidents that took place this year were: the indictment of journalist J.S. Tissanayagam and the statements made by government institutions that clearly discouraged any dissent or opposition to the war and branded dissidents as traitors, even going so far as to suggest that they may not receive the protection of the law. In addition to these two events, on October 29, a Gazette was issued under the Emergency Regulations which imposed a censorship on media coverage of the war. It was hurriedly withdrawn two days later.[30]

[30] Gazette Extraordinary No 1521/3 dated 2007.10.29

The Indictment of J.S. Tissanayagam

Journalist J.S. Tissanayagam was arrested on March 3, 2008 and detained under the Prevention of Terrorism Act for a period of over 180 days with no charges. On September 24, 2008 he was indicted on the charge of aiding and abetting terrorism through his media activities. This was in fact the first time that the Prevention of Terrorism Act or the Emergency Regulations had been used so blatantly to violate freedom of expression. While it is true that on many previous occasions journalists have been threatened and/or arrested on suspected charges of terrorism, never before have they been charged for what they have written without any clear demonstration that the content was false and written with malicious intent.

The case is currently ongoing in the High Court of Colombo. The outcome is being watched with keen interest as the jurisprudence created with regard to a journalist's freedom of expression versus a perceived resultant breakdown of support for the war, could have far reaching consequences.

Statements made by the Defence Ministry

In the wake of much debate with regard to investigative reporting on the war and violence against journalists, the Defence Secretary stated that "If [sic] journalists continue criticizing the military, neither the Secretary of Defence nor the regime are in a position to prevent actions taken against them by groups/persons who revere the Army Commander." [31] This, indeed, could be seen as a threat or at least as a warning to defence correspondents to be careful of what they write about as the government will not provide them with protection and would turn a blind eye to any violence against them. This shocking statement has never been clarified by the Defence Ministry and has merely been followed by more statements that personally attack defence correspondents and make various unsubstantiated allegations against their integrity.

In January 2008, in an interview with the *Irida Lankadeepa,* the Defence Secretary stated that there was no need for any reports on the military and that he strongly advocated press censorship. Thereafter, in May 2008, he further branded those who published reports seen as harmful to the *security forces and military operations* as 'traitors'.

[31] Sri Lankan Defence Secretary calls journalists 'traitors' and calls for ban on independent media - http://freemediasrilanka.wordpress.com/2008/05/05.

These messages, given out by government, raise serious questions about the continued independence of the media. In addition to this, there have been many reports of journalists being summoned by officials and told not to report on certain matters, or of being warned that their articles did not conform to the wishes of these officials.

General Violence Against Journalists

The year 2007/2008 has also been described as a year of unprecedented violence against journalists. Many received death threats, some were arrested and later threatened[32], others beaten and hospitalized,[33] one was shot at,[34] another abducted,[35] and in one instance a whole printing press was burnt by arsonists.[36]

Although no arrests have been made in connection with this wave of violence, the end result has been a sense of fear among journalists. There seems to be a feeling that reporting anything against the government is dangerous and should only be done after careful consideration of the ensuing risk.

The year 2007/2008 has been one where there has been an attempt to stifle people's greatest source of information and the people's expression of dissent. Thankfully this has not met with much success, and many journalists, at peril to their own lives, have taken the courageous step of continuing to report on sensitive matters. This has often been used by the government to prove to the international community that it is not stifling media freedom.

The freedom of the media cannot be measured on the basis of a few uncensored articles that are critical of government. It must be measured on the basis of a journalist's right to heavily criticize the government without fear of reprisals. A vibrant democracy requires a strong voice of dissent. The lack of such a voice goes to the heart of accountability as it prevents the government from gauging the will of the people during their term of governance.

[32] Journalist Parameshwari on 07/09/2007 see http://freemediasrilanka.wordpress.com
[33] For example Keith Noyahr see http://freemediasrilanka.wordpress.com
[34] Ethalya Journalist Kumudu Champika Jayawardene on 30/10/2007 see http://freemediasrilanka.wordpress.com
[35] Udayan Newspapers Vadivel Nimalaraja on 17.11.2007 see http://freemediasrilanka.wordpress.com
[36] See http://freemediasrilanka.wordpress.com

International Safeguards to Protect Citizens

The past decade has seen positive developments in the concept of sovereignty and international accountability. There has been a general shift towards a more liberal interpretation of sovereignty and towards accountability of nations to the wider international community. Governments today are therefore unable to use sovereignty as a defence for abusing their citizens. The very term has been defined as *sovereignty of the people* as opposed to *sovereignty of the nation or country*, which previously was used as a guise for sovereignty of the government of the day. International accountability is generally conceived on the basis of governments signing treaties and accepting certain obligations and codes of conduct by which they will be bound. The United Nations and other international bodies then monitor whether governments keep to their undertakings after acceding to the international covenants and treaties. A common method of evaluating countries' fulfillment of obligations is through the process of independent monitors.

Throughout this year the Sri Lankan Government has consistently ignored their shortcomings as highlighted by the international community, and opted to sideline those who dared to criticize them. A notable example is that of the criticism of John Holmes (who was even branded as a terrorist). Louise Arbour, the UN High Commissioner for Human Rights, was denied full access to conflict areas and was thereby hampered in assessing the true situation in the country. In addition to this, the government refused to allow UN monitors into Sri Lanka or the opening of an Office of the High Commissioner for Human Rights in Colombo.

The European Union (EU) and GSP-Plus

The past year also included some controversy about the European Union's system of tariff preferences known as the GSP-Plus programme. Under this system, from which Sri Lanka was a beneficiary, countries are expected to implement certain human rights treaties in order to qualify for trade concessions and benefits. This year, Sri Lanka's concession came up for extension and the main point of debate was whether Sri Lanka had fully implemented the three specified human rights instruments, namely the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and the Convention on Child Rights.[37] Due to Sri Lanka's position regarding the war and the ethnic conflict, and general concerns regarding human rights standards, the EU decided that - in addition to examining whether Sri Lanka had complied with the international covenants and treaties by effecting enabling domestic legislation - it would itself undertake to monitor and investigate the actual operation of the legislation.

The Government of Sri Lanka responded to this opportunity for external independent monitoring by arguing that such monitoring would be inconsistent with Sri Lanka's national sovereignty and dignity. This statement came in the aftermath of a shocking judgement by the Supreme Court that stated that although Sri Lanka had acceded to the optional protocol of the ICCPR, the Supreme Court would not give effect to a decision or finding arrived at by them.[38] The only response was the passing of an Act entitled the ICCPR Act, which fell far short of the spirit and the letter of the law set out in the ICCPR.

Once again, the government, under the guise of sovereignty and national security, isolated itself from the international arena and sought to remove itself from the general framework of accountability. These individual incidents whereby the government has rejected the monitoring or investigations by international independent bodies are not mere isolated incidents, but a well-planned move away from accountability.

Conclusion

Although each incident mentioned in this chapter is well known and documented, the writer sought to view these incidents in the context of the larger picture of accountability. When looked at together they show a clear move away from accountability. Although some of these incidents are subtle, it is the writer's contention that when looked at as a whole, few seem to be simply careless mistakes or policies. On the contrary, through the short space of one year the country seems to have taken leaps and bounds in isolating itself from the international community and of creating centralized power. This centralization of power without accountability is all the more alarming in the context of the war and the allegations of abuse of power by the government. Another feature of this year has been that, in addition to these covert practices, government officers have been open in making discriminatory statements against the minorities. While corruption, mismanagement and bad governance may always be present, the striking feature of the past year has been the debonair air with which the same are flaunted in the face of the people, and the impunity with which it is done.

In conclusion, it is submitted that in a system where power is centralized and not even the international community is permitted to have a say; in a system where naming and shaming has lost its power and a culture of fear remains, democracy cannot be said to be in existence. At the same time, it is suggested that it is for the people of Sri Lanka to take note of and stand up against any perceived abuses of power by the government. These are not mere incidents that have occurred; they are incidents that have resulted in cracks in the

foundation, in systemic breakdown. If this is not solved soon, it could result in a complete failure of the state. Let us not become so sidetracked with the war that we forget that the government which rules us in times of war will also be the government that rules us in times of peace.

An economic analysis of corruption in Sri Lanka

by Nishan de Mel and Eran Wickramaratne*

Adam, Adam, Adam Smith
Listen what I charge you with!
Didn't you say
In a class one day
That selfishness was bound to pay?
Of all doctrines that was the Pith.
Wasn't it, Wasn't it, Wasn't it, Smith

– Stephen Leacock (1936)

Introduction

This witty limerick by Stephan Leacock, both a literary writer and economist, is a response to one of the most famous claims of Adam Smith – the father of modern economics.

> It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.
> — Adam Smith (1776)

These words represent one of the strangest and most powerful ideas of modern market economics. It is that individuals acting freely to further their own interest – let's simply call this 'self-interest' – can end up serving the greater interest of society, that is, the 'public interest'.

The claim is strange because it is counter-intuitive. The prevalent observation is usually not of confluence but of tension and contradiction between self-interest and the public interest. Therefore, the limerick gives voice to the sense of popular outrage felt by many when economists seem to be asserting the opposite, almost as an article of faith, regardless of the observed consequences.

* The views expressed are the personal views of the authors and do not necessarily represent the views of the associated organisations.

Economic ideas and methods, however, when intelligently applied, are not naïve about the contradiction between self-interest and public interest. The science of aeronautics recognises gravity as the principal constraint for flying; but nevertheless, its ingenuity lies in recognising that the force of gravity can be harnessed (through its effects on atmospheric pressure) to enable flight. Adam Smith endorsing attention to self-interest should be understood like aeronautics endorsing attention to gravity: as providing an ingenious insight into generating solutions by, counter-intuitively, harnessing the very thing that is the principal problem.

Corruption is often contrary to the public interest and a clear manifestation of the self-interest tendency in human nature. There is obviously much to be said for reducing those self-interest tendencies that lead to corruption – flying will always be easier and less costly in an environment with less gravity. But the tools of economics can supplement that recognition, by pointing to ways in which those very self-interest tendencies can be harnessed in the task of reducing corruption.

1.1 Overview of discussion

In this chapter we provide an analysis of corruption in Sri Lanka from within the framework of economic ideas and methods. The concern is to see how the tools of economics can be brought to bear on analysing corruption as well as in mitigating its adverse consequences. The analysis will focus on providing examples of corruption and its impacts in Sri Lanka – especially in the recent past.

The chapter is organised as follows: the rest of section 1 provides a broad definition of corruption and then a taxonomy that classifies corruption into four types: Predictable, Unpredictable, With-Theft and Without-Theft.

Section 2 provides separate discussions on each type of corruption. It uses examples from Sri Lanka to highlight the likely differences in economic consequences for each type.

Section 3 relates a familiar problem in economic policy to the concerns of reducing corruption. That is, the possible tension between efficiency and fairness. Using the example of corruption in school admissions, it shows how corruption can sometimes improve efficiency in a given environment even while reducing fairness.

Section 4 looks at the role of ethics in business and governance. It provides examples of how an improved culture of ethics can reduce corruption and help to improve economic outcomes.

Section 5 shows how the tools of economics can be used to harness self-interest and reduce the adverse consequences of corruption to promote the public interest. We limit the discussion to examples from two major areas of economics: the theory of incentives and the theory of competition.

This discussion is a general, indicative and non-technical guide of how an economic analysis can help to better understand the problem of corruption and develop practical methods for reducing it.

1.2 A taxonomy of corruption

Definition of corruption: Definitions of corruption are varied and different. Often in economic literature the focus of corruption is the taking and giving of bribes by government officials. For the purpose of this discussion we will adopt the definition used by Transparency International, as "the abuse of entrusted power for personal gain".[1] There are two benefits of this definition over many narrower 'bribe'-related definitions. Firstly, it is not limited to money transactions: nepotism, cronyism and embezzlement are therefore included; and secondly, it is also not limited to government officials: practices in private corporations and non-governmental institutions can therefore be included in the scrutiny.

Corruption can take different forms, and can be categorised in different ways. We define four categories for the purpose of analysis: Predictable, Unpredictable, With-Theft and Without-theft.[2]

(1) **Predictable**: Corruption can be predictable. That is, when payments are fixed, with a certainty that the promised product will be delivered. This type of corruption is thought to have been the norm in Korea during the 90s and Communist Russia prior to Glasnost. In Sri Lanka, for instance, this type of corruption is a familiar feature of motor car examinations, or of getting freight cleared from Customs.[3] In government, this type of corruption is most

[1] See Transparency International website: http://www.transparency.org/about_us "what is corruption?"
[2] See Shleifer & Vishny (1993) for economic modelling of corruption using this type of categorical distinction (especially that of 'with' and 'without' theft).
[3] In 2008 the Bribery Commission of Sri Lanka reported that the **standard** bribe by a motor car examiner at the Registrar of Motor Vehicles had increased from Rs. 500 to Rs. 1,000. (SAMN, 2008).

seen in the *lower or mid-level bureaucracy*; ranging from clerks, inspectors to local authorities who have some discretionary powers in the efficient and accurate provision/implementation of government services/regulations. While secrecy is a feature of all corruption, some forms of predictable corruption can exist as an 'open secret' – as documented by the Sri Lanka Bribery Commission (SAMN, 2008).

(2) **Unpredictable**: Corruption can also be unpredictable, with arbitrary payments and uncertain delivery. In such cases there tends to be demands for a number of payments to different officials, at different times, but nevertheless, the delivery of the product is not guaranteed. This is said to be the experience of post-Communist Russia in the 90s, and in some of the countries that perform very poorly in the corruption perception index of TI, such as Somalia. In Sri Lanka this type of corruption environment is symptomatic of permissions for large scale investments where constant changes in political leadership or situations tends to require that either the same senior members of government are given repeated bribes, or new members in power require new bribes to ensure the continuity of the projects. In government this type of corruption is often connected with the complicity of *high-level officials* (senior bureaucrats and politicians) with very high discretionary powers and ability to manipulate the contents and implementation of laws, regulations and investigations. The unpredictability is often linked to the fact that the private gains and imperatives of secrecy are also much higher than in corruption involving low-level and mid-level bureaucrats.

(3) **Without-Theft**: Theft is not a necessary part of corruption. For instance, consider a familiar situation in Sri Lankan customs, where, despite an importer paying all the customs duty and providing the required information, documents may not be processed in an orderly or timely way unless a bribe is paid. This is corruption, but in a form that does not cause any loss to the government. It is classified as corruption Without-Theft.

(4) **With-Theft**: Corruption, however, can include theft. Staying with the example of customs, in exchange for a bribe, an official can falsify the record of an inspection to enable the importer to not pay the full duty that is due. This deprives the government of revenue it would have otherwise gained, and therefore it is classified as corruption With-Theft.

2 A Categorised Analysis of Corruption

The distinctions between types of corruption: Predictable, Unpredictable, With-Theft and Without-Theft, is useful for analysis. The different types of corruption can result in different

consequences. In each case, the distribution of the benefits and burdens of corruption, and also incentives for those involved can be significantly different. Therefore, both to understand the impact of corruption on the economy, and to draw on ideas from economics to reduce corruption, it helps to make these categorical distinctions.

2.1 Predictable Corruption

This is the case of corruption with fixed payments and predictable outcomes. The person who is required to pay the bribe knows clearly how much is expected and is guaranteed of getting the expected outcome if the bribe is paid. There is a significant literature in economics which shows that this type of corruption when it is entrenched and working smoothly results in the bribe functioning like a price paid for the services provided by the government. The main consequence of the bribe then is to increase the price of those services.

In Sri Lanka in the early part of the 1980s, an application for a driving licence at the Registrar of Motor Vehicles (RMV), after passing all the tests, would take about a week to be processed. Those who needed their licences sooner, however, could make an extra payment of about Rs. 300 to the person behind the counter. From experience of trying to complain about the system, we have good reason to believe that the bribe was shared by the staff in the department. In the latter part of the decade the management changed the processing system. It then became possible to 'officially' make a priority application and get the driving licence the next day or, as before, to stay with the normal application and get it in a week. The priority application cost about the same as the bribe. Presumably, the managers had also increased the incentive payments to the staff so they could 'officially' increase their output, making the net transactional result to the applicant identical to that of the bribe environment.[4]

It might even be argued that, in the absence of suitable management reforms, the corrupt practice at the RMV was improving the efficiency of the system. As argued by Leff (1964, p. 11), "if the government has erred in its decision, the course made possible by corruption may well be the better one."

Rather than staff working to the lethargic targets set by the management for poor pay and processing all the driving licences in a week, with the possibility of bribes they were working harder, delivering a valuable service to those willing to pay for it, and also managing

[4] There is, obviously, a qualitative difference in a system that achieved the same outcomes through a culture of corruption rather than by management reforms and transparent rules.

to improve their incomes. This was likely to have been an efficiency improvement in the allocation resources of time and money, and probably resulted in better outcomes all round – our own experience of feeling perturbed about the bribes notwithstanding.

This kind of observation is codified in economic ideas of corrupt payments as 'greasing the wheels of economics'. This 'efficient grease' hypothesis asserts precisely that corruption can improve economic efficiency by reducing unnecessary bureaucratic red tape and lethargy as described in our RMV example.

But the reverse causation has also been explored in economics. That is, the fact that red tape and inefficiency tend to come about or persist precisely because they *create* opportunities for extracting corrupt payments. As Rose-Ackerman (1999, p. 26) notes, "the defence of bribery as an allocative [greasing] tool is static. It assumes a given set of laws and public program requirements. Instead, corrupt officials, seeing the financial benefits of accepting bribes, frequently have the discretion to redesign their activities. They may create scarcity, delay, and red tape to encourage bribery."

In other words, the opportunity for corrupt payments could in fact be 'sanding' the wheels of economics before 'greasing' them. More recent research is displacing the previous views and suggesting that the 'sanding' tendency of corruption is the dominant result (see Wei and Kaufmann 1999).

A vivid example of the 'sanding' result in Sri Lanka is probably the long drawn out attempts by the business community and other arms of government to introduce an Electronic Document Interface (EDI) to the customs department. EDI would speed up processing, reduce workloads, improve documentation, save time, and result in much greater efficiency for all parties. But it would also undermine a prevalent and predictable form of corruption that has long existed in the customs department. As a result perhaps, attempts to introduce EDI have been successfully frustrated by the customs department for almost a decade.

2.2 Unpredictable Corruption

This is the case of corruption with uncertain payments and uncertain outcomes. It is a problem typically faced by large scale foreign investors the world over as well as in Sri Lanka. A World Bank survey in 1997 of 3,600 firms in 69 countries found that 40% of firms reported they had to pay bribes and more than half of them classified the corruption environment as Unpredictable, with uncertainty about how much more they would have to

pay in bribes and uncertainty about whether they would get the promised result (Brunetti et al. 1997).[5]

The decision to invest in a country usually depends on a cost benefit analysis, and having a fair sense of the prices as well as the time that will be taken to overcome regulatory hurdles is an important aspect of the cost analysis. The existence of unpredictable corruption can significantly increase the risk-premium (attributed to uncertainty about prices and outcomes) of an investment decision. As a result, typically, corruption of this sort tends to (a) reduce the inflow of foreign investment; (b) attract investment only at very high premium; (c) attract investment that is aiming to exploit the further possibility of corruption with-theft (rogue investment).

The 1997 bid for mining the Eppawala phosphate is a classic example of rogue investment. The bid was led by a consortium headed by Freeport-McMoRan, a US based company that has a notorious record of bribery and human rights abuses. The government proceeded with the deal despite advice to the contrary by economists and social activists. The deal was stopped in 2000 only subsequent to legal objections filed in the Supreme Court by seven residents of Eppawala. Later, in 2005, *The New York Times* exposed many of the abusive practices of Freeport-McMoRan in Indonesia. It documented from company records that these were sustained from 1998 to 2004 by paying over US$ 20 million in bribes to the police and military alone in Indonesia (Perlez & Bonner 2005, December 25). Going by the Indonesian case analysis of *The New York Times*, the Supreme Court judgement seems to have rescued Sri Lanka from a dangerous and corrupting foreign intervention in the country.[6]

In summary, Unpredictable corruption, therefore, not only increases the price of 'doing business' in Sri Lanka, just as Predictable corruption, but also increases that price by much more than the bribes involved. This is because the extra risk, created by Unpredictable corruption, reduces investment and business activity in the country. Furthermore the business and investment that *is* attracted into such an environment are likely to be ones that are seeking to benefit also from corruption With-Theft and other unscrupulous practices that increase private gain at the expense of government revenue and the public interest.

[5] Questions 14 to 17 in the survey are the relevant questions and Brunetti et al. (1997) give further relevant details on the distribution of responses in pages 31-33.
[6] The relevant Supreme Court Judgement, on the Eppawala case, is Bulankulama et al. vs. Secretary, Ministry Of Industrial Development et al. (2000)

2.3 Corruption With-Theft

Corruption With-Theft robs the government of due revenue and welfare, in the service of limited private benefits. The point made above, that an environment of Unpredictable corruption increases the tendency for corruption With-Theft, is well illustrated by the findings in two Supreme Court decisions that have come out at the time of writing this chapter (in July and October 2008). These two cases are analysed here for their economic consequences rather than their legal arguments.

In the first case, Nanayakkara vs. Choksy et al. (2008), on the privatisation of Lanka Marine Services Ltd. (LMSL), the government-owned LMSL had a business in bunkering services which involves supplying ships with fuel. The courts found with the petitioner that the "privatization was lopsided and moved in the reverse direction of public enterprise reform by converting a tax-paying Public Enterprise to a tax-free private enterprise which claimed a monopoly in the relevant business." (Nanayakkara vs. Choksy et al. 2008, p. 3) The element of 'Theft' involves, according to the court judgement: (1) A contrived undervaluation of the debt-free profit-making LMSL business to determine the floor-price of the sale; (2) A bid evaluation process that was irregular in favour of John Keells Holdings (JKH), the final buyer, succeeded in excluding all other applicants and ensured sale at the low floor price (by avoiding a competitive bidding process); (3) At the time of accepting the bid, the conferring of tax-free status to JKH for this LMSL business, which had hitherto been paying taxes; (4) After accepting the bid, but before the sale, conferring monopoly status to the relevant business without charge, thereby losing the government licence and tax revenue from competing firms; (5) Alongside the sale, a free transfer of very valuable government property to JKH under false pretexts of payment. The combined loss to the public is estimated to be in multiple billions of rupees (a billion is a thousand millions).

The second case, Mendis vs. Kumaratunga et al. (2008), involves a large tract of land (approximately 225 acres in total) not far from the current parliament, which was acquired by the government around 1988 on the basis of a law which enables the government to acquire private land when there is a significant public purpose at stake. In this case the 'public purpose' was increasing the parliamentary administrative complex, and providing water retention as a low-lying area. In the years 2000 and 2001 the land was leased or freely transferred by the government to Asia Pacific Golf Courses Ltd. (APGC) to build a private golf club, and luxury apartments (Mendis vs. Kumaratunga et al. 2008). The element of 'Theft' involves, according to the court judgements: (1) Significant undervaluation of the land; (2) Double counting price concessions, to maintain water retention, by discounting

for them in the land valuation as well as in the rental calculation based on that valuation; (3) The free transfer of significant part of the land; (4) Causing public funds to be spent on improving the land, under pretexts of developing it as a public playground, just before affecting such transfers; (5) A 12-year tax holiday granted by the BOI to APGC, without investigating qualifications for such concessions. The combined loss to the public is estimated to be in multiples of hundred-millions of rupees.

These are just two recently exposed examples that show how corruption With-Theft can involve immense loses to the government and through that to the general public.

Further, corruption With-Theft involving approximately Rs. 3.5 billion by officials of the Inland Revenue Department was exposed by the Auditor General's report in 2006. Two reports by the Parliamentary Commission on Public Enterprises (COPE) in 2007 and the regular Auditor General's reports document a large number of direct losses within government which are probably due to corruption With-Theft (Rajapakshe 2007a, 2007b).

Making calculations and projections from the above reports, a study conducted for the USAID-ARD Anti-corruption programme by Professor Indraratna as chairman of the Sri Lanka Economic Association, hazards an estimate of the annual loss to the Sri Lankan government due to corruption as approximately 9% of GDP (Indraratna 2007, p. 82). The GDP in 2007 was Rs. 3,578 billion and therefore the estimated loss is Rs. 322 billion. Given an incremental capital output ratio (ICOR) of about 4 in Sri Lanka, at present, this translates to a GDP loss of Rs. 80 billion to the country in 2007.

To put these figures in perspective, the total current expenditure for health care by the government in 2007 was approximately Rs. 40 billion. This level of funding has proved terribly inadequate for government hospitals to provide many of the required tests, medicines and medical services, and poor people who cannot easily opt into the high cost, private health care face severe hardships. The high level of corruption and the low income status of Sri Lanka imply that losses due to corruption will result in real constraints on what the government can spend on essential services. Therefore, typically vulnerable groups, such as the poor, the war displaced and those in active military combat, may literally be paying with their lives for the corruption of those who are in positions of power.

2.4 Corruption Without-Theft

Corruption Without-Theft increases the cost to the public for the carrying out of normal functions, but without causing loss to the government. In 2008, according to the Investigation division of the Bribery Commission of Sri Lanka, officials at the Registrar of Motor Vehicles routinely charge a bribe of Rs. 100 to accept an application and simply process it in the normal manner (SAMN 2008). In this case there is no loss to the government, but the price to the public is increased by the amount of the bribe, and the income of the workers at the RMV is increased as well.

Even though we highlighted earlier (in the discussion of Predictable corruption), the possible internal efficiency gains that could result, even Predictable corruption Without-theft can have negative systemic consequences on productivity. Further, Without-Theft corruption whether Predictable or Unpredictable can also cause significant indirect losses to the state.

Systemic consequences: A feature in Sri Lanka is the regular appointment of national commissions to resolve salary anomalies amongst government employees. This is probably a testament to the keen sense of fairness prevailing amongst government sector employees with regard to discrepancies in salary structures. When the structure is seen to be unfair it can result in workers becoming dissatisfied and de-motivated and therefore less productive in their work. When certain institutions such as the RMV or the customs allow corruption Without-Theft to go on unchecked, it arbitrarily increases the effective incomes of employees in those departments, and can thereby contribute to systemic demotivation and loss of productivity in the government sector. Conversely, it can also encourage a culture of corruption including corruption With-Theft, thereby causing further inconvenience and loss to the public and the state. As Rose-Ackerman (1999, p. 26) notes, “toleration of corruption in some areas of public life can facilitate a downward spiral in which the malfeasance of some encourages more and more people to engage in corruption over time”

Indirect losses: Even though corruption Without-Theft does not directly cause losses to the state, it can *indirectly* cause losses in several ways. Government licences are needed for a plethora of private, commercial activities: TV and radio stations, mobile phone networks, private buses, retailing alcohol, operating casinos, etc. The fees and methods for allocating these licences are an example of corruption Without-Theft that can still cause indirect losses.

It has been common practice in Sri Lanka for licence fees to be nominal or set well below market rates. This means there is an excess of demand for the licences and it opens the avenue not only for arbitrary favouritism but also for charging bribes. The potential bribe will be the difference between the market price (that would result from an open auction or bidding process) and the lower price set by the government. As a result, there is an incentive for the 'government price' to be kept low, to increase the potential bribe. While 'on paper' there is no loss to the government, as the official licence fee is paid, the loss comes indirectly through the corruption motives that keep the prices below market rates. The licensing of TV/radio broadcasting is a typical example.

After the general election in 2005 the government did not conceal the fact of having given TV/radio licences to minority parties that helped it to form a majority coalition. It was widely reported in 2007 that one such party acquired the licence for a company called People's Media Network (Pvt.) Ltd., which, with the licence as the principal asset, was able to sell 60% of its shares for the sum of about 100 million rupees – indicating that the licence was being valued at around 165 million rupees (Lanka-e-news 2007). While the initial government activity can be classified as corruption Without-Theft, the actual indirect loss to the public coffers is the market price of the licence, which is likely to be more than 165 million rupees if subject to an open bidding process.

The airwaves are obviously not the private property of politicians or political parties, and any rents on permission to use them for commercial purposes should be of direct benefit to the public. The current system of issuing such licences, even when 'following the rules', is benefiting private and political interests and denying the government significant revenue - which is then extracted from the public through taxes.

The absence of a transparent bidding process in the issuing of licences for such premium business activities such as broadcasting and telecommunication, prevents revelation of the true market price, and creates opportunities for large bribes and private profits through the issuing of licences. At the same time, these opportunities for corruption create political incentives to keep the system as it is. This is indicative of how corruption, even Without-Theft, can in fact cause significant losses to the government and the general public, and also hold back the development and professionalism of state institutions.[7]

[7] There are contrasting positive examples as well. The National Transport Commission has been gradually professionalising its activities over the years and now bus route licences that were once given away free or at nominal cost are priced substantially to reflect their market value. As a result, a five year route licence for a single bus doing the intercity route from Colombo to Kandy now costs 3 million rupees, and there are still more than adequate takers – suggesting that it is not over-priced. State

2.5 Overview of categorised analysis

> It is often assumed that an economy of private enterprise has an automatic bias towards innovation, but this is not so. It has a bias only towards profit.
>
> Hobsbawm 1969, p. 401, cited in Baumol 1990

In a well-functioning economy, the profit motive of the private sector creates a strong incentive to innovate, and innovation is the engine of economic growth and success. One of the major negative consequences of corruption is that it skews private sector incentives away from increasing profits through innovation towards increasing profits by taking advantage of corruption opportunities. The cases of the JKH and LMSL transactions underscore this danger.

The analysis has shown that Unpredictable corruption tends to have more negative economic impact than Predictable corruption; and that corruption With-Theft tends to have more negative consequences than corruption Without -Theft – with the caveat that in some cases, large indirect losses can result from Without-Theft corruption as well.

Both common sense and the economic theory of incentives suggest that, typically, corruption With-Theft (and Corruption Without-Theft that causes indirect losses to the government) would be favoured by public officials for two reasons. First, it becomes possible to charge a much higher bribe – because the offered gains are larger; and second, the bribe-payer becomes complicit in gaining undue benefits thus reducing the risk of him trying to report or punish the corrupt official.

The analytical structure and some of the examples in this section are summarised in the following table.

Categories of Corruption illustrated with examples	**Predictable (usually low or mid-level bureaucracy)**	**Unpredictable (usually involves high officials)**
With-Theft	Activities such as customs inspections, traffic policing.	Privatisation of state enterprises, granting tax holidays, sale of state lands.
Without-Theft	Institutions such as RMV, Local government. Activities such as school admissions.	Issuing of TV, radio, and other such operating licences.

The sum of the analysis suggests that the most harmful economic consequences tend to arise from corruption that is *unpredictable-with-theft*. The consequences tend to be least harmful in the cases of corruption that are *predictable-without-theft* (provided there are no significant indirect losses to the state). This last category of corruption, at its most providential, becomes in effect a way of changing how public services are financed: from taxes, to a combination of taxes and fees for service, with the fee acting like a piece rate payment and incentivising public officials to give a quicker and better quality service – such as in the first RMV example prior to management reform. However, even such seemingly providential incidences of corruption can lead to negative systemic consequences that spread to other forms of corruption, de-motivate sections of the public sector and reduce overall worker productivity in the government sector.

3 Reducing Corruption: Efficiency vs. Fairness

Economics analysis is particularly concerned with questions of efficiency. The concept connotes some idea of getting the greatest benefit possible from the available resources. In speaking of efficiency, therefore, it is necessary to be clear about 'what' it is that is desired as a benefit. The specification of 'what' is more simply done with concrete examples. Efficiency of a government service such as the Immigration and Emigration Department of Sri Lanka, for instance, might mean the fastest possible processing of the daily passport applications for a given investment in staff and physical resources.[8]

Therefore, economic ideas of increasing efficiency normally involve improving the allocation of resources, and the mechanisms and technology for transforming those resources, in order to get more of the targeted output.

Discussions of corruption are, however, not only about efficiency but also about justice and fairness. The concerns for fairness and for efficiency can often be convergent. For instance, in the two Supreme Court decisions discussed under corruption With-Theft, the court found that there was both a misallocation of resources and resulting losses to the economy, therefore a loss of efficiency; and also, a violation of the constitutional requirement for 'equal treatment under the law', therefore a lack of fairness.

[8] In Sri Lanka this department is seen as an exemplary public institution for its efficiency and lack of corruption. In 2007 it was taking only 1 minute to process a passport, and was on course to achieve the international benchmark of 30 seconds per passport (Weerasekara, 2007).

But the convergence can depend to some extent on the existing system of resource allocation and management. Even though convergence between efficiency gains and increased fairness is the generally expected case, it is instructive also to recognise possible exceptions to the rule, where the concerns for fairness and efficiency may *not* be convergent. We highlight this possibility through the example of corruption in school admissions in Sri Lanka.

Corruption in school admissions: The demand for corruption in the admissions process, it is well known, is driven by two factors: first, the paucity of schools considered to have a high standard of education and second, the competition amongst parents to expose their children to the best education.

The existing mechanism of matching students to schools is based on an area and past-pupils rule. Students who live close to the school, and whose parents have been past-pupils of the school, have the best chance of getting admission. A survey on Corruption in Sri Lanka 2007 (CPA 2007) enables several insights into the pervasive corruption in primary school admissions. The high demand for places in good schools, alongside the existing mechanism of admissions, has opened up two avenues for corruption.

One on the part of the principals of schools who can practice nepotism, cronyism or extract bribes from parents – running in the order of hundreds of thousands rupees – even when the student is qualified under the rules; the other on the part of parents who are documented to *rent-an-address* for around Rs. 25,000 a year for five years, with additional payments of Rs. 1,000 a year to the Grama-Niladari to secure the fiction of being resident and being in the electoral role in the vicinity of the school (CPA 2007). In the school admissions process these two seems to work in tandem, with the corruption of the school principals being a supplementary obstacle rather than simply substituting for the qualification under the area rule.

Efficiency vs. Fairness in school admissions: CPA (2007) found that the likelihood of parents opting to participate in a corrupt process was correlated with two factors. First, the wealth of the parents, and second, and perhaps more importantly, the extent to which parents prioritised education of their children. The second factor is important because the long-term planning and effort involved to secure qualification under the area rule is not likely to result from wealth as much as by setting a high priority on the child's education. This means that children who secure places in the better schools are disproportionately likely to be from families that place a high priority on education.

Within the scope of the situation, it is possible to see the challenge of efficiency in terms of resource allocation as one of matching the students who are most likely to persevere in their education to the best schools. But this perseverance prediction is undoubtedly very difficult to elicit when interviewing a 5-year-old child. It is, however, well known that children who come from families that place a high priority on education tend to be more persevering and successful in education. Perversely, then, it is possible that the existence of corruption in terms of falsifying the area requirement is helping to improve efficiency in the allocation of admissions to the best schools.[9]

This means, of course, that parents who live in the area could have the admission of their child denied in favour of someone who doesn't live in the area but managed to falsify themselves in a more proximate address to the school. And clearly this would be seen as grossly unfair. It is, however, a possible example of the demands of fairness and efficiency not being convergent, and corruption resulting in efficiency at the expense of what seems to be fairer.[10]

4 Ethics in business and governance

Ethics is very important to economics, even though it probably does not receive commensurate mention in economic discussions. Improving the culture of ethics is vital for reducing corruption, improving economic outcomes, and building a stable economic system. In this section we indicate the connection between economics and ethics by discussing separately ethics in business and ethics in governance.

4.1 Ethics in business and the economics of corruption

The issue of business ethics is important because, as seen from the examples cited in corruption With-Theft, partnership in corruption between the government and large private firms can radically increase the scale of economic loss to the wider population.

[9] As noted earlier, the evaluation of efficiency depends on the objectives. Therefore, if the stated objectives are changed the conclusion about efficiency will be different. In Sri Lanka the 1938 reforms by C.W.W. Kannangara led to free education becoming an important cultural value and social objective. Even though the main reason for education being costly is the inability of the State to provide an adequate supply of quality education, if the main objective is for education to be 'free' then the existence of corruption is not improving efficiency.

[10] We use the word 'fair' loosely to match with general perception on how it relates to the school admissions problem. In a more fundamental sense, it is not obvious why it is fair, in the allocation of education, to favour children who are proximate to good schools over those who live further away – especially since the funding of schools in Sri Lanka is not based on taxes from the local residents.

One of the foundational issues for business ethics is about what limits should be placed on the profit possibilities of private firms on the basis of ethical considerations. It should be obvious that there is a distinction between the ethical and the legal. The *raison d'être* for conversations about ethics in business and governance is that legal restrictions cannot feasibly be coded for every kind of behaviour that should be disallowed. The current discussion in business circles about what particular statutory law was violated, in the cases involving JKH and APGC, therefore, misses the point. It is precisely because the violations were also more fundamental, involving the principles of law – which is the proper domain of ethics – that the cases had to be adjudicated by the Supreme Court, rather than a lower court.

The Supreme Court has already adjudicated very cogently on how the principles of law were violated in the cases involving JKH and APGC, and the judgements have much in them that can inform and help the business sector in Sri Lanka to understand how the profit motive should be modulated by ethical considerations.[11] It is not necessary to repeat the Supreme Court discussion in this paper. We note, however, that the possibility for corruption in those two cases could well have arisen from a serious misunderstanding on the part of business leaders about the requirements of ethics.

That understanding about business ethics needs to be heightened is also evidenced in the discussion surrounding the controversial 500 million dollar loan by HSBC bank to the Sri Lankan Government in 2007.

Around August 2007, the HSBC bank undertook to facilitate a US$ 500 million bond sale by the Sri Lankan government. There had been an extensive public agitation campaign against this sale because it was widely expected that the proceeds would not be used for new development or infrastructure, as claimed by the government, but for other non-transparent transactions, while the burden of paying the high interest loan (when the bond became due) would fall on the tax-payer.

[11] In the judgment involving JKH the Court response, to the plea made by JKH, begins as follows: "Counsel thereby supports the plea of bona fides with the legality of the executive action in issue. The argument seems to be that when there is a yielding hand there is nothing illegal to take something more. I possibly cannot accept either of the propositions [bona fide or legality] of Counsel." The explanation that proceeds in this judgement is a master-class in ethics-based evaluation of business actions.

The relevant question is whether or not the actions of HSBC bank were a violation of reasonable ethical considerations[12] and the 'public trust'.[13] We don't presume to have an answer, but the discussion surrounding the question remains instructive.

In the run-up to the US$500 million loan, the Leader of the Opposition declared that his party would cancel the licence of HSBC when in power if it proceeded with facilitating the sale, which was thought to be against the public interest. The *Sunday Times* on September 9, 2007, carried an article critical of this threat. On September 16, 2007, the same paper published a letter of complaint from a reader on its position regarding HSBC. The reply to this letter by the business editor was as follows:

> Our point was that 'yes' take the government to task but not another party to which **it is just a commercial transaction, nothing less/nothing more**. As for the loan itself and its need, we said last week, "There is no doubt that the loan itself raises many questions and would result in Sri Lankans being called upon to pay through their noses." We have raised concerns about the loan in earlier weeks (and will still continue to do so)… By all means go after the culprit… and that's what the Opposition Leader should be doing not attacking a commercial lender **whose sole objective like any bank including local banks is profit and responsibility to shareholders**. (emphasis added, Sunday Times Online 2007, September 16)

The problem with managing profits and pleasing shareholders as the *sole* responsibility of private firms, is that it reduces ethics to the question of 'will we suffer for this later?' That is, ethics becomes possible only as a sophisticated form of pursuing 'self-interest'. While this reductionist view of ethics may be inspired by economics and Adam Smith as quoted at the beginning of this chapter, it is not a view that could have been supported by Smith himself. Before writing the *Wealth of Nations*, Adam Smith, a professor of moral philosophy, wrote the *Theory of Moral Sentiments,* and his latter work on economic organisation assumes as a pre-requisite the moral and ethical environment described in the former (Smith A. 1759, 1776).

[12] It is noteworthy that in a similar situation in September 2004 HSBC, Bank pulled out of arranging a $500-million loan for Norilsk Nickel, a Russian company thereby reflecting the anti-Russian western opinion at that time, in the wake of the Russian State taking over the Oligarch controlled Yukos Oil Company. Like in Russia, HSBC Bank clearly had a choice about continuing with the facilitation of the loan, but made a different choice.

[13] The Supreme Court decision involving APGC set out 'the doctrine of public trust' which can be of great benefit in informing the ethics of business and governance practices in Sri Lanka.

To explain, while economics may accept 'self-interest' as aeronautics accepts gravity, just as flying would become impossible under conditions of extreme gravity, the public interest can also become impossible to achieve under conditions of extreme 'self-interest'. In short, some ethical and moral underpinnings are necessary even for the methods of economics to successfully harness the average self-interest tendencies towards the public interest.[14]

This necessity is well understood in economics. However, theoretical presentations of economics often conceal the moral assumption in technical language such as 'complete information', 'perfect information', and 'competitive markets'. That is, these assumptions – which economic models posit as prerequisites for generating outcomes that are in the public interest – cannot generally be satisfied without a significant level of trust and ethical probity within business and government.[15]

In the wake of the Supreme Court judgement involving JKH, much of the media, including the *Sunday Times* newspaper (quoted above), has been positively and progressively advocating accountability and higher ethical standards. This could be the springboard for heightened consciousness in Sri Lanka about the importance of trust and genuine (not just self-serving) ethics in the sphere of private sector business. If the opportunity is seized in the private sector corridors of power to better understand and adopt sound ethical practices, it would be a positive and welcome development – and one that is much needed for the present economic system to truly succeed.

4.2 Ethics in governance and the economics of corruption

In the comprehensive guide, *Corruption and Government: Causes, Consequences, and Reform*, Rose-Ackerman observes crucially that, "a corrupt and incompetent civil service can defeat all other efforts" (Rose-Ackerman 1999, p. 68). In other words, a civil service that is either significantly incompetent or unethical can become a severe hindrance to all development.

Integrity of Institutions: Development economics has paid particular attention to the role of institutions and culture in a society for the successful functioning of a market economy. This has explicitly helped to recover some important foundations of market economics, such as the importance of a well functioning law and order system.

[14] This is underscored by Nobel prize-winning economist Amartya Sen in this amusing dialogue (in a situation of extreme self-interest): "Where is the railway station?" he asks me. "There," I say, pointing [in the opposite direction] at the post office, "and would you please post this letter for me on the way?" "Yes," he says, determined to open the envelope and check whether it contains something valuable (Sen 1977).

[15] These foundational issues in economic theory have been highlighted and popularised in a non technical thesis by Francis Fukuyama (1995) in his famous and aptly named title, *Trust*.

Repeated surveys in Sri Lanka over the last 8 years have shown that in terms of public perception, the police is perceived as the most corrupt institution in the country. Of those surveyed in 2007, when asked to name the sector they believed to be the most corrupt, 43% *immediately* named the police; 54% said they did not feel that they could deal with the police without a bribe or influence of some sort (CPA 2007, p. 2).

When foundational institutions such as the police are perceived to be corrupt, economic activity becomes very much more risky and unstable, and is thereby diminished. Therefore, the very high perception of police corruption is likely to be having a significant negative effect on entrepreneurship and development in Sri Lanka.

Ethics of high officials: The ethics that are normalised in a society are usually driven by the behaviour of its most visible and public figures. Usually these are leaders in the business world, and, even more, the Members of Parliament, Cabinet Ministers and the President. Therefore, a reform of ethics must start from the top.

In Sri Lanka, a law enacted in 1975 created a legal obligation for high officials of government to make a formal declaration of their assets. In 2003, less than 5% of parliamentarians had done so during the required time period.[16] If the current situation is similar, then it indicates a culture of disregard for ethics by high officials, which then has a cascading effect through all levels of government.

That this disregard for ethics has become 'normalised' in government bureaucracy in Sri Lanka, and is a result of top-down influence, is well captured by the following report on a high-level meeting subsequent to the Supreme Court judgment against the sitting Secretary to the Treasury in Nanayakkara vs. Choksy et al. (2008).

> A senior Ministry Secretary, who declined to be named, said Ministry Secretaries had expressed serious concern on future legal repercussions for carrying out 'wrong' orders of political leaders as it will affect their career and pension benefits. They explained to the President, the difficulties faced by them in carrying out their orders. (Sirimanna 2008)

[16] See Freedom House (2004):

The quote indicates that some high officials of the Sri Lankan bureaucracy are accustomed to acquiescing to unethical/corrupt requests from their political masters, and unaccustomed to being constrained either by the law or by their own conscience. Such a normalisation of unethical/corrupt behaviour is extremely detrimental to development because the government bureaucracy is the backbone of all other functions of an economy.

Economics of nepotism: The 17th Amendment was an important legislation geared to safeguarding and improving ethics in high-level appointments. The beneficial effects were highly visible in the subsequent functioning of the police commission and the human rights commission. However, since 2005 the law has been bypassed by the government. The natural result is that the administration becomes vulnerable to nepotism, cronyism and acquiescence in the corruption of high officials. This vulnerability is underscored by recent news reports alleging that 79 of the current President's relatives are in top government positions.[17]

The problem with nepotism and cronyism is not simply that it is in itself a form of corruption (*the abuse of entrusted power for personal gain*) but that it also promotes other forms of corruption and reduces the level of competence in the government – all of which is fundamentally disadvantageous to economic development. The high profile scandal involving Mihin Lanka, a budget airline launched by the government, provides a typical example.

Mihin Lanka Limited, Lanka Logistics and Technologies Limited, and Pramuka Arakshaka Lanka Limited, were three companies formed by the government in a legal black-hole that enabled them to bypass oversight by the Parliament or the Auditor General.[18] The CEO of Mihin was a coordinating secretary of the President and Mihin functions partly under the purview of the Minister of Aviation who in turn is the brother of the President. Initial funding of about 700 million for Mihin came from two main sources: the Treasury and Lankaputra bank – a new bank set up by the government to provide micro enterprise funds for the poor and headed by the father of the CEO of Mihin. Despite exercising all the advantages of government patronage (treasury guarantees, loans, approvals, tax free status etc. all received in double quick time), within one and a half years of incorporation, Mihin

[17] Lanka Dissent (2008) based on press conference by parliamentarian Mangala Samaraweera, a senior government member now leading a dissenting faction of the ruling party.
[18] Jayasundera (2008), relating questions raised by the Supreme Court of Sri Lanka.

caused the state to make a loss of 3,500 million, and also caused the near collapse of Lankaputra Bank.[19] Nevertheless, currently in the budget for 2009 the government has allocated another 6,000 million of tax payer's funds in a bid to revive the failed Mihin airline.

These facts surrounding Mihin air have been very much in the public domain. The purpose of the analysis is simply to provide a vivid example of how nepotism and cronyism can result in poor decisions, incompetence, lack of accountability and further corruption – all resulting in a significant economic loss to the population as well as a loss of confidence by potential investors and entrepreneurs. Nepotism by itself can seem a relatively innocent form of corruption, but when evaluated in terms of the attendant consequences, a culture of nepotism can seriously undermine economic development.

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An economic system is socially sustainable only when its benefits are being widely spread and the institutions of governance command a reasonable level of confidence in their competence and probity. Further and continuous development of an ethical culture in business and governance remains a prerequisite for reducing corruption and enabling the market economic system to grow in a healthy and sustainable manner and spread its benefits amongst the population of Sri Lanka.

5 Economic Insights for Reducing Corruption

All things being equal, market economic systems with less corruption show higher levels of efficiency and success. While an improved culture of ethics in business and governance will contribute to reducing corruption and improving economic efficiency, in any given ethical environment it is also possible to use insights from economic theory to reduce corruption.[20]

The ideas advocated by economists involve using strategic measures to create betrayal between corrupt parties, to encourage whistle-blowing, to destabilize and legally squash enforcement of corrupt contracts, to hinder and impose punishments of corrupt middlemen and to increase transparency and competition in situation susceptible to corruption.[21]

[19] Handunnetti (2008), relating proceedings of the Sri Lanka parliament on May 6, 2008.
[20] See Bardhan (1997) for a survey of the literature and Klitgaard (1988) for a discussion on the success of reducing corruption.
[21] See Lambsdorff et al. (2005) for a discussion of some of these aspects under the rubric of New Institutional Economics.

We conclude, therefore, by highlighting some of these possibilities, and relating them to examples from Sri Lanka, under the rubric of just two concepts from economics: the concepts of incentives and competition.

5.1 Theory of incentives

Adam Smith's observation, thinking economists have long recognised, depends on the possibility of harnessing self-interest to generate precisely such an alignment. While there are situations in which that alignment of interest may exist by happy coincidence, it is also possible to engineer environments towards generating such an alignment. That is a task that would be taken up within an economic analysis and design of incentives.

The economic theory of incentives examines how punishment and rewards, and their attendant probabilities, in the environment in which people act can be modulated such that self-interest is aligned with the public interest.

Punishment and probability: We have noted that reducing corruption amongst high officials is doubly important, first, because of the cascading effect on the rest of the public sector and second, because corruption of high officials tends towards the categories of Unpredictable and With-Theft, both of which are the most damaging in economic terms. Therefore, evolving a system of discouraging incentives against the corruption of high officials is a top priority for economic policy. The primary goal could be to ensure a high expectation of very severe punishment for engaging in such corruption. Such an expectation has two components, firstly, the probability of being found out and secondly, the severity of punishment if detected.

Because, as already discussed, there is a high tendency for collusion and concealment between involved parties when the corruption is With-Theft, the negative incentive effects from any expected punishment, if detected, is reduced by the low probability of detection. Therefore, sound policy suggests that when the probability of detection is low, then the punishment if detected must be high enough to counteract that low probability. Only then will the punishment act as a suitable incentive to align self-interest with the public interest of preventing the corruption.

Sharpening institutional/legal teeth: The existence of the Bribery Commission in Sri Lanka serves an important function in this regard, because it increases the probability of detection for those engaging in corruption. Going by the record of the Bribery Commission, however,

its effectiveness in detection and punishment seems at present to be more visible with regard to low-level bureaucratic corruption, the sort that is mostly Predictable and Without-Theft. A Bribery Commission that demands the declaration of assets and demonstrates the capacity and willingness to investigate and prosecute high officials, therefore, remains an important goal for economic policy.

However, for such investigations to be successful it will be important to restore the integrity of the police and its independence from severe political manipulation. This task could begin with the effectively implementing the 17th Amendment to the constitution, encouraging whistle-blowers,[22] and providing methods of witness protection.

Threat of activism/information: Adverse incentives for corruption can also be created by leveraging mechanisms of democracy, such as civic/consumer activism and political activism. At present such mechanisms do not seem to be playing a significant role in Sri Lanka. Normally this lack is related to a lack of reliable and well publicised information. In many countries, and recently also India, enacting 'freedom of information legislation' has had a great impact in helping to generate public awareness and discourage corruption. Even when the information is not accessed by the public, the threat of the possibility can be important in creating adverse incentives.

Legal interventions: At present (in 2008), judicial activism has emerged as the most potent method by which adverse incentives are created for the more lethal forms of corruption in Sri Lanka. In this regard, even though recent judgments of the Supreme Court have sent tremors through the system at the highest levels of government and private sector, the actual punishments prescribed by the Court have in fact been quite mild. That is, the remedy prescribed has been focused on restoring lost value to the government. Punitive damages have only been imposed on officials deemed to be acting in bad faith (rather than on the institutions they represent) and those damages have been only a fraction of the potential benefits that could have accrued as a result of the detected corruption. Whether these punishments are adequate to generate the required level of adverse incentives remains to be seen.

Attention to incentives suggests that concern for achieving such an adequate level of adverse incentives should be a part of the considerations of the Courts in determining punitive

[22] See Sri Lanka Peace Secretariat media release: http://www.peaceinsrilanka.org/InsideNews/news.asp?newsID=7396

measures in any future detections of such corruption. This is doubly important because such detections are inevitably difficult and rare, and recent breakthroughs in this area will undoubtedly lead to an increase in the sophistication of future attempts at concealment. Therefore it is important that the expectation of punishment when detected is high enough to compensate for the low expectation of detection.

Destabilising corrupt contracts: Another strategic recommendation from economics is to destabilise and create greater risk for contracts that result from corrupt means. In both the court cases discussed in this chapter, involving JKH and APGC, the courts annulled the existing contracts. The value of such action goes beyond the rectification of the immediate injustice. It sends out a signal that contracts achieved by corrupt processes are significantly more risky and unstable and therefore much less attractive.

5.2 Theory of competition

Much of the discussion about corruption in this chapter and in the academic literature is focused on corruption that involves the government. This is not because there is no corruption purely within private firms, but because private firms, unlike government departments, are subject to the consequences of competition, which is a powerful and effective mechanism for creating internal incentives to reduce corruption.

The hallmark of corruption is that it increases costs. A private firm that has corrupt managers (who cause losses for the firm in pursuing private gain) will tend to face higher costs. Therefore, it will have to increase prices, lose market share, and reap less profit. In a competitive environment, other firms without corrupt managers will have lower costs and be able to gradually drive the firm with corrupt managers out of the market. In other words the high competition amongst private firms, when it exists, is likely to exert a **self-correcting force** on the tendency for internal corruption in the private sector. This observation is a cornerstone of economic thought. The idea is that competitive environments have a tendency to undermine self-interest and bring about the public interest and this is an insight that can usefully be applied in public policy.

Apart from detection and punishment, one approach to reducing corruption Without-Theft, is to create competition for the corrupt rewards (Shleifer & Vishny 1993).[23] If there were several government departments within easy reach that were capable of dispensing the

[23] This approach, however, can have an exacerbating consequence on corruption With-Theft, since competition can be based on increasing the level of theft, rather than in reducing the bribe.

services offered by the RMV, for instance, people would tend to favour the office that didn't take a bribe. The resulting competition amongst departments to attract clients could lead to reducing the price of the bribe, and – if the workers were paid a bonus according to the total number of clients served by the department – then to eliminating bribes altogether. In short, it is a way of simulating in the government sector the beneficial effects of price and services competition as in the private sector.

The competition created need not only be for bribes, but also for other kinds of rewards based on reduced corruption. For instance, a mechanism of surveys to generate direct client feedback with regard to the efficient non-corrupt service of government institutions can be used to rank departments on a league table of efficiency and corruption-freeness. Such a ranking, if it was widely publicised, even if it is not tied to bonus payments, can lead to competition to improve services and reduce corruption.[24]

The advantage of this second method is that it does not involve departments that duplicate services because a client feedback ranking can be applied across different departments. It would also have the benefit of reducing the negative systemic consequences that flow from corruption within any one government department, because the rankings would act as a method of naming and shaming, preventing the systemic discouragement and demotivation that would arise from the existence of impunity and undue rewards in being corrupt.

This insight on competition has highlighted two types of applications. First, it can guide the investigation of corruption – that is, to look more closely at situations and institutions that are least subject to conditions of competition. Second, it can guide methodology in mitigating corruption by creating competition for both bribe and non-bribe related rewards.

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The importance of preserving incentives and competition can be seen in a recent example highlighting the problem in the rice market in Sri Lanka.

The problem of the rice price: The government has diagnosed and widely condemned the fact that the price of rice is high due to anti-competitive practices by the main private sector traders in rice. The allegation has been that these traders collusively hoard rice inventories to create an artificial shortage, which drives up the price and allows the

[24] Some positive competition has already been created by the National Productivity Awards. The Immigration and Emigration Department of Sri Lanka, which issues passports, and is widely praised for being a model public institution has been rewarded by winning the best public department award in the Western Province two years in succession – in 2006 and 2007 (Weerasekara, 2007).

traders to make an unreasonable profit. If there were many traders and they were not acting collusively – that is anti-competitively – this would not be possible, since the trader hoarding an inventory would only lose market share to others. Recognising this, the solution proposed within the government was not to impose the punishments that can be dealt out under the Consumer Affairs Authority, but to rely on the competition theory insights and enter the market itself as a competitor to the private sector traders.

Therefore, the remedy proposed to the President was for the government to competitively purchase large quantities of rice and supply it to the market so that private traders who hoarded would simply lose market share and profits, while price stability would be maintained through the government's supply. Newspapers indicated that the President instructed the agrarian affairs ministry to implement this remedy. Strangely, the experiment failed. The ministry, it is reported, didn't attempt to pay a competitive price for the rice and was thereby not able to purchase much of it. The resulting lack of stocks was its excuse for not being able to prevent the high prices from artificial shortages created by the private sector. The reason for this failure, it turns out, can be explained by the incentives within the structure of governance. The *Island* newspaper reporting on the problem included some pertinent information:

> The government competed with several major private sector traders, including Siripala Gamlath, Deputy Minister of Agrarian Services and Dudley, brother of Agriculture Development and Agrarian Services Minister Maithripala Sirisena. Gamlath, who is the brother-in-law of Sirisena, is the proprietor of 'Nipuna' while Dudley runs 'Araliya'– two of the largest selling brands. (Ferdinando, 2008).

According to this article, the Minister of Agrarian Services has a brother and a brother-in-law who are two of the largest private sector traders in rice. Furthermore, the brother-in-law is also the Deputy Minister of Agrarian Services. It is not difficult to see that at the very top of the implementation ladder there were strong incentives to ensure that the President's policy of thwarting the rogue practices of the private traders failed – and failed it did.

What the example aptly demonstrates is that, while insights from economics can be used to change incentives, increase competition and thwart corruption, the success of such methods may in turn depend on some minimum level of ethics in business and governance. In this example, flagrant nepotism and conflicts of interest of government ministers – both matters of elementary ethics – successfully undermined an otherwise clever strategy for thwarting corruption.

6 Conclusion

Even the few cases where corruption has been successfully detected in Sri Lanka in the last few years add up to a high direct cost to the country's economy. However, the detected corruption is possibly only the tip of the iceberg. Existing estimates place the cost of corruption at Rs. 322 billion in revenue loss to the government, and Rs. 80 billion in GDP lost to the economy. Reducing corruption therefore is likely to have significant consequences in improving economic outcomes. This finding is consistent with most studies on corruption which conclude that it slows down development.[25] Therefore a policy that is serious about development in Sri Lanka must also be serious about reducing corruption.

Economic analysis can provide many helpful pointers in devising ways to reduce corruption. In this paper we have shown that corruption can take many forms and that some forms cause greater economic losses than others. We have observed that not every situation of corruption has a negative economic consequence, and that some incidences of corruption might even result in unexpected efficiency improvements in the production of desired outcomes. Nevertheless, we have observed that even Predictable corruption that is Without-Theft, usually the forte of low level bureaucracy, can have negative systemic consequences that are cumulatively very damaging to economic productivity. We also observed that Unpredictable corruption and corruption With-Theft tend be the most damaging types of corruption, especially when it involves high-level officials with greater levels of discretion.

The examples we have provided throughout suggest that there is much reason for concern about the depth, extent and types of corruption in Sri Lanka and that economic policy needs to be purposefully focused on the challenge of reducing it. Economic theory provides us with many useful insights and guidelines. We have outlined some aspects of those insights in terms of generating appropriately high adverse incentives against corrupt behaviour, and modifying institutional structures to generate an environment of competition for bribes or compensating rewards. These are practical methods that have a proven record of success. The likely success and ease of implementing such solutions, however, would be greatly increased if there were improvements in the existing ethical norms of business and governance in Sri Lanka.

[25] See for instance Gould & Amaro-Reyes (1983) and United Nations (1989)

Minimal adherence to ethics is especially important for foundational institutions of governance such as the Parliament, Central Bank, judiciary and the police, because the integrity of such institutions form the cornerstone of confidence for the success of a market economy. In this regard, the very high perception in society (43%) of the police as the most corrupt sector in the country is of grave concern. Empirical studies clearly indicated a relationship between higher ethical standards in the institutions of governance and the economic success of nations.

Overall, for reducing corruption and improving economic outcome, economic theory recognises that the confluence between self-interest and public interest is one that needs to be brought about by careful design and the development of the institutional and ethical structures of society. The failure to undertake such a task and adequately address the problem of rampant and deep-rooted corruption can ultimately undermine the well-being of even those who are corrupt by keeping the Sri Lankan economy perennially dysfunctional and underdeveloped. Patriotic politicians and business leaders would do well to take note.

References

- Bandula Sirimanna (2008, August 31), 'Presidential committee over Jayasundera affair', *Sunday Times Online*. Available from: http://sundaytimes.lk/080831/FinancialTimes/ft300.html [12 October 2008].
- Bardhan, P. (1997), 'Corruption and Development: A Review of Issues', *Journal of Economic Literature* 35(3), 1320-1346.
- Baumol, W. (1990), 'Entrepreneurship: Productive, unproductive, and destructive', *The Journal of Political Economy* 98(5), 893-921.
- Brunetti, A., Kisunko, G. & Weder, B. (1997), *Institutional Obstacles to Doing Business: Region-by-region Results from a Worldwide Survey of the Private Sector*, World Bank, Office of the Chief Economist and Senior Vice President, Development Economics.
- Bulankulama et al. vs. Secretary, Ministry Of Industrial Development et al. (2000) *Sri Lanka Law Reports*, Volume 3, page 243
- CPA (2007) *A Survey on Corruption in Sri Lanka 2007*, Centre for Policy Alternatives.
- Ferdinando, S. (2008, November 03), 'Govt. mulls rice imports as its paddy purchase plan goes awry', *The Island Online*. Available from: http://www.island.lk/2008 /11/03/news1.html[19 November 2008
- Freedom House (2004), 'Country Report - Sri Lanka', *FreedomHouse.org*. Available from: http://www.freedomhouse.org/template.cfm?page=140&edition=1&ccrcountry=63&section=48&ccrpage=5 [21 October 2008].
- Fukayama, F. (1995), 'Trust', Hamish Hamilton, London.
- Gould, D. & Amaro-Reyes, J. (1983), 'The Effects of Corruption on Administrative Performance', *World Bank Staff Working Paper*.
- Handunnetti, D. (2008, May 7), 'Govt admits Mihin losses 3500 million', *Morning Leader*. Available from: http://www.themorningleader.lk/20080507/news.html# Govt [21 October 2008].
- Hobsbawm, E. J. (1969), 'Industry and Empire from 1750 to the Present Day'.
- Indraratna, A. D. V. de S. (2007), *The Impact of Corruption on Poverty and Economic Growth (White Paper)*, USAID-ARD (Sri Lanka).
- Jayasundera, R. (2008, September 14), 'Makings of a 'Gota-po'', *Sunday Leader*. Available from: http://www.thesundayleader.lk/20080914/spotlight-1.htm [21 October 2008].
- Klitgaard, R. (1988), *Controlling Corruption*, University of California Press.
- Lambsdorff, J., Taube, M., Schramm, M. & NetLibrary, I. (2005), *The New Institutional Economics of Corruption*, Routledge.

- Lanka Dissent (2008, November 20), '3 yrs. of Chinthana & 79 Mahinda's relatives in top jobs', *LankaDissent.com*. Available from: http://www.lankadissent.com/en/index.php?option=com_content&view=article&id=2509:3-yrs-of-chinthana-a-79-mahindas-relatives-in-top-jobs&catid=1:latest-news&Itemid=50 [21 November 2008]
- Lanka-e-News (2007, August 19), 'The way they sold the TV license', *Lanka-e-News (Online)*. Available from: http://www.lankaenews.com/English/news.php?id=4565 [19 August 2007].
- Leacock, S. (1936), *Hellements of Hickonomics*, Dodd, Mead and Co., New York, NY.
- Leff, N. (1964), 'Economic Development Through Bureaucratic Corruption', *American Behavioral Scientist* 8(3), 8.
- Mendis vs. Kumaratunge et al, SC(FR) 352/2007, Minutes of 08.10.2008.
- Nanayakkara vs. Choksy et al, SC(FR) 209/2007, Minutes of 22.07.2008.
- Perlez, J. & Bonner, R. (2005, December 25), 'Below a mountain of wealth, a river of waste', *The New York Times on the Web*. Available from: http://www.nytimes.com/2005/12/27/international/asia/27gold.html [10 September 2008].
- Rajapakshe, W. (2007a) *First Report, From The Committee On Public Enterprises*, Parliamentary Series, No. 07, of the sixth parliament of the democratic socialist republic of Sri Lanka (Second Session), department of government printing, Sri Lanka (12th January, 2007).
- Rajapakshe, W. (2007b) *First Report, From The Committee On Public Enterprises*, Parliamentary Series, No. 10, of the sixth parliament of the democratic socialist republic of Sri Lanka (Second Session), department of government printing, Sri Lanka (24th August, 2007).
- Rose-Ackerman, S. (1999), *Corruption and Government: Causes, Consequences, and Reform*, Cambridge University Press.
- SAMN (2008, April 17), 'Bribery also goes up with inflation', *South Asia Media Network*. Available from: http://www.southasianmedia.net/cnn.cfm?id=490091&category=Law&Order&Country=SRI%20LANKA [10 September 2008].
- Sen, A. (1977), 'Rational Fools: A Critique of the Behavioral Foundations of Economic Theory', *Philosophy and Public Affairs* 6(4), 317 - 344.
- Shleifer, A. & Vishny, R. W. (1993), 'Corruption', *The Quarterly Journal of Economics* 108(3), 599 - 617.
- Smith, A. (1759), *1976. The Theory of Moral Sentiments*, Oxford University Press.
- Smith, A. (1776), *An Inquiry into the Nature and Causes of the Wealth of Nations, eds. Campbell, RH and AS Skinner*, Oxford: Clarendon Press.

- Sunday Times Online (2007, September 16), 'Ranil and the HSBC loan', Available from: *http://www.sundaytimes.lk/070916/FinancialTimes/ft309.html* [September 16, 2007]
- United Nations. (1990), *Corruption in Government: Report of an Interregional Seminar*, United Nations Dept. of Technical Cooperation for Development and Centre for Social Development and Humanitarian Affairs.
- Weerasekara (2007, September 27), 'Immigration voted the best state department', *Daily Mirror* (e-edition), Available from: http://www.dailymirror.lk/2007/09/27/news/2.asp [27 September 2007]
- Wei, S. & Kaufmann, D. (1999), 'Does Grease Money Speed Up the Wheels of Commerce?', *NBER Working Paper* No. 7093.

Governance of NGOs in Sri Lanka

Rukshana Nanayakkara*

Over the last 25 years in Sri Lanka, the term NGOs (non-governmental organizations), has drawn vast political attention. The NGO movement has changed from mere grassroots level philanthropic initiatives to involvement as people's representatives in the democratic and peace process. This has raised concerns, especially in the political sphere, about the source of NGO funding and questions about their legitimacy to work on politically sensitive issues. NGOs which operate in these fields are targeted politically, although the term NGOs is understood to refer to "voluntary bodies formed by groups of citizens for specific purposes of social service or social and policy intervention."[1] This broad definition embraces a wide range of organizations from neighborhood collectives, pension clubs or temple development societies with limited focus, interest and activities to those addressing national questions such as human rights, peace, democracy and governance, economic development, the environment, minority issues and women rights.[2]

The principal aim of this chapter is to introduce the Golden Rules developed by Transparency International Sri Lanka as a regulatory framework to promote good governance within the NGO sector in the country. In order to describe the context into which these principles must function, the chapter highlights the current legal regime which regulates NGOs, the perception and certain research-based realities of NGOs and recent politically-motivated attempts to govern NGOs. The writer has not conducted a perceptional or institutional survey to understand the problems faced by NGOs or the problems and malpractices within the sector. Nevertheless, the chapter emphasizes the freedom of association of all Sri Lankans while recognizing the necessity to introduce principles of democracy and good governance for the proper management of NGOs.

The Legal Regime

The legal regime in place to control NGOs reflects the State's perception of, and relationship to NGOs which is extremely sensitive as it determines their degree of political autonomy. Recent attempts to introduce laws and regulations to control NGO activities are a reflection of the attitude of the present governing party towards them. (This aspect is discussed later in this chapter).

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[1] Udan Fernando, NGOS in Sri Lanka Past and Present Trends (Colombo: July 2003)

[2] ibid.

Until the 1990s there were no specific laws to regulate NGOs in Sri Lanka. This provided the freedom for them to operate with a great deal of autonomy. However, the situation changed due to a number of factors, predominantly with the involvement of NGOs in the field of peace and human rights.

The first national attempt to register NGOs was through the Voluntary Social Services Organisation Act of No. 31 of 1980, popularly known as the VSSO Act. This Act made it mandatory for organizations who obtain contributions from government and other public sources to register with the Ministry of Social Services. The penalty for non-compliance was Rs. 250.00. Further, the registration became important for organizations who wanted to obtain visas for their foreign staff.

The first attempt to amend the VSSO Act was in 1995 when the then Minister of Social Services obtained the approval of the Cabinet of Ministers to amend it. The amendment proposed that the State could take over an NGO for an interim period where a prima facie case is established of misappropriation of funds or other malpractice in the NGO. Subsequently a Bill, entitled the Voluntary Social Services Organisation (Registration and Supervision) Bill, was presented to Parliament. However, the Bill was not passed by partially due to the lobbying of NGOs and the wider movement of Civil Society Organizations (CSOs) with the then ruling party. That same Bill was presented to Parliament in 1998 with some new additions vesting more power with the Minister. Rather undemocratically, the Bill was passed with another eighteen Bills when the main opposition party, the United National Party (UNP), boycotted the Parliament. Thus, the Act has remained in force as the law applicable to NGOs.

In April 1999, a Presidential Circular was issued to all government Ministries, District Secretaries and Departments calling on all NGOs to be re-registered under an authority which is the National NGO Secretariat. All international and national level foreign-funded voluntary service organizations and NGOs are required to declare their sources of funding, annual expenditure and annual budgets. Clearance from the Ministries of Defense, Foreign Affairs, Plan Implementation and relevant line Ministry was made a pre-requisite for registration.[3] The exception for re-registration under the National NGO Secretariat is for organizations whose activities are conducted in one District or at Divisional levels. Those organizations are required to register under the District Secretary and the Divisional Secretary respectively. However, if the organizations receive funds from foreign donors, they are required to register under the National Secretariat.

[3] Presidential Secretariat, RAD/99/01 Dated 26th February, 1999 signed by K Balapatabendi, Secretary to the President.

Another change introduced by the above Presidential Circular was the setting up of District Coordinating Committees for NGOs. The District Committees consist of the District Secretary, the Head of the District Planning Secretariat, the Provincial Secretary in charge of Social Services, a representative of the Chief Secretary of the Province and a Social Services officer nominated by the Chief Secretary. The main function of these committees is to meet periodically and consider applications at the District and Divisional level and make recommendations for registration. Similarly, a National Level Steering Committee of NGOs is appointed which consists of the Secretary to the Ministry of Social Services in addition to Secretaries to the Ministries of National Planning, Defense, Public Administration, Foreign Affairs, and the Director of the National Secretariat of NGOs. The functions of the Committee include meeting once a month to discuss policy matters, submit proposals to the Government, prepare action plans and monitor the implementation of action plans. The National NGO Secretariat was formed in 1996 but did not become active until 1999. The Circular issued by the Presidential Secretariat re-activated the Secretariat and made the re-registration compulsory for NGOs.

Instead of going through the government-controlled NGO committees, most NGOs at present have opted to register themselves under the Companies Act of Sri Lanka.[4] The Companies Act allows civil society organizations to register as companies limited by guarantee. This means that NGOs become answerable to their Board of Directors which provides governance and directional guidance to the institution.

In addition to the above mentioned avenues for NGO registration, other forms include:

- Registering as a Trust under the Trust Ordinance No. 17 of 1917
- Registering under the Mutual Provident Societies Act (Act No. 55 of 1949)
- Registering as a charitable institution under the Inland Revenue Act
- Registering as an approved charity under the Inland Revenue Act
- Incorporation by an Act of Parliament (by way of a Bill presented by a private member)

[4] Act number 07 of 2006 which amended the earlier Companies Act No. 17 of 1982.

Perceptions about NGOs

In 2007, the Centre for Policy Alternatives' Social Indicator Unit conducted a survey on corruption in Sri Lanka with the objective of measuring the perceived presence of corruption in society and the frequency and prevalence of this activity.[5] The survey only took into account transactional corruption, leaving out types of corruption such as embezzlement, cronyism and nepotism. Although perception is not always a mirror of reality, the survey findings are worth summarizing here as they reveal the notion of corruption among public of Sri Lanka.

According to the survey findings, one third of the people interviewed, irrespective of their interaction with, or knowledge of the NGO sector, believe that these organizations are highly corrupt, while half of the people interviewed on that same basis mentioned that NGOs are moderately corrupt. However, in cross-tabulating these opinions with the interviewees' knowledge about NGOs, it was found that people who are well acquainted with the work of NGOs rarely accuse them of corruption. The survey reflects the unfortunate victory of politically-motivated campaigns against civil society in Sri Lanka.

Attempts to Govern NGOs

The NGO Commission

In December 1990, the Commission of Inquiry in respect of NGOs (better known as the NGO Commission) was appointed. The Commission conducted inquiries until 1993 and the media gave wide publicity to its investigations. Three NGOs came under direct investigation by the Commission, namely Sarvodaya, the Eye Donation Society and World Vision. The Commission issued its report in December 1993. The report found that there had been practices of unfair and deceitful conversions to Christianity by some NGOs; that officers in their employment enjoyed extraordinarily high salaries and fringe benefits; that there was misappropriation and other practices by NGOs and that they were spending unusually high proportion of their funds for administrative purposes.

The key recommendations of the report included the appointment of a Commissioner for NGOs and the enactment of a new statutory framework making registration of all NGOs and the supervision and monitoring of all NGO funding and activities compulsory. In May 1993, then President D B Wijetunga followed up the recommendations made by the Commission by issuing a Regulation entitled the Monitoring of Receipt and Disbursement

[5] A Survey on Corruption in Sri Lanka 2007, conducted by Social Indicator – Centre for Policy Alternatives and commissioned by ARD-Anti Corruption Program of USAID.

of Non Governmental Organizations (Regulation number 1 of 1993). This was issued through an Extraordinary Gazette under the Emergency Regulations).

This regulation defined NGOs as organizations that are dependent upon public or government grants for funds and that are engaged in social welfare, development, empowerment, research and environmental protection activities. Those NGOs with annual budgets less than Rs. 50,000 and cooperatives were excluded from the above definition. All other organizations were required to register with the Director of Social Services, submitting detailed information regarding receipts and disbursements, including the sources of receipts and the recipients of funds and goods and services. Heavy penalties for non-compliance were incorporated into the regulation, with fines and prison sentences up to five years for officers concerned. This regulation, however, lapsed in the following year.

The Parliamentary Select Committee on NGOs

A Parliamentary Select Committee for the investigation of the operations of non-governmental organizations and their impact was appointed on 30th August 2005.[6] As per the terms of reference of the Committee it is mandated to investigate:

i. functioning of foreign-funded NGOs which are in operation in Sri Lanka
ii. transparency of financial activities of such non-governmental organizations

As stated in the terms of reference of the Committee, it was initiated in the light of allegations made by numerous citizens to the effect that some NGOs are engaged in activities which are inimical to the sovereignty and integrity of Sri Lanka, and thus activities which adversely affect the national security of the country.

So far, the committee has questioned a number of NGOs particularly on the source of their funding and projects and activities they carried out. Although the committee has noted no clear findings so far, the very appointment of the committee raises serious questions about government attitudes towards NGOs in the country. If implemented properly the present legal regime on NGOs provides a substantial framework to regulate the conduct of NGOs. This appointment of a Committee with political motives is a serious blow to the fundamental right of freedom of association of the people of Sri Lanka.

[6] http://www.parliament.lk/committees/list_select.jsp

New Act to Streamline NGOs

On 28 October, 2008, the government-owned Daily News reported that government is taking steps to introduce a new Act to regulate NGOs in Sri Lanka. Quoting the Deputy Minister of Social Welfare, the newspaper reported that the new Act intends to bring all INGOs and NGOs under a single law. Under this new law, NGOs are required to change their foreign staff members once in every three years and are compelled to give priority to employment of Sri Lankans. Further, newspaper articles have made allegations about NGOs being involved in terrorism, illegal activities and various programmes and project activities which have no relevance to the requirements of the relevant communities. However, the report has not substantiated any of its accusations with facts.

The Eight Golden Rules

The principal objective of this chapter is to introduce the Golden Rules developed by Transparency International Sri Lanka as a point of reference for discussion on the issue.[7] These Rules present a framework for civil society organizations in Sri Lanka such that fundamental values and principles are automatically endorsed through subscription. In essence, the values and principles contained in the framework promote trust, honesty, flexibility, openness, clarity, professionalism and value for money. The aim is to incorporate these into a culture rather than impose rules; as such the eight Golden Rules presented here are to serve as a foundation for building that culture. In doing so, care should be taken not to overburden the organization with undue and unwieldy bureaucracy. Moreover, all eight Golden Rules are not only equally important but synergistic, consequently the order in which they appear is irrelevant. Further it is important to note that these Rules must be dynamic. In other words, these Rules must be treated as evolving entities, such that they are revised, amended, omitted, etc. according to new knowledge and experience gained and to changing contexts and operational environments.

The Rules are provided as a framework for all kinds of NGOs operating in Sri Lanka (as per the definition at the beginning of this chapter). Thus it includes national and international non-governmental organizations which operate either at grassroots or national level.

1. Good Governance

This guideline contains requirements for the proper logistical functioning of a CSO,[8] i.e. the minimum requirements for a CSO to conduct its affairs effectively.

1.1. The CSO shall have a constitution encompassing the 8 Golden Rules contained in this document

1.2. The CSO shall have a policy of adherence to the letter and spirit of its constitution and all adopted policies, procedures, processes, etc.

1.3. The CSO shall have a clear and concise definition of its vision, mission, values and principles

- All objectives, goals, strategies, programs, projects, etc. engaged by the CSO shall be strictly aligned to these definitions

1.4. The CSO shall have a board of directors

1.4.1. The criteria and a procedure for selecting board members shall be defined

1.4.2. Length of term, number of consecutive terms, conditions for early dismissal, etc. of board members shall be defined

1.4.3. Board members shall serve on a voluntary basis

- This may include reimbursements for essential costs such as travel, etc.

1.4.4. The board of directors shall be responsible for implementing the vision, mission, values and principles of the CSO

1.5. The CSO shall have a decision making process that is professional and demonstrably disciplined

1.5.1. It shall include criteria and a procedure for accepting/rejecting proposals, etc.

1.5.2. It shall be applicable to the board of directors

1.5.3. It may be extended to executive staff

1.6. The CSO shall have a monetary policy

1.6.1. It shall contain a process for handling donations

1.6.2. It shall contain a process for handling money earned through fund raising, accrued interest, etc.

1.6.3. It shall include a structure for fees and administrative charges

1.7. The CSO shall have a process for handling non-monetary donations

1.8. The CSO shall have a donor, partner, supplier relations policy

- It shall include criteria and a process for selection

[8] Civil Society Organization, or CSO, is used here in the broadest sense to include any kind of organization which works for the betterment of society.

1.9. The CSO shall have a process for making changes to its constitution, policies, procedures, processes, etc.

1.10. The CSO shall institute mechanisms to guard against malpractice

1.10.1. Including access to funds and abuse of resources

1.10.2. Including decision making

1.10.3. To ensure fair and consistent supplier sourcing by preventing nepotism, etc.

1.10.4. To prevent undue influence of donors

1.10.5. To prevent undue influence of partners

1.11. The CSO shall have a risk management policy

1.11.1. Including an analysis process with acceptability criteria

1.11.2. Including mitigation options and procedures

1.11.3. Including guidelines for contingency plans

2. Legitimacy

This guideline defines the authority of the CSO, i.e. whose voice is involved when the CSO speaks and acts.

2.1. The CSO shall be democratically managed

2.1.1. Democratic decision making

- By the board of directors
- May be extended to executive staff

2.2. The CSO shall conduct a stakeholder analysis

2.2.1. To identify beneficiaries

2.2.2. To identify contributors

- Including members, volunteers, donors, board members, staff, etc.

2.2.3. To identify the general support base

2.2.4. Including admirers, media, academics, governments, other CSOs, etc.

2.3. The CSO shall ensure meaningful participation of stakeholders, namely beneficiaries and contributors, in decision making

- Beneficiary input shall be actively sought, especially at program level, and from the initial stages of planning

3. Transparency

This guideline entails openness and access to information of the CSO, both internally and externally.

3.1. The CSO shall have a Right to Information (RTI) policy encompassing the guidelines in this section

3.2. The CSO's constitution and all adopted policies, procedures, processes, etc. shall be publicly available

3.2.1. Including annual reports, financial summaries, board meeting minutes, board-member profiles, interest registers, partners list, donors list, suppliers list, etc.

3.2.2. Including the document legally registering the CSO in the country of operation

3.2.3. Including any specific laws and/or bylaws followed by the CSO

3.2.4. The CSO shall disclose its bias if any

3.3. Any withheld information shall be stated explicitly with a valid reason

3.3.1. Reasons include proprietary, strategic advantage, security, etc.

3.3.2. Individual donors of nominal amounts shall remain anonymous

3.4. The CSO shall provide for independent, i.e. external, auditing of financial accounts

3.5. The CSO shall ensure easy access to information

3.5.1. Directly accessible via website

3.5.2. Emailed and/or mailed upon request

3.6. The CSO shall ensure active communication of information

3.6.1. Regular updates via web posts, newsletters, press releases, advertising campaigns, etc.

3.6.2. Including contact information

4. Accountability

This guideline outlines how the CSO can be held accountable by stakeholders, i.e. who shall take responsibility for the actions of the CSO.

4.1. The CSO shall have an accountability structure that includes the board members, executive directors, managers and staff

4.1.1. It shall define who is accountable to whom and for what

- Using objective criteria

4.1.2. There shall be a consensus among all parties as to their position in the structure and the respective responsibilities

4.2. The CSO shall have a feedback mechanism

4.2.1. That caters to both internal and external feedback

4.2.2. That has the capacity to handle questions, comments, suggestions, concerns, grievances, etc.

4.2.3. That contains a process for addressing the feedback, i.e. a response mechanism

- Including criteria for prioritising
- Including accountability panels or committees to take action
- Including a timeline for response

4.3. The CSO's constitution and all adopted policies, procedures, processes, etc. shall be properly and clearly documented

5. Integrity

This guideline defines general principles that build and improve a CSO's reputation.

5.1. The CSO shall have a code of ethics

- It shall include conflict of interest

5.2. The CSO shall have a whistle blower policy and mechanism

5.2.1. It shall encourage evidence based reporting

5.3. The CSO shall be politically independent and non-partisan

5.4. The CSO shall be law abiding

5.4.1. Both local and international laws

5.4.2. Including international agreements, covenants, conventions, protocols, etc.

5.4.3. The CSO may lobby for changes to laws, international agreements, etc.

5.4.4. The CSO shall be strictly non violent

5.4.5. The CSO may break a law only if doing so is directly related to its vision, mission, values and principles which are not in contrary with any accepted human rights standards and conventions.

5.5. The CSO shall be a champion of human rights

5.5.1. It shall abide by and advocate human rights laws

5.5.2. It shall preserve the culture, beliefs and dignity of the beneficiaries

5.5.3. It shall foster diversity

5.5.4. It shall not discriminate under any circumstances

5.6. The CSO shall comply with international accounting standards

5.7. The CSO shall strive for a diversified funding base

5.8. The CSO shall not compete with other CSOs

5.8.1. It shall seek a vision and mission independent from existing CSOs

5.8.2. It shall forge partnerships when and/or where an overlap may occur with other CSOs

5.9. The CSO shall place equal focus and importance on the means of delivery as well as the end results

5.10. The CSOs performance shall be based on actions and effect on society rather than purely financial

5.10.1. The CSO shall demonstrate value for money

5.10.2. The CSO shall be strictly non profit

- Surpluses must be reinvested in furthering its vision, mission, values and principles

5.11. The CSO shall use established best practices when adopting/developing its constitution, policies, procedures, processes, etc.

5.12. The CSO shall implement a quality management system

5.12.1. Including proper referencing procedures in research

5.12.2. Including an approval structure for reports and publications

5.12.3. Including mistake proofing mechanisms

6. Monitoring

This guideline defines principles for monitoring programs/projects to ensure alignment with goals in the interim, upon and beyond completion. Also included is compliance monitoring of the CSO against adopted values and principles.

6.1. The CSO shall conduct internal audits to ensure compliance with its constitution and all adopted policies, procedures, processes, etc.

- Including updating them as necessary

6.2. The CSO shall have a performance evaluation process for board, donors and suppliers

- Including feedback from superiors, subordinates and peers

6.3. The CSO shall conduct objective comparisons of the results of its work to stated targets and established standards

6.3.1. It shall focus on measures that make a difference rather than measures that are simply countable

- It shall prove effectiveness of output based on delivery, cost, quality, resource management and decision making
- It shall show compliance with policies, values, rules, standards, etc.

6.3.2. It shall regularly assess its progress against the adopted action plan

6.3.3. It shall conduct an assessment at the completion of a program/project

6.3.4. It shall conduct regular assessments of programs/projects post completion

6.4. The CSO shall obtain narratives and personal accounts of the impact of its work directly from the beneficiaries

6.5. The CSO shall incorporate monitoring activities into its strategic plans and program planning

- Including budget allocation for monitoring purposes

6.6. The CSO shall take action to correct any deviation or lapse from stated action plan, targets, standards, etc.

- It shall make appropriate adjustments to program execution, planning, budgeting, etc. with respect to the insight and knowledge gained from monitoring activities

7. Sustainability

This guideline is concerned with the long term impact of CSO work on the communities/ people they serve and the environment in which they function. Also included is the long term viability of the CSO itself.

7.1. The CSO shall be cognizant of the rights of all life on earth

- Including the environment

7.2. The ultimate goal of the CSO shall be to empower the beneficiaries to assume responsibility for their own development

7.2.1. By empowering people to think, speak and act for themselves

- Through information sharing
- Through skills development

7.2.2. By seeking the root cause of problems

7.3. The CSO shall implement strategic plans with 10 to 20 year timelines for programs

7.3.1. To ensure long term strategies instead of "quick fixes"

7.3.2. Short term action plans shall be used to aid implementation

7.4. The CSO shall make every effort to adapt to changing circumstances

- By incorporating flexibility and responsiveness in all its policies, procedures, processes, etc.

7.5. The CSO shall be committed to continuous improvement

7.5.1. Based on knowledge, experience and feedback gained

7.5.2. Including constitution and all other policies, procedure, processes, etc.

7.5.3. It shall create new policies, procedures, processes, etc. as necessary

7.6. The CSO shall endeavour to be self sustainable

- Through income generation

8. Human Resources

This guideline contains principles for hiring and managing human resources.

8.1. The CSO shall empower staff and managers for decision making

8.1.1. By empowering employees to think, speak and act for themselves

8.1.2. By clearly communicating expected results, available resources, etc. to all concerned parties in a timely manner

8.1.3. By providing easy access to all relevant information and resources

8.1.4. By providing easy access to senior managers and experts

8.1.5. By providing guidance and support at all stages of a program/project

8.2. The CSO shall monitor and assess the exercise of authority and responsibility by its staff and take appropriate action as necessary

8.2.1. By conducting regular performance assessments including superior, subordinate and peer feedback

8.3. The CSO shall provide proper training and development to its staff

8.3.1. By having a personalised development plan for each staff member

8.3.2. By providing orientation for new hires

8.4. The CSO shall have properly defined roles and responsibilities for each staff member

- Including a clear definition of scope of work and authority

8.5. The CSO shall provide for democratic participation of the staff members in its management

- Including meaningful participation in decision making

8.6. The CSO shall be an equal opportunity employer

- Strict non discriminatory hiring practices
- Hired individuals are aligned with the CSO's values and principles

8.7. The CSO shall have fair and merit based remuneration and promotions

8.8. The CSO shall fulfill all statutory obligations

- Including benefits, EPF, ETF, etc.

8.9. The CSO shall provide for the health and safety of the staff according to international regulations

8.10. The CSO shall nurture creativity and resourcefulness among its staff

Conclusion

Transparency International Sri Lanka hopes that the Golden Rules introduced in this chapter will lead to greater discussion on the subject. It was introduced in the spirit that NGOs and other civil society organizations will take up action to strengthen their governance in the context of shrinking space for civil societies to operate in the country. Such a set of Rules will improve the legitimacy of NGOs to operate in civil society as the accountability and transparency of NGOs are paramount in the eyes of the public. If no such principles are followed, the right of NGOs as watchdog and advocacy institutions to question the accountability and transparency standards of government will be jeopardized.

Reforms Needed for Streamlining Financial Control and Scrutiny by Parliament

Wijeyadasa Rajapakshe *

Democracy is a government of the people, by the people, for the people.[1]

All power tends to corrupt; absolute power corrupts absolutely.[2]

That the King can do no wrong, is a necessary and fundamental principle of the English Constitution.[3]

The State is made for man, not man for the State.[4]

Deterioration of every government begins with the decay of the principle on which it was founded. Forces of capitalist society, if left unchecked, tend to make the rich richer and the poor poorer.[5]

Democracy is considered the best form of government among all systems which prevail in the world. The Sri Lanka Constitution provides for a democratic form of government, including a system of checks and balances within democratic norms and principles.

Chapter VI of the Constitution stipulates the Directive Principles of State Policy and Fundamental Duties which include the full realisation of fundamental rights and freedom of all persons, protection and promotion of social justice, enhancement of the standard of living of the people, equitable distribution to all citizens of material resources, prevention of concentration of state resources in state agencies or in the hands of a privileged few, complete eradication of illiteracy and assurance to all persons of the right to universal and equal access to education at all levels, the raising of moral and cultural standards of the people and ensuring the full development of human personality.

On the other hand, Chapter III of the Constitution guarantees the freedom of thought, conscience, religion, speech, expression, peaceful assembly, trade union activities, engagement in a lawful profession, movement and residence within Sri Lanka etc. Article 12 (1) and (2) categorically guarantees equality before the law and the equal protection of the law to all citizens irrespective of their race, religion, language, caste, sex, political opinion, place of birth, etc.

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* President's Counsel

[1] Abraham Lincoln, 16th President of the United States of America
[2] Lord Acton,1887
[3] Sir William Blackstone
[4] Albert Einstein
[5] Jawaharlal Nehru

It is essential to note that the Constitution is structured to achieve the said democratic goals while recognising two basic and cardinal doctrines, namely the 'separation of powers' and the 'rule of law' which form the bedrock of democracy. Accordingly, the temple of democracy rests upon three distinctive pillars - the legislature, executive and judiciary as explained by conservative political scientists. Nowadays, freedom of expression (free media) is considered the fourth pillar of democracy and is an integral and essential part thereof. The subject of financial allocation, management, supervision and scrutiny of public funds are exclusively a matter for the legislature in terms of Chapter XVII of the Constitution. Article 148 specifically states that Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law, passed by Parliament. All government revenues shall be credited to one account called the Consolidated Fund in terms of Article 149. Article 150 expressly prohibits any withdrawal from the Consolidated Fund without the approval of Parliament.

The authority of the executive is prohibited from spending public funds unless Parliament has approved such sum to be spent for particular and specific projects or services.
The inveterate practice adopted by parliaments in well developed, democratic countries is to exercise their powers in relation to financial control in three stages, with the purpose of convenience, accuracy and transparency

i. allocation of funds for projects and services (recurrent and capital expenditure)
ii. constant supervision
iii. scrutiny

Those powers are vested in Parliament to prevent any kind of usurpation or overlapping of the powers of one organ over another. The doctrine of separation of powers is ingrained into our Constitution as a necessary instrument to maintain the check and balance system of governance. The ultimate goals expected to be achieved are:

i. Utilisation of the public funds in a more effective manner to increase the productivity.
ii. To ensure the accountability and transparency of expenditures from public funds.
iii. Prevention of corruption, abuse of power mismanagement, malpractices and inefficiencies.

Parliament made provisions in Standing Orders No. 125 and No. 126 to establish two oversight committees, the Public Accounts Committee (PAC) and the Committee on Public Enterprises (COPE). Each committee consists of 31 members from all political parties represented in Parliament. Chairmen are elected by the members themselves in such committees.

The concept of oversight committees was introduced by British Prime Minister Gladstone in the British Parliament in 1860 for the reason that it was not possible for the House to attend to financial expenditure of all government institutions. It also points to the fact that it is of great importance to scrutinise meticulously and prudently all governmental expenditures. This system has been in existence in most democratic countries such as the United Kingdom, the United States of America, Australia, New Zealand, India and Sri Lanka for more than four or five decades. In the United Kingdom and Australia, this oversight committee is known as the Public Accounts and Estimates Committee as the committees are empowered not only to scrutinise governmental expenditure but also to evaluate and advise on pre-budgetary estimates before the presentation of the Appropriation Bill in Parliament.

The Public Accounts Committee in the Sri Lankan Parliament could not cope with the workload as, in addition to the work of departments and local authorities, the government owned a large number of business enterprises. Therefore the work of the Public Accounts Committee was divided into two committees, the Public Accounts Committee (PAC) and Committee on Public Enterprises (COPE). The Public Accounts Committee is empowered to attend to the scrutiny of government departments and local authorities, while the financial scrutiny of all government corporations, boards, authorities, state banks and state-owned companies comes within the purview of the Committee on Public Enterprises.

The operation of these oversight committees was not successful at all until recent times as their members were interested in, and dedicated to securing their party political affiliations and loyalty by ignoring the prime duty to act and perform their obligation on an apolitical basis when they sit on oversight committees. However, the Committee on Public Enterprises, constituted in August 2006, did endeavour to perform its obligations by ignoring party political differences and affiliations which is the prime and foremost principle to be followed within such a committee. Its first report[6] was presented to the House on 12th of January 2007. It dealt with 26 out of around 400 government institutions which come

[6] Parliamentary Series No. 07 of the Sixth Parliament, Second Session

within its purview. The committee made startling revelations of corruption, abuse of powers, mismanagement, malpractices, and inefficiencies which had caused loss and damages to the state of approximately Rs. 150 billion. It observed a number of reasons which had led to the disastrous situation and severe deterioration in the state sector, which in turn had caused a serious fall of public confidence in the legislature and executive. The reasons given in the report are[7]:

1. Failures and omissions on the part of the relevant Secretaries to supervise and follow up the performance of the institutions which come within their purview.
2. Failures and omissions on the part of the relevant Ministries to keep close observations into the affairs of the institutions which come within the purview of their duties and obligations.
3. Lack of professionalism in the management of public enterprises.
4. Key senior management positions being held on acting, capacity or on contacts basis for a considerably long period.
5. Lack of quality management resulting in losses.
6. Very poor attention on profitability, liquidity and financial viability.
7. Lack of effective internal audit.
8. Poor Treasury management.
9. Poor supervision of the line ministries.
10. Idle and underutilized resources.
11. Absence of good governance practice.
12. Non-availability of updated Corporate Plans and Action Plans.
13. Delays in submitting of accounts and audit reports.
14. Uneconomical and imprudent transactions and mismanagement of funds.
15. Non-compliance with financial rules and regulations.
16. Non-adherence with the accepted tender procedures.
17. Political interference including appointments of incompetent political stooges.
18. Delays or Failures in responding to the Committee directives.
19. Payments of withholding taxes by the institutions which amounts to a payment of double taxes.

[7] ibid., pp 4-5

The failure to manage public funds with accountability and transparency by government would undoubtedly lead the country to a catastrophic situation and the following would be the result:

1. Set back of the economy
2. Increasing of inflation to alarming levels and adverse impact upon the national economy
3. Deterioration of financial discipline and efficiency
4. Increase of unemployment rate
5. Increase of foreign and local debts
6. Devaluation of currency
7. Adverse effect on the exchange rate
8. Adverse balance of trade
9. Failure of projects and services
10. Deflation of economic growth
11. Erosion of public confidence
12. Failure to uphold the rule of law

In examination of the Public Enterprises Reform Commission (PERC), the Committee on Public Enterprises (COPE) observed that there had been a series of corruption and abuse of power taking place in the privatisation of two state-owned profit-making institutions viz. the Sri Lanka Insurance Corporation and Lanka Marine Services Ltd. There are several public interest litigations filed by way of violations of fundamental rights in the Supreme Court based on the COPE report challenging the privatisation of 90% of the shares of the two said state-owned organisations. The Supreme Court delivered its judgment on July 21, 2008 in relation to the privatisation of 90% of Lanka Marine Services Ltd. Shares. It came to the following conclusions:[8]

1. Transfer of the said shares to John Keells Holdings Ltd. had been done without any transparency and accountability and also without following the proper procedure and guidelines. In that, then chairman of PERC, later who was the Secretary to the Ministry of Finance and the Treasury Dr. P. B. Jayasundara has abused his power and acted irresponsibly to provide an undue advantage to John Keells Holdings Ltd., causing severe damages to the State. Hence court directed Dr. Jayasundara to pay a compensation of Rs. 500,000/- to the State which resulted his resignation from his office of the Secretary to the Ministry of Finance and the Treasury.

[8] Act number 07 of 2006 which amended the earlier Companies Act No. 17 of 1982.

2. The conveyance of 8.5 acres of land within the port premises of Colombo by way of a Crown grant had been made without any consideration and hence declared that the transfer of the said land was null and void. John Keells Holdings Ltd., was ordered to deliver the possession thereof to the Sri Lanka Ports Authority within one month from the date of the judgement.

3. The tax exemption granted to the said company John Keells Holdings Ltd., has been in violation of the revenue laws of the land and therefore the Supreme Court directed the Commissioner-General of Inland Revenue to recover all dues by way of taxes which come approximately about Rs.1.5 billion.

COPE also had made its observation about the privatisation of 90% of the shares of the Sri Lanka Insurance Corporation which involved a series of corruption due to the following reasons:[9]

i. A Steering Committee to handle the sale of 90% of shares appointed by the Minister in charge of the Public Enterprises Reform Commission was without a Cabinet approval.
ii. Steering Committee has appointed the audit firm called Price, Waterhouse and Coopers, Indonesia in collaboration with Sri Lanka branch as the consultant without a Cabinet approval and paid an excessive and unreasonable fee of Rs. 172.8 million.
iii. Disregarding a Cabinet decision, Secretary to the Treasury had authorised the Deputy Secretary to the Treasury to appoint a tender board instead of a Cabinet Appointed Tender Board by making himself the Chairman thereof.
iv. The recommendation of the Technical Evaluation Committee and purported Tender Board had been made on the same day which reflects a clear involvement of corruption and abuse of power.
v. Although the Evaluation Committee had recommended the sales of shares to a consortium comprising of Distilleries Company Ltd, Aitken Spence Insurance (Pvt) Ltd. and Technical Parties ING Institutional and Government Advisory Service BV (Holland)) and sale agreement had been signed with Milford (Pvt) Ltd, an Off-Shore company, Greenfield Pacific EM Holdings (Pvt) Ltd., incorporated in Gibraltar which was not in existence as at the date of the Cabinet approval.

[9] Parliamentary Series No. 07 of the Sixth Parliament, Second Session, pp. 24-28

vi. The sale had taken place without audited accounts therefore it was not possible to ascertain the asset value of the institution which shows obvious surreptitious and intentional conduct of the parties involved.

vii. Ernst and Young Auditors and Price Waterhouse Coopers consultants were directly involved in the said fraud and corruption.

viii. A senior partner of Price Waterhouse Coopers Mr. Deva Rodrigo had been a member of the Steering Committee which selected Price Waterhouse & Coopers as consultants for the Government and thereby established conflictive interests in adverse to the interests of the State.

ix. A Director of PERC and the Secretary of the Steering Committee named M/s Anila de Soysa has joined Price Waterhouse & Coopers as a partner in the same month which the transaction took place and thereby established an abuse of power for a private gain and causing a loss to the State.

x. Then Chairman of PERC Dr. P. B. Jayasundara has been a Senior Adviser to Ernst and Young who were the auditors of Sri Lanka Insurance Corporation Ltd. and thereby established conflictive interests and corruption as well.

xi. It is also observed that the said transaction involves criminal elements whereas prosecution could be instituted under the provisions of Public Property Act and bribery and corruption laws.

The Public Interest Litigation filed on that is still pending in the Supreme Court.
It is also significant that under the heading of Central Bank of Sri Lanka, the Committee reported as follows:[10]

"Examined on 19.02.2006 and 01.12.2006

2. It was pointed out that the CBSL has not taken adequate steps against the finance companies functioning in the illegal manner without obtaining the proper approval from the Monetary Board. Frequent publication of notices in newspapers indicating the illegal functioning of finance companies is a most unhealthy practice which could cause an immense effect adversely to the economy of the country. **The Governor undertook to take the remedial measures within the period of two months.** [emphasis added]

3. It was pointed that the CBSL should take positive legal action with regard to the non functioning finance companies which amounts to about 80% of the total number of the registered companies.

[10] ibid., pp.5-6

4. The CBSL has failed, neglected and acted in a lethargic manner in relation to the recovery of a sum of Rs. 7,000 million which had been granted to bankrupt financial companies. The list of such companies is annexed to marked as "A".

.....

6. On being pointed out by this Committee, **Governor undertook to appoint a committee to investigate the affairs of the pyramid schemes which had affected the foreign exchange of the country in an adverse manner and to report to the COPE within two months**. The Governor expressed his concern over his name being falsely and unfairly connected to the said issue in the media." [emphasis added]

The Central Bank and the Monetary Board had ignored the warnings and directives of the COPE and Parliament for 22 months, the result being that several thousand people have been trapped by illegally operated finance institutions. It is believed that one person called Sakvithi Ranasinghe has defrauded several thousand people, the amount involved running into approximately around Rs. 9 billion. (The exact figure is not yet ascertained). It is a case in point that whereas even the highest institution responsible for the monitoring of financial institutions in the country has failed in its duties and obligations and thereby has caused a severe and adverse impact on the economy and the confidence in both the public and private sectors.

The said report also revealed a series of corruption involved in institutions such as the Telecommunication Regulatory Commission (TRC), Ceylon Electricity Board (CEB), Bank of Ceylon (BOC), Ceylon Petroleum Corporation, Board of Investments (BOI), Development Lottery Board, National Lottery Board, Policy Research Institute, Land Reform Commission (LRC), Samurdhi Authority, Sri Lanka Ports Authority and Urban Development Authority.

Similarly, the Public Accounts Committee also revealed in early 2008 that there was a case of corruption involving almost Rs.3.7 billion in the Value Added Tax (VAT) Division of the Department of Inland Revenue.

The overall performance of the state sector as far as financial control is concerned has proved to be replete with corruption, abuse of power, ineffectiveness, inefficiencies and malpractices. On the other hand, it is a poor reflection on the legislature to see its scant regard towards its own responsibilities and failure to uphold its constitutional duties and obligations. Taking into consideration all kinds of lapses and irregularities, it is appropriate to resort to following legal reforms to prevent corruption in relation to public funds which

in fact means the taxpayers money in the western domain. Corruption involves political corruption, the dysfunction of the political system, bribery, cronyism, nepotism, patronage, graft, embezzlement etc. “Injustice anywhere is a threat to justice everywhere.” Corruption is defined as an abuse of power by a public official for private gains. The reason why Sri Lanka was listed in 25th place in the Failed States Index is mainly due to corruption in both the public and private sectors.

It would be important to suggest the following reforms in our legal system, in keeping with the standards and policies adopted by countries which have been successful in achieving the ultimate objective of democracy through mechanisms of transparency and accountability.

1. Parliament shall take over its prime duty of allocation of funds for projects and services and preparation of the annual budget without allowing the executive or bureaucrats to arrogate to themselves the financial control which is exclusively vested with the legislature.

2. Parliament shall adopt a procedure to commence pre-budgetary debates enabling it to adjust or alter budgetary provisions after ascertaining views of the Members of the House and identifying the priorities. It also would help mitigate losses and wastages.

3. There shall be a Budgetary Secretariat established in the Parliament under the guidance of the Minister in Charge of the Subject of Finance and shall be equipped with experts in different fields such as economics, auditing, accountancy, law, engineering, valuation etc, who is directly responsible to the Parliament. They shall act independently and maintain a data bank to be updated periodically to which all Members as well as the public shall have access. They also shall entertain views and critics from the public.

4. The Minister of Finance shall be a Member of Parliament who is available any time to answer questions posed by the Members. When it is held by the Executive President who holds unlimited powers for appointment and removal of ministers and deputies, accountability and transparency have never been questioned. Since 1994, apart from two years, this portfolio has throughout been held by the Executive President and thereby Sri Lankan experience has proved that checks and balances is no more a principle practically adhered to in our system of government.

5. Legislature shall make a law requiring the government to obtain prior approval from Parliament before taking any loan which could create any liability over the Treasury.

6. Oversight committees (PAC and COPE) shall consist of members who do not hold any cabinet or non-cabinet or deputy ministerial portfolios. At present the majority of members are either ministers or deputy ministers. The purpose of oversight committees is to scrutinise the performance of governmental institutions which come within the preview of a particular ministry. Therefore the whole purpose is lost since ministers themselves sit as watchdogs on their own conduct.

7. Oversight committees shall have power vested in them to evaluate and make recommendations on budgetary allocation before the Appropriation Bill is presented.

8. Committees shall have power to summon ministers in appropriate matters and call for explanation about any alleged corruption, mismanagement, malpractices, inefficiency or abuse of powers.

9. Such committees shall be chaired by senior members of the opposition with high integrity and reputation.

10. Committees shall have the power to conduct examinations open to the media. But they may make examinations in camera where there are sensitive issues involved, or publicity of such matters would detrimentally affect the security or economy of the country.

11. Membership shall be reduced (to about 9 or 11 members) and it shall be ensured that they would attend to their duties actively and diligently.

12. Committee members shall act with an apolitical approach.

13. Committees shall have the power to examine and to scrutinise privatised organisations such as Sri Lankan Air Lines, (prior to March 2008) Sri Lanka Telecom, so long as the Treasury holds a substantial number of shares.

14. Submission of audit reports annually and bi-annually shall be made mandatory and such reports shall be presented to Parliament within 3 months after the end of the period.

15. Members must be encouraged to submit no-confidence motions as a primary duty on their part against ministers or deputy ministers who are responsible for any corruption, mismanagement, malpractices, abuse of powers etc, and encourage them to support such resolutions irrespective of political party affiliation.

16. The Committees shall also have a Secretariat and shall work with close links to the Parliamentary Budgetary Office (proposed one).

17. The examination of every governmental institution shall be made at least once in six months.

18. An Independent Audit Commission shall be established and it shall be directly responsible to the Parliament. A draft bill has already received the sanction of the Cabinet, but so far has not been presented to Parliament.

19. The 'right to information' shall be recognised statutorily as it was done in India. The draft bill was ready some time ago, but not presented to Parliament. No democracy could be complete without the right to information in relation to matters pertaining to public affairs. In that context the freedom of expression guaranteed by the Constitution is not meaningful unless the people have access to information. Hence this principle demands the removal of obstructions to receive information except in sensitive matters relating to public security and the economy.

Corruption in the state sector has eaten into the core of the social fabric of our society. Decadence in financial control and the deleterious effect of it on the economy is mainly due to the abdication of the powers of Parliament in particular the arrogation of legislative powers of Parliament by the executive and bureaucrats. Overall, there was, and there is no political will to establish and implement a system of accountability and transparency. As a result, corruption has spread from the public into the private sector too by eliminating all democratic values and a democratic ethos.

It is therefore important and urgent to draw the attention of every citizen to his right to receive all benefits guaranteed by the Constitution as well as to his duty and obligation to react and participate diligently in the upholding of the rule of law and against the menace of corruption, abuse of powers, mismanagement, malpractices and inefficiency. A submerged or anesthetized civil society will always pave the way for the creation of a dictatorship in which truth will be the first victim and the state coffer the second casualty. However much the lids are off the scandalous growth in corruption at the hands of our politicians and bureaucrats and at the cost of tax payers' money, the continued emergence of corrupt deals both in public and private sectors has not been arrested or mitigated. Squabbling among political parties remains interminable in our body politic which has been rotten to the core since independence, thus creating multi-faceted problems which have led to degeneration in every sphere and to the establishment of corruption-ridden state institutions. The sharp decline in public confidence demands a quick revamping of public sector institutions to douse the ire and frustration of the general public. Civil society is looking at the situation with great trepidation and with the distressing feeling that the **high and the mighty are always above the law**, thereby throttling prospects for equity, equality, equanimity and equilibrium. What has to be stressed is that **might is not the right, but the right is the might.** This is not the time to twiddle our thumbs and look askance.

විගණකාධිපති වාර්තාවෙන් හෙළිවන 'රාජ්‍ය ගණන් දීමේ වගකීම්' පැහැර හැරීමේ බේදන්තය

ආනන්ද ධර්මප්‍රිය ජයසේකර

"රාජ්‍ය ගණන් දීමේ වගකීමේ" ඉතිහාසය මෙන්ම එම ගණන්දීම් පිළිබඳව අවදියෙන් සිටීමින් රාජ්‍ය විගණනය නිසි ආකාරයෙන් සිදුවී ඇත්දැයි සොයාබැලීමට මහජනතාවට හිමිවී ඇති අයිතියේ ඉතිහාසයද 10 වන ශත වර්ෂය තරම් ඈතට දිවෙයි

IV වන මහින්ද රජු විසින් මිහින්තලයේ කරවා ඇති සෙල් ලිපියක සඳහන් වන පරිදි "එකතුවන ආඥාමින් මහාපාය පවත්වාගෙන යාම සහ ප්‍රතිසංස්කරණ කටයුතු සඳහා නීතිපතා දරුනු ලබන වියදම් ලේඛණගත කළ යුතු අතර අදාළ ව්‍යාපාර ස්ථානවල සිටින පුද්ගලයින්ගේද එකඟතාවය ඇතිව ඉහත සඳහන් ලේඛණවල ඇතුලත් තොරතුරු පිරික්සා, නිරවද්‍ය ලෙස සැකසූ ගිණුම් ප්‍රකාශ අඟුළු සහිත කරඬුවල තැම්පත් කළ යුතුයි මෙසේ තැම්පත් කළ ගිණුම් පත්‍රිකා **මාසිකව මහජන ප්‍රසිද්ධියට ලක්කර** ඒවා පදනම් කරගෙන තවත් (මාසික) ගිණුම් ප්‍රකාශයක් සකස්කළ යුතු අතර වර්ෂයක් තුළ පිළියෙල කළ ගිණුම් ප්‍රකාශ 12 පදනම් කරගෙන වසර අවසානයේ ශේෂ පත්‍රයක් සකසා එය **මහ සඟරුවන ඉදිරිපිටදී ප්‍රසිද්ධියේ කියවිය යුතුයි** මෙම නියමයන් කඩකරන සියලුම සේවකයින්ගේ දැඩි දඩුවම්වලට යටත් කළ යුතු අතර ඔවුන් සේවයෙන්ද නෙරපිය යුතුයි" [1]

බ්‍රිතාන්‍ය පාලන සමයේ ආරම්භ වී[2] (1799 දී) වර්තමානය දක්වාම ක්‍රියාත්මකව පවතින ශ්‍රී ලංකාවේ විගණකාධිපති දෙපාර්තමේන්තුව එද-මෙද තුර රාජ්‍ය විගණන ක්‍රියාවලියේ අඛණ්ඩව නිරතව සිටියි

විගණකාධිපතිවයාගේ අධිකාරී බලය

ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජ ව්‍යවස්ථාවේ 154 වගන්තිය මගින් විගණන කටයුතු ඉටුකිරීම සඳහා විගණකාධිපති වරයාට හිමිවන අධිකාරී බලය මෙසේ දක්වා තිබේ.

"විගණකාධිපතිවරයා විසින් ආණ්ඩුවේ සියලුම දෙපාර්තමේන්තුවල ගිණුම්ද, අමාත්‍ය මණ්ඩල කාර්යාලයේ අධිකරණ සේවා කොමිෂන් සභා කාර්යාලයේ රාජ්‍ය සේවා කොමිෂන් සභා කාර්යාලයේ පරිපාලන කටයුතු පිළිබඳ පාර්ලිමේන්තු කොමසාරිස්වරයාගේ කාර්යාලයේ පාර්ලිමේන්තු මහ ලේකම් කාර්යාලයේ සහ මැතිවරණ කොමිෂන් සභා කාර්යාලයේ පළාත් පාලන ආයතන කාර්යාලවල සහ රාජ්‍ය සංස්ථා කාර්යාලවල ගිණුම් ද යම්කිසි ලිඛිත නීතියක් යටතේ ආණ්ඩුවට පැවැරී ඇති වෙළඳ ව්‍යාපාරවල හෝ වෙනත් ව්‍යාපාරවල ගිණුම් ද විගණනය කළ යුත්තේයි"

ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් ලබාදී ඇති මෙම බලතල යටතේ මහජනතාව වෙනුවෙන් ඉටුකළ යුතු වගකීම් හා කාර්යයන් රැසක් විගණකාධිපතිවරයාට පැවැරෙයි. ඒ අතර විගණනයට අදාළ සියලු පොත්පත් වාර්තා සහ වෙනත් ලියකියවිලි ලබා ගැනීමටද ගබඩා හා වෙනත් දේපලවලට පිවිසීමටද අවශ්‍ය වියහැකි තොරතුරු ලබාගැනීමටද කරුණු පැහැදිලි කරවා ගැනීමටද[3] විගණකාධිපති වරයාට පුළුල්

[1] 10 වන ශත වර්ෂයේදී මහින්ද රජු විසින් මිහින්තලේදී කරවන ලද සෙල් ලිපියකින් උපුටාගත් කොටසකි ("එපිග්‍රාෆියා සිලනිකා" ග්‍රන්ථයේ පළමුවන වෙළුමේ 75 සිට ඉදිරි පිටු) "විගණකාධිපති දෙපාර්තමේන්තුව විසින් මෙහෙයවන ශ්‍රී ලංකාවේ රාජ්‍ය අංශයේ විගණනය" පොත් පිංච ආශ්‍රයෙනි

[2] ඉහත ශ්‍රී ලංකාවේ රාජ්‍ය අංශයේ විගණනය' පොත් පිංච පිටුව 4

[3] 1978 ජනරජ ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 154(5) වගන්තිය

බලයක් හිමිවෙයි. ඔහු කිසිදු අමාත්‍යවරයෙකුගේ හෝ රජයේ නිලධාරියෙකුගේ අධීක්ෂණයට යටත් නොවන අතර ඔහුට මහජනතාව වෙනුවෙන්, ස්වාධීන ලෙස විධායකය විසින් රාජ්‍ය සම්පත් සකසුරුවම්ව, කාර්යක්ෂමව හා ඵලදායී ලෙස ප්‍රයෝජනයට ගන්නේද? එනම් මහජන සුභසිද්ධිය වර්ධනය කිරීමේලා අපේක්ෂිත අරමුණු වෙත ළඟාවීමට සම්පත් උපරිම ලෙස යොදු ගන්නේද යන්න ගැන උපරිම මට්ටමින් විමසා බලා වාර්තා කිරීමේ පූර්ණ බලතල හිමිවී තිබේ

"විගණකාධිපතිවරයා විසින් තමන්ට අයත් කාර්යයන් හා ඊට අදළ වගකීම් ඉටුකිරීම පිලිබඳ වාර්තා සකස්කර, එක් එක් මුදල් ව ර්ෂය අවසාන වීමෙන් පසු මාස 10 ක් ඇතුළත (හෝ ඔහු අවශ්‍ය යැයි සලකන කවර හෝ අවස්ථාවක) පාර්ලිමේන්තුව වෙත ඉදිරිපත් කළයුතු[4] අතර පාර්ලිමේන්තුව වෙනුවෙන් එම වාර්තා සමාලෝචනය කිරීමේ වගකීම ආණ්ඩුපක්ෂ හා විපක්ෂ පාර්ලිමේන්තු මන්ත්‍රීවරුන්ගෙන් සමන්විත රාජ්‍ය ගිණුම් කාරක සභාව (PAC) හා පොදු ව්‍යාපාර පිළිබඳ කාරක සභාව (COPE) යනුවෙන් හැඳින්වෙන විශේෂ පාර්ලිමේන්තු කමිටු දෙක වෙත පැවැරෙයි වාර්ෂික වාර්තාවට අතිරේකව විගණකාධිපතිවරයා විසින් (අ) අමාත්‍යංශ හා දෙපාර්තමේන්තු, (ආ) රාජ්‍ය සංස්ථා (ඇ) අරමුදල් (ඈ) විදේශ ආධාර ව්‍යාපෘතිය (ඉ) පළාත් සභා (ඊ) පළාත් පාලන ආයතන යන විවිධ ප්‍රභේද යටතේ විස්තරාත්මක විගණන වාර්තා පාර්ලිමේන්තුව වෙත ඉදිරිපත් කරනු ලැබේ

රාජ්‍ය පාලන ක්‍රියාවලිය කෙරෙහි පොදු ජනතාවගේ විශ්වාසය පවත්වාගෙන යාම හා සමස්ථ පද්ධතිය පිළිබඳ මහජන විශ්වාසය ඇතිකිරීමේ මූලික අරමුණින් ක්‍රියාත්මකවන රාජ්‍ය විගණනයෙන් මහජන අපේක්ෂා කොතෙක් දුරට ඉටුවේද? ඒ පිළිබඳ තොරතුරු දැනගැනීමට එම සම්පත්වල සැබෑ හිමිකරුවන් වන මහජනතාවට කවර ප්‍රමාණයකට ඉඩ ප්‍රස්ථා විවරවී ඇත්ද? මහජනතාව වෙනුවෙන් විගණකාධිපතිවරයා සිය වාර්තා මඟින් හෙළිදරව් කර ඇති කරුණු මොනවාද? එම හෙළිදරව් කිරීම් වලින් පසු ඒ සම්බන්ධයෙන් ව්‍යවස්ථාදායකය හා විධායකය අනුගමනය කර ඇති ක්‍රියාමාර්ග මොනවාද?

විගණන විමසුම්වලින් 7,190 කට පිළිතුරු නෑ

2006 වර්ෂය සඳහා වන විගණකාධිපතිවරයාගේ වාර්ෂික වාර්තාවේ 12 වැනි පිටුවේ යහපාලනයක් ගැන උනන්දුවක් දක්වන පුරවැසියෙකු තුළ දැඩි තිගැස්මක් ඇතිකරවන සුවිශේෂී සටහනක් හමුවෙයි

"මාගේ දෙපාර්තමේන්තුව 2005-ජනවාරි සිට 2007-ජූනි දක්වා නිකුත්කර ඇති 26,116 ක් වූ විගණන විමසුම්වලින් විමසුම් 7,190 කට අදාළ විගණන ආයතනවලින් පිළිතුරු සපයා නොතිබිණි මෙයින් ගණන්දීමි නිලධාරීන් විගණනයට අනුකූලනා නොදැක්වීම මෙන්ම ඔවුන්ගේ වගකීම් විරහිත බව සහ විගණනයට සහයෝගයක් නොදැක්වීම පෙන්නුම් කෙරේ

ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් පැවැරී ඇති විගණකාධිපතිගේ කාර්යභාරය ඉටුකිරීමේදී මෙමගින් එම විගණන විෂය පථය අනියම් ලෙස සීමාකිරීමක් සිදුවන බවද උපකල්පනය කළ හැකියි"

[4] 1978 ජනරජ ව්‍යවස්ථාවේ 154(6) වගන්තිය

"විගණිත ආයතනයන් විගණනයට දක්වන අසතුටුදායක ප්‍රතිචාර පිළිබඳව සඳහන් කරමින් විගණකාධිපතිවරයා මේ කියන්නේ තමන්ට ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් අධිකාරී බලයක් ලබාදී ඇතැත්ද එම බලය නොසලකන අමාත්‍යාංශ ලේකම්වරු (ප්‍රධාන ගණන්දීම් නිලධාරීන්), දෙපාර්තමේන්තු ප්‍රධානීන් (ගණන්දීමේ නිලධාරී), රාජ්‍ය සංස්ථාවල සභාපතිවරු (ගණන්දීමේ නිලධාරී), පළාත් පාලන ආයතනවල ප්‍රධානීන් (ගණන්දීමේ නිලධාරී) පිරිසක් සිටින නිසා මහජනතාව වෙනුවෙන් තමා විසින් ඉටුකළයුතු වගකීම නිසිලෙස ඉටුකිරීමට නොහැකිවී ඇති බවද?

විගණකාධිපති වාර්තාවට අනුව 2006 වර්ෂයේ රාජ්‍ය අංශය සහ රාජ්‍ය අංශයේ ගණන්දීමේ වගකීමට අයත්වූ ආයතනික රාමුවට ඇතුළත් විවිධ රාජ්‍ය යාන්ත්‍රණ සංඛ්‍යාව 1036 කි.[5] එයින් 61 ක් රජයේ අමාත්‍යාංශ වන අතර එම යාන්ත්‍රණයට අයත් දෙපාර්තමේන්තු සංඛ්‍යාව 85 කි දිස්ත්‍රික් ලේකම් කාර්යාල 25 කි කිසියම් අමාත්‍යාංශයක් යටතට නොවැටෙන තවත් ආයතන 21 කි විවිධ රාජ්‍ය සංස්ථා 193 කි ව්‍යවස්ථාපිත අරමුදල් 58 කි. තවද, පළාත් සභා 9 ක්, මහනගර සභා 18 ක්, නගර සභා 42 ක් සහ ප්‍රාදේශීය සභා 270 ක්, සමාගම් පනතේ විධිවිධාන ප්‍රකාර සංස්ථාපිත සහ පාලනය වන, රජයට හෝ රාජ්‍ය සංස්ථාවන්ට විවිධ ප්‍රතිශතයන්ගෙන් කොටස් ප්‍රාග්ධනයට හිමිකම් ඇති සීමිත සමාගම් 98 ක්ද ප්‍රාදේශීය සංවර්ධන බැංකු 6 ක්, රාජ්‍ය ආයතන විසින් ක්‍රියාත්මක කරනු ලබන විදේශාධාර ව්‍යාපෘති 150 ක් ආදී වශයෙන් වූ පුළුල් පරාසයක් දක්වා එම යාන්ත්‍රණය විහිදී තිබේ.

එහෙත් යහපාලනය ගැන උනන්දුවක් දක්වන පුරවැසියෙකුට ඉතාම වැදගත් කාරණයක් වන, විගණිත ආයතන පිළිතුරු සැපයීමේ වගකීම පැහැරහැර ඇති විගණන විමසුම් 7,190 අයත්වන්නේ ඉහත යාන්ත්‍රණ 1036 අතරින් කවර අමාත්‍යාංශ, දෙපාර්තමේන්තු හා ආයතන වලටද? එම විගණන විමසුම් පත්‍රිකා මගින් විගණකාධිපතිවරයා පෙන්වා දී ඇති අඩුපාඩු මොනවාද? යන කරුණු විගණකාධිපතිවරයා සිය වාර්තාවේ විස්තර නොකරයි එසේම, පිළිතුරු ලබා දී නොමැති විමසුම් වලට අදාල මූල්‍ය වංචාවන්හි අගය කොතෙක්දැයි විගණකාධිපතිවරයා හෙළිදරව් නොකරයි.

ඒ සම්බන්ධ වැඩිදුර තොරතුරක් හෙළි කරගැනීම සඳහා සමස්ථ වාර්තාවම කියවා බැලූ විට එම විගණන විමසුම් 7190 අතරින් 3451 ක් පිළිබඳ ඉඟි හමුවන නමුත් පිළිතුරු දීම පැහැර හැර ඇති ඉතිරි විමසුම් 3739 තවදුරටත් උභතෝකෝටිකයක් බවට පත්වේ.

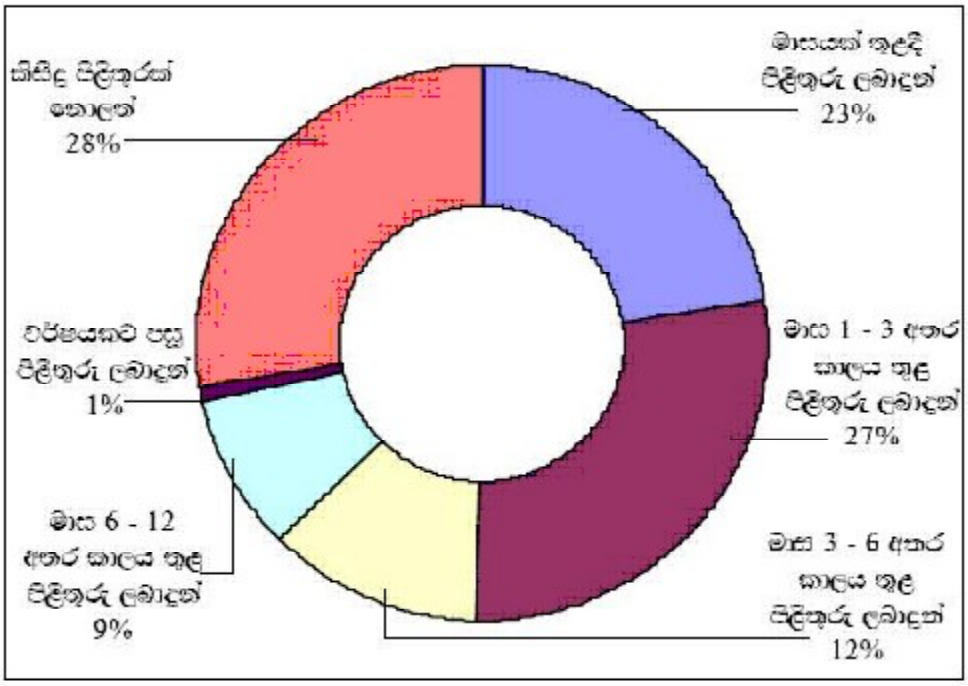
විගණන වාර්තාවේ "පළාත් සභාවල ගිණුම්කරණ සහ වාර්තාකරණ පද්ධතිය සම්බන්ධයෙන් විගණනයේදී නිරීක්ෂණය වූ පොදු අඩුපාඩු"[6] පිළිබඳ සටහන අනුව ඉහත විමසුම 7190 අතරින් 1,414 ක් පළාත් සභාවලට අයත් ඒවා බව හෙළිවෙතත් ඒ පළාත් සභා මොනවාද? අක්‍රමිකතා හෝ වංචා සිදුවී ඇත්තේ කවර ක්ෂේත්‍ර වලද? යන්න ප්‍රශ්නයක් ලෙස තවදුරටත් ඉතිරිවෙයි. එසේම ප්‍රාදේශීය බලමණ්ඩල සම්බන්ධයෙන් වූ විගණන විමසුම් 1984 කට පිළිතුරු සපයා නොතිබුණු බව "විගණනයේදී නිරීක්ෂණය වූ පොදු අඩුපාඩු" යටතේ විගණකාධිපතිවරයා පෙන්වා දී තිබේ.[7] "පොහොර ආධාර යෝජනා ක්‍රමය

[5] විගණකාධිපතිවරයාගේ වාර්ෂික වාර්තාව - 2006, පිටුව 3,
[6] විගණකාධිපතිවරයාගේ වාර්ෂික වාර්තාව - 2006, පිටුව 69
[7] විගණකාධිපතිවරයාගේ වාර්ෂික වාර්තාව - 2006, පිටුව 73

යටතේ ගොවිජන සේවා මධ්‍යස්ථාන මගින් ගොවීන්ට පොහොර බෙදා හැරීම" යන ශීර්ෂ යටතේ විගණකාධිපතිවරයාගේ නිරීක්ෂණ සඳහන් කරමින් අනුරාධපුර, පොළොන්නරුව, අම්පාර, හම්බන්තොට හා බදුල්ල යන දිස්ත්‍රික්ක 5 ආවරණය වන පරිදි සිදු කරන ලද විශේෂ විගණනයේදී හෙළි වී ඇති **ප්‍රබල විගණන සොයාගැනීම්** අනුව කෘෂිකර්ම සංවර්ධන අමාත්‍යාංශයට හා ගොවිජන සංවර්ධන දෙපාර්තමේන්තුවට 2007 ජුනි සිට ඔක්තෝම්බර් දක්වා කාලය තුළ විමසුම් 53 ක් යවා ඇතත් කිසිදු විමසුමකට පිළිතුරු නොලැබුණු බව විගණකාධිපතිවරයා පෙන්වා දී තිබේ.[8]

එසේම, එලෙස **පිළිතුර ලබා නොදීම නිසා මූල්‍ය වංචාවන්හි මූල්‍යමය අගය පිළිබඳ අවසාන නිගමනයකට ඒමට නොහැකි වී තිබෙන බවද,** විගණකාධිපතිවරයා පෙන්වා දෙයි. එය ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් විගණකාධිපතිවරයාට හිමිකර දී ඇති අධිකාරී බලය නොතකන (රටේ ආණ්ඩුක්‍රම ව්‍යවස්ථාව නොතකා හරින) නිලධාරී පිරිසක් ගැන ව්‍යවස්ථාදායකය හා විධායකය වෙත විගණකාධිපතිවරයා විසින් කරන ප්‍රබල දැනුම් දීමක් ලෙස සැලකිය හැකිය.

2006 වර්ෂය සඳහා පිළිතුරු ලැබී නොමැති 7190 ට අමතරව, විගණනය කෙරෙහි විගණිත ආයතන දක්වන ප්‍රතිචාර පිළිබඳව අදහසක් ඇතිකර ගැනීම සඳහා සමස්ථ විමසුම් ප්‍රමාණයට (26,116 ට) ප්‍රතිචාර දැක්වීම් ගැන ජනතාව වෙත පුළුල් චිත්‍රයක් ලබාදීමට විගණකාධිපතිවරයා උත්සාහ දරා තිබේ.



සටහන : විගණිත ආයතන, විගණන විමසුම් සඳහා පිළිතුරු ලබාදීමේ ප්‍රගතිය - 2005 ජනවාරි 01 සිට 2007-ජූනි-30 දක්වා

[8] විගණකාධිපති වාර්තාව - 2006, පිටුව 56

සාමාන්‍ය තත්ත්වය යටතේ විගණන විමසුම් වලට ප්‍රතිචාර දැක්වීම සිදුවිය යුත්තේ කවර කාල පරාසයක් තුළ ද? නිශ්චිත කාල වකවානුවක් තුළ ප්‍රතිචාර දැක්වීම පැහැර හැරීමෙන් විගණනයට සිදුවන බලපෑම් කවරේද යන්න පිළිබඳව ද අවධානය යොමුකිරීම වැදගත්ය.

විගණන විමසුමකට ප්‍රතිචාර දැක්වීමේ වඩාත් පිළිගතහැකි තත්ත්වය වනුයේ විගණන විමසුමෙන් මසක් ඇතුළත ඊට ප්‍රතිචාර දැක්වීමයි රාජ්‍ය සංස්ථා / ව්‍යවස්ථාපිත අරමුදල් වල සහතික කරන ලද වාර්ෂික මූල්‍ය ප්‍රකාශන ගිණුම් වර්ෂය අවසන් වී දින 60 ක් ඇතුළත විගණනය සඳහා ඉදිරිපත් කළ යුතු බවද, ඒ මත වූ විගණන වාර්තා දින 30 ක් ඇතුළත නිකුත් කළ යුතු බවදෘ ඉන්පසුව ප්‍රධාන ගණන් දීමේ නිලධාරී විසින් වාර්තාකරණ ගිණුම් වර්ෂය අවසන් වී මාස 5 ක් ඇතුළත සංස්ථාවේ වාර්ෂික වාර්තාව පාර්ලිමේන්තුවට ඉදිරිපත් කළ යුතු බවටද 2002 වර්ෂයේදී කැබිනට් මණ්ඩලය විසින් තීරණයක් ගෙන තිබූ අතර, රාජ්‍ය මුදල් චක්‍රලේඛ අංක PF/PE/21 හා 2002 මැයි 24 දිනැති චක්‍ර ලේඛයෙන් භාණ්ඩාගාරයේ ලේකම් විසින් ඒ පිළිබඳ නියෝගයක් නිකුත් කර තිබූ බව විගණකාධිපතිවරයා පෙන්වා දී තිබේ°

සාමාන්‍යයෙන් විගණකාධිපති වරයා ඔහුගේ නිරීක්ෂණ පිළිබඳව අවසන් නිගමනයකට එළඹෙනුයේ විගණිත ආයතනයන්ට අවශ්‍ය පැහැදිළි කිරීම් ඉදිරිපත් කිරීමට ලබාදිය හැකි උපරිම අවස්ථා ලබාදීමෙන් අනතුරුවය. ඒ අනුව ඉහත වගුවේ මාසයක් තුළදී පිළිතුරු ලබා දී ඇත්තේ සමස්ථ විගණන විමසුම් ප්‍රමාණයෙන් 23% ක් පමණක් බව පෙනේ විගණන විමසුම් වලින් 77% ක්ම අයත් වී ඇත්තේ නිශ්චිත කාලය තුළ ප්‍රතිචාර දැක්වීම පැහැර හැර ඇති ගොඩටයි විශේෂයෙන්ම, විගණන විමසුමෙන් මාස 3 ක කාලයක් තුළ හෝ පිළිතුරක් සැපයීමට උනන්දු වී ඇත්තේ 50% ක් පමණි.

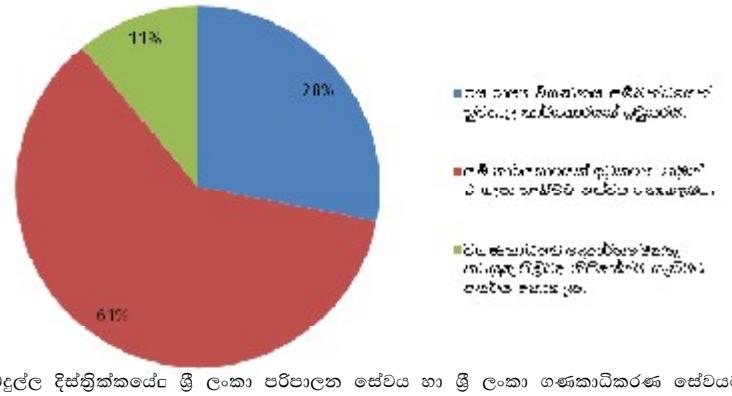
විගණකාධිපති දෙපාර්තමේන්තුවේ කටයුතු ශ්‍රී ලංකා පරිපාලන සේවා/ගණකාධිකරණ සේවා නිලධාරීන්ගේ ඇසින්

විගණකාධිපති දෙපාර්තමේන්තුව ගැන ඔබ අසා තිබේද ?

ඔව් 100%

නැත 0%

විගණකාධිපති දෙපා. ඉටු කරන කාර්යභාරය



නියැදිය : බදුල්ල දිස්ත්‍රික්කයේෘ ශ්‍රී ලංකා පරිපාලන සේවය හා ශ්‍රී ලංකා ගණකාධිකරණ සේවයට අයත් ප්‍රාදේශීය ලේකම්වරුෘ සහකාර ප්‍රාදේශීය ලේකම්වරු හා ගණකාධිකාරීවරු 28 දෙනෙකු සහභාගී කරගනිමින් 2008 මැයි මාසයේදී පැවැත්වූ සම්මුඛසාකච්ඡාවක් ඇසුරිනි

නියැදියට අයත් සියලු දෙනාම උපාධිධාරීන් වූ අතර ඔවුන්ගෙන් 21% ක් පශ්චාත් උපාධි සුදුසුකම් සපිරූවෝ වූහි නියැදියෙන් 32% ක් කාන්තාවෝද ඉතිරි 68% පිරිමි නිලධාරීහු ද වූහ

රාජ්‍ය විගණනයට ප්‍රතිචාර දැක්වීම පැහැර හැරීමේ මෙම බේදනීය තත්ත්වය 2006 වසරට පමණක් සීමාවී ඇති සුවිශේෂී තත්ත්වයක් නොවන බව ඒ පිළිබඳ වැඩිදුර විමර්ශනය කර බැලීමේදී පෙනීයයි. 2005 වසරේදීද එම වසරට අදළ ගිණුම් 2,050 ක් අතුරින් 2006-අප්‍රේල්-30 දින වන විටත් ඉදිරිපත් කර තිබුණේ ගිණුම් 1251 ක් පමණක් බව විගණාධිපතිවරයා පෙන්වා දෙයි.[10]

එය වඩාත් විස්තරාත්මකව දක්වන්නේ නම්, අමාත්‍යාංශය සහ දෙපාර්තමේන්තු ගිණුම් 565 න් 197 ක් දෙ පළාත් සභා ගිණුම් 817 න් 303 ක්ද, පළාත් පාලන බල මණ්ඩල ගිණුම් 311 ක් අතරින් 174 ක්ද, පොදු ව්‍යවසායයන් හා ව්‍යවස්ථාපිත අරමුදල් ගිණුම් 221 න් 40 ක්ද, ශ්‍රී ලංකාවේ විදේශාධාර අරමුදල් ව්‍යාපෘති ගිණුම් 136 න් 85 ක්ද 2006-අප්‍රේල්-30 වනවිටත් විගණනය සඳහා ගිණුම් ඉදිරිපත් කිරීමේ වගකීම පැහැරහැර තිබිණි.

මේ තත්ත්වය පිළිබඳව විගණකාධිපතිවරයා විසින් දිගින් දිගටම අදළ බලධාරීන්ගේ අවධානය යොමු කිරීමේ ප්‍රතිඵලයක් වශයෙන් "විගණන විමසුම් වලට මසක් ඇතුලත අනිවාර්යයෙන්ම පිළිතුරු ලබාදිය යුතු බවට" 2007 - ජනවාරි මාසයේදී චක්‍රලේඛනයක් මගින් සියලුම අමාත්‍යාංශ ලේකම්වරුන්ට, හා රාජ්‍ය ආයතන ප්‍රධානීන්ට ජනාධිපති මහින්ද රාජපක්ෂ මහතාද උපදෙස් ලබාදී ඇතැත් [11] ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් ලබාදී ඇති විගණකාධිපතිවරයාගේ අධිකාරී බලය පමණක් නොව විධායක ජනාධිපති උපදෙස් ද නොතකා ක්‍රියාකිරීමට තරම් බලසම්පන්න අමාත්‍යාංශ ලේකම්වරු, දෙපාර්තමේන්තු ප්‍රධානීන්, රාජ්‍ය සංස්ථාවල සභාපතිවරු හා පළාත් පාලන අයතනවල ප්‍රධානීන් පිරිසක් ශ්‍රී ලංකාවේ රාජ්‍ය සේවය තුළ සිටින බව ඉහත විගණන විමසුම් සඳහා පිළිතුරු ලබාදීමේ ප්‍රගතිය සටහනේ වර්ෂයක් ඉකුත්වීමෙන් පසුත් කිසිදු පිළිතුරක් නොලත් විගණන විමසුම් 28% ක් (සංඛ්‍යාත්මකව සැලකුවිට විමසුම් 7,190 ක්) තවදුරටත් ඉතිරිව තිබීමෙන් පෙනීයයි.

මෙහි වඩාත් බේදනීය තත්ත්වය වනුයේ මෙම විගණකාධිපති වාර්තාව පාර්ලිමේන්තුවේ සභාගත කිරීමෙන් පසුවද මහජනතාව වෙනුවෙන් ඒ සම්බන්ධයෙන් අවධානය යොමුකළ යුතු මහජන නියෝජිතයින් රාජ්‍ය ගණන් දීමේ වගකීම් ක්‍රියාවලියට අත්වී තිබෙන අවාසනාවන්ත ඉරණම පිළිබඳව සංවාද කර ඇති බවත් දක්නට නොලැබීමය.

"රාජ්‍ය මූල්‍ය පිළිබඳ සම්පූර්ණ පාලනය පාර්ලිමේන්තුව සතු විය්‍යයේය" යන ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 148 වන වගන්තිය පිළිබඳව මහජන නියෝජිතයින් කොතරම් සංවේදීදැයි විමර්ශනය කිරීම සඳහා "හැන්සාඩ්" තීරු දහස් ගණනක් පිරික්සුවද ව්‍යවස්ථාදායකය පත්වී තිබෙන පරිහානි තත්ත්වය පෙන්නුම් කරන බොහෝ සංවාද අතර ඉදහිට රාජ්‍ය මූල්‍ය සම්බන්ධයෙන්ද අදහසක් දෙකක් ඉදිරිපත් කර ඇති අවස්ථාවක් හැරුණ විටද විගණකාධිපති වාර්තාව අධ්‍යයනය කර එමගින් පෙන්වා දී ඇති ප්‍රමුඛ කරුනු පිළිබඳව ආණ්ඩු පක්ෂ හා විපක්ෂ එකම මහජන නියෝජිතයෙකු හෝ පාර්ලිමේන්තුවේ අවධානය යොමු කර ඇති බවත් දක්නට නොලැබේ.

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[9] 2006 වර්ෂය සඳහා විගණකාධිපතිවරයාගේ වාර්තාව පිටුව 58
[10] 2005 වර්ෂය සඳහා විගණකාධිපති වාර්තාව පිටුව 2
[11] 2007-01-07 "මව්බිම" පුවත්පත් වාර්තාව

COPE වාර්තා 2 ක් මගින් හෙළිදරව් කර ඇති රුපියල් දසලක්ෂ 750[12] ක වංචා - දූෂණ සම්බන්ධයෙන් දැඩි නිද්‍රාශීලි පිළිවෙතත් අනුගමනය කරන විධායකයක් අභියස, රුපියල් කෝටි 40,370 ක් හෙවත් බිලියන 403.7[13] ක මහා පරිමාණ වැටි බදු වංචාව පිළිබඳ තවමත් කතා පැවැත්වීම් හා විමර්ශන පමණක් සිදුවෙමින් පවතින රටක පාර්ලිමේන්තුවේ ප්‍රධාන අරමුණු වන නීතිරීති සම්මත කිරීම්, විධායකය අධීක්ෂණය කිරීම සහ මහජන මුදල් පාලනය යන කරුනු තමන් විසින් පත් කර යවන මහජන නියෝජිතයින් විසින් කොතෙක් දුරට ඉටුකරන්නේදැයි මහජනතාව මීට වඩා විමර්ශණාත්මකව බැලිය යුතු බව මෙම කරුණු අධ්‍යයනය කිරීමේදී පෙනීයයි.

දේශීය ආදායම් දෙපාර්තමේන්තුව ප්‍රසිද්ධ කර ඇති ගිණුම් තොරතුරුවල නොගැලපීම්

දේශීය ආදායම් දෙපාර්තමේන්තුව යනු ශ්‍රී ලංකාවේ ආදායම් කළමනාකරණය පිළිබඳව සාකච්ඡා කිරීමේදී එකතු කරනු ලබන ආදායම් අතින් වැදගත්ම ආයතනයයි. මහා පරිමාන වැටි බදු වංචාවත් සමඟ එය විශේෂ මහජන අවධානයට ලක් වූ ආයතනයක් බවට පත් වූ අතර ඒනිසාම එම ආයතනය සම්බන්ධයෙන් විගණකාධිපතිවරයාගේ නිරීක්ෂණ මොනවාදැයි අවධානය යොමු කිරීම වැදගත්ය

"දේශීය ආදායම් දෙපාර්තමේන්තුව විසින් නිකුත්කර ඇති, සහතික කරන ලද වාර්තාවලින් හෙළිදරව් කර ඇති තොරතුරුවල සැලකිය හැකි තරම් නොගැලපීම් පවතින බව අපගේ විගණන වාර්තාවලින් දිනෙන් දිනටම පැහැදිලිව පෙන්වා දී ඇති නමුත් තිරණ ගැනීමට, ඉදිරි පුරෝකථන පිළියෙල කිරීමට සහ ගණන්දීමේ කාර්යයන් සඳහා සපයනු ලබන තොරතුරු කෙරෙහි විශ්වාසනීයත්වය තහවුරු කරමින් ඔවුන්ගේ කාර්ය සාධනය, විෂය මූලික ආකාරයෙන් තක්සේරු කිරීමට අවශ්‍ය වන තොරතුරු පිළිබඳ විශ්වාසනීයත්වය පවත්වා ගැනීම සඳහා දෙපාර්තමේන්තුව ප්‍රමාණවත් පියවර ගෙන නොතිබුණ බව නිරීක්ෂණය වේ."[14]

එවැනි වැදගත් අවස්ථා කිහිපයක් මෙසේය

- ආදායම් ශීර්ෂ *1002.10 (VAT)* ; *1002.20 (GST)* සහ *1004.20* (ආදායම් බදු) වලට අදාළව 2006 දේශීය ආදායම් දෙපාර්තමේන්තුවේ වාර්ෂික ආදායම් ගිණුම් අනුව වාර්තාකර ඇති සම්පූර්ණ මුදල රු. මිලියන 169,022.8 ක් වන අතර 2006 සඳහා රාජ්‍ය ගිණුම් දෙපාර්තමේන්තුව රජයේ ගිණුම් වලින් වාර්තාකර ඇති මුදල රු. මිලියන 166,624.1 කි. ඒ අනුව වෙනස රුපියල් මිලියන 2,398.7 කි"

- "දෙපාර්තමේන්තුවේ ගිණුම් ක්‍රමය තුළ අභ්‍යන්තරව භාවිතා වන සී-පොදු 35" වාර්තාව අනුව 2003 සිට 2007 දක්වා කාල පරිච්ඡේදය තුළ ඒ ඒ වර්ෂයට අදාළ වර්ෂ අවසාන ශේෂය සහ ඉදිරියට ගෙනඒන ලද හිඟ ආදායම් පිළිබඳ ඊලඟ වර්ෂයේ ආරම්භක ශේෂය අතර රු. බිලියන 0.3 සිට රු. බිලියන 10.4 පරාසයක වාර්තාකරණ වෙනස්කම් නිරීක්ෂණය විය.

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[12] 2007 ජූලි 13 "සියත" පුවත්පත් වාර්තාව

[13] 2006 ජූලි 20 දින වනවිට හෙළිදරව් වී තිබුණ වංචනික ලෙස වැටි බදු ආපසු ගෙවීම් ප්‍රමාණය රු මිලියන 3,722 ක් වූ අතර 2004 මාර්තු 19 සිට අගොස්තු 11 දක්වා කාල පරිච්ඡේදය තුළ තවත් ව්‍යාපාරික ආයතන 5 කට වංචනික ලෙස ආපසු ගෙවන ලදී රුපියල් මිලියන 315 ක් පිළිබඳව හෙළිදරව් වීමත් සමඟ එම වංචාවට අදල මුළු මුදල් ප්‍රමාණය රු. මිලියන 4,037 ක් දක්වා වර්ධනය වී ඇතැයි විගණකාධිපතිවරයා පෙන්වා දෙයි. (2006 විගණකාධිපති වාර්තාව, පිටුව 36)

[14] විගණකාධිපතිවරයාගේ වාර්ෂික වාර්තාව - 2006, පිටුව 39

මෙම තත්ත්වය හේතුවෙන්, රජයේ ගිණුම් කාරක සභාව වෙත ඉදිරිපත් කළ හිඟ හිටි බදු (ගෙවා නොමැති බදු) පිළිබඳ අහයන්හි විෂමතා පැවැතී බව එම පරීක්ෂණවලදී නිරීක්ෂණය වියි ඒ අනුව 2007 මාර්තු 31 දිනට හිඟ බදු ප්‍රමාණය රුපියල් මිලියන 167,681 බවට ගණන්දීමේ නිලධාරී සහ ප්‍රධාන ගණන් දීමේ නිලධාරී විසින් වාර්තා කරනු ලැබුවද ඉහත "සී-පොදු 35" ට අනුව එය රුපියල් මිලියන 152628 ක් වියි ඒ අනුව වෙනස රුපියල් මිලියන 15,053 කි."

අභ්‍යන්තර පාලන ක්‍රමයේ අසම්පූර්ණතා හේතුවෙන් පවත්නා ගිණුම් ක්‍රමයේ සහ වාර්තාකරණ ක්‍රමයේ දක්නට ලැබෙන මෙවැනි දුර්වලතා හේතුවෙන් පාර්ලිමේන්තුවට තොරතුරු වාර්තාකිරීම දක්වා වන වාර්තාකරණය තුළ ප්‍රබල අඩුලුහුඩුකම් ඇතිවිය හැකි බව තවදුරටත් නිරීක්ෂණය කෙරේ."

"කෙසේ වුවද දේශීය ආදායම් දෙපාර්තමේන්තුව අනිකයේදී මෙම අවශ්‍යතාවයන් බොහොමයක් පිළිපැද නොතිබූ බව නිරීක්ෂණය කරන ලද අතර එම තත්ත්වයද වාර්තා කරන ලද වංචා සහගත ගණුදෙණු වර්ෂ ගණනාවක් සිදුවීමට හේතුවූ බව නිරීක්ෂණය කළ හැකියි එම නිසා මුළු මෙහෙයුම් පද්ධතිය යථාවත් කිරීමට අඩුම තරමින් 2006-ජූලි-20 දින වැට බදු වංචාව පාර්ලිමේන්තුවට වාර්තා කිරීමෙන් පසුව හෝ ඉහළම ප්‍රමුඛත්වයක් ලබාදිය යුතුව තිබිණි."

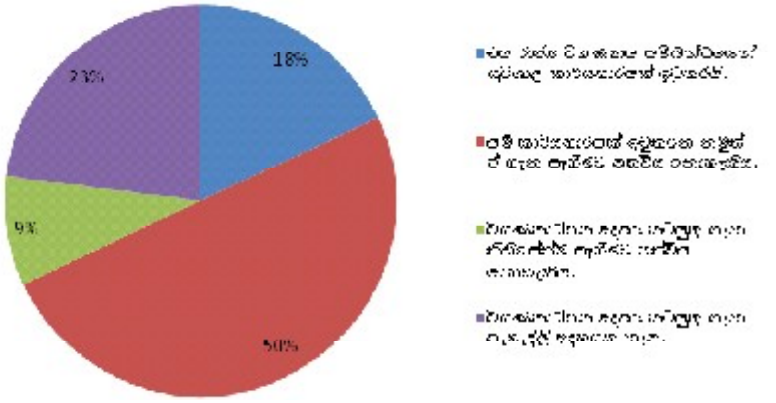
විගණකාධිපති දෙපාර්තමේන්තුවේ කටයුතු ප්‍රාදේශීය මාධ්‍යවේදීන්ගේ ඇසින්

විගණකාධිපති දෙපාර්තමේන්තුව ගැන ඔබ අසා තිබේද ?

ඔව් 864%

නැත 136%

විගණකාධිපති දෙපා. ඉටු කරන කාර්යභාරය



නියැදිය : "දූෂණය හා ගවේෂණාත්මක වාර්තාකරණය" පිළිබඳ වැඩමුළුවකට සහභාගී වූ, ඌව පළාතේ සිංහල හා දෙවිඩ මාධ්‍ය ප්‍රාදේශීය ජනමාධ්‍යවේදීන් 22 සහභාගී කරගනිමින් පැවැත්වූ සමීක්ෂණයක් ඇසුරිනි. (2008-ඔක්තෝබර්) සියලු දෙනාම අධ්‍යාපන මට්ටම අතින් අ.පොෙ.ස. (සා.පෙළ) සමත්වූවන් වූ අතර එම නියැදියෙන් 23% ක් උපාධිධාරීන්ද, 9%ක් ඩිප්ලෝමාධාරීන්ද, 55% ක් අ.පොෙ.ස. (උ.පෙළ) සමත් වූවෝද වූහ.

දේශීය ආදයම් දෙපාර්තමේන්තුව සම්බන්ධයෙන් මීට වසරකට පෙර විගණකාධිපතිවරයා ඉදිරිපත් කල මෙම නිරීක්ෂණ පිළිබඳව මේ වනවිට කුමක් සිදුවී ඇත්දැයි පැන නැගෙන ප්‍රශ්නයට පැහැදිලි පිළිතුරක් සපයන ප්‍රකාශයක් පසුගිය ද වැට් වංචාව පිළිබඳ කරුණු විමර්ශනය කිරීම සඳහා පත් කර ඇති විශේෂ විමර්ශන කොමිසම ඉදිරියේ සාක්ෂි දෙමින් දේශීය ආදයම් කොමසාරිස් ජනරාල් වරයා විසින් සිදු කර තිබිණි. එහිදී වැට් බදු වංචාව පිළිබඳ කරුණු දක්වමින් ඔහු ප්‍රකාශ කර තිබුණේ වැට් වංචාවට (රුපියල් කෝටි 40,370 ක් වූ) හවුල් නිලධාරීන් තවමත් දේශීය ආදයම් දෙපාර්තමේන්තුව තුළ සිටින බවයි. වැඩිදුරටත් ඒ සම්බන්ධයෙන් අදහස් පළ කරමින් ඔහු ප්‍රකාශ කර තිබුණේ ඔවුන් පිළිබඳව තීරණයක් ගත යුත්තේ මුදල් අමාත්‍යාංශය බවයි.

ශ්‍රී ලංකාවේ ප්‍රධානතම ආදයම් එකතුකිරීමේ ආයතනයක් වන දේශීය ආදයම් දෙපාර්තමේන්තුවේ අභ්‍යන්තර සම්බන්ධයෙන් එම දෙපාර්තමේන්තුව භාර ගණන්දීමේ නිලධාරියා කරන ඉහත කරුණු දැක්වීම කොතෙක් දුරට තර්කානුකූලද? එම වගකීම මුදල් අමාත්‍යාංශය වෙත පවරා ඔහුට ඇඟබේරාගැනීමට හැකියාවක් තිබේද? යනාදී ගැටලු ඒ පිළිබඳව උනන්දුවක් දක්වන පුරවැසියෙකුට නිරන්තරයෙන්ම ඇතිවිය හැකිය.

විගණකාධිපති දෙපාර්තමේන්තුවේ කටයුතු ප්‍රජා මූල සංවිධාන සාමාජිකයින්ගේ ඇසිනි.

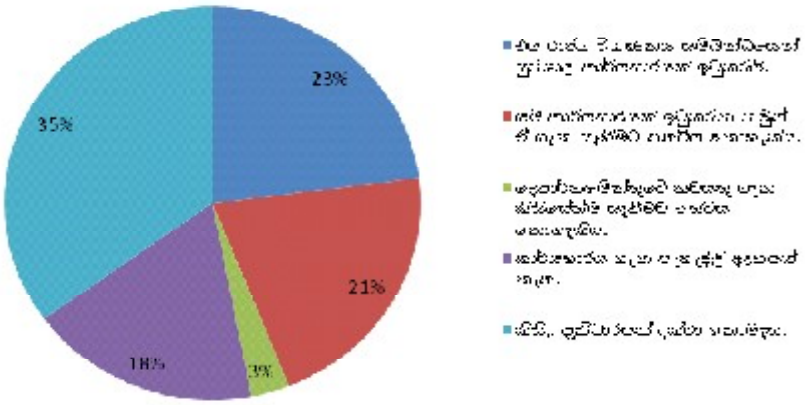
විගණකාධිපති දෙපාර්තමේන්තුව ගැන ඔබ අසා තිබේද ?

ඔව් 65%

නැත 20%

කිසිදු ප්‍රතිචාරයක් දක්වා නොමැති 15%

විගණකාධිපති දෙපා. ඉටු කරන කාර්යභාරය



නියැදිය : හම්බන්තොට දිස්ත්‍රික්කයේ, ප්‍රජාමූල සංවිධානවල සේවයේ නියුතු ස්වේච්ඡා සේවක සේවිකාවන් 34 දෙනෙකු සහභාගී කරගනිමින් 2008-අගෝස්තු මාසයේදී පැවැත්වූ සමීක්ෂණයක් ඇසුරිනි. ප්‍රතිචාර දක්වා නොමැති එක් අයෙකු හැර නියැදියේ සෙසු සියලු දෙනාම අ.පො.ස. (සා.පෙළ) සමතුන් වන අතර ඔවුන්ගෙන් 53% ක් අ.පො.ස. (උ.පෙළ) සමත්වූවන් ද, 3% උපාධිධාරීන් හා තවත් 3% ත් පශ්චාත් උපාධි සුදුසුකම් සපුරා ඇති අයද වෙයි නියැදියෙන් 41% ක් කාන්තාවෝ ය. ඉතිරි 59% පුරුෂයෝය.

මෝටර් රථ ප්‍රවාහන දෙපාර්තමේන්තුවේ ආදායම් එකතු කිරීමේ දුර්වලතා

මෝටර් රථ ප්‍රවාහන දෙපාර්තමේන්තුව, ආදායම් එකතුකිරීම අතින් සිව්වන ස්ථානය හිමිකරගන්නා දෙපාර්තමේන්තුවයි. අල්ලස් හා විවිධ වංචා දූෂණ පිළිබඳ නිරන්තරයෙන් චෝදනා එල්ල වන එම දෙපාර්තමේන්තුවේ ආදායම් එකතු කිරීමේ දුර්වලතා පිළිබඳව විගණකාධිපති වරයාගේ නිරීක්ෂණ කිහිපයක් මෙසේය.

"ආනයනය කරන ලද මෝටර් රථ සඳහා ට්‍රක් රථ සඳහා වන අඩු පේටි ගණන යටතේ පේගු ගාස්තු ගෙවාෘ ඇතතුරුව එම පේගු ලියවිලි වෙනුවට ව්‍යාජ පේගු ලියකියවිලි උපයෝගී කරගෙන ඉතා ඉහළ මට්ටමක පේගු ගාස්තු ගෙවිය යුතුව තිබූ ද්විත්ව කාර්ය වාහන හෝ මෝටර් කාර් ලෙස ලියාපදිංචි කරවා ගැනීම තවදුරටත් සිදුවෙමින් පවතින බව නිරීක්ෂණය කෙරේ."

"මෙම තත්ත්වය 2004 වර්ෂයේ සිට සිදුවෙමින් පැවැතෙන අතර සහ 2005 වර්ෂයේ සිට හොනවත්වා විගණනයන් පෙන්නුම් කරනු ලබන නමුත් මෙතෙක් ඵලදායී නිවැරදි කිරීමේ ක්‍රියාවලියක් හඳුන්වා දී නොමැති මෙම තත්ත්වය පේගු දෙපාර්තමේන්තුවේ පවත්නා පද්ධතිවල ඇති බොහෝ දුර්වලතා සඳහා ප්‍රධාන හේතුවක් වන අතර රජයේ පේගු බදු ආදායම් විශාල වශයෙන් අහිමි කිරීමක් සිදුකරමින් මෙම පුරුද්ද තවදුරටත් සිදුවෙමින් පවතින බව නිරීක්ෂණය වේ."

- "මෝටර් රථ ප්‍රවාහන දෙපාර්ථමේන්තුවේ ලිපිගොනු නඩත්තු කිරීම බොහෝ අසතුටුදායක තත්ත්වයක පවතින අතර වාහනවලට අදාළ ඇතැමේ ලිපිගොනු කිසිසේත්ම සොයාගත නොහැකි එබැවින් අවශ්‍යතාවයන් පැන නැඟුණද මෙවැනි තත්ත්වයක් යටතේ එම වාහන පිළිබඳ කිසිදු පරීක්ෂණයක් කළ නොහැකිව ඇත.

- "එක්දින සේවා සැපයීමේදී පෙර නිමිකරුගේ අත්සන සෑසදීම මගින් මාරු කිරීම් වල සත්‍ය-අසත්‍යතාවය පිළිබඳ සෑහීමකට පත්වීම පිණිස අවශ්‍ය පරීක්ෂණ සිදු නොකෙරෙන බවද නිරීක්ෂණය වේ.

සෞඛ්‍ය අංශයේ ඖෂධ ප්‍රසම්පාදනය

ශ්‍රී ලංකාවේ සෞඛ්‍ය සේවයේ පවත්නා විවිධ දූෂණවල ස්වභාවය පිළිබඳව මහජනතාවට අදහසක් ඇති කර ගැනීම සිදහා සංවේදී සිදුවීම් කිහිපයක් විගණකාධිපතිවරයා සිය වාර්තාවේ දක්වා තිබේ.

"ඖෂධ මිලදී ගැනීම සෞඛ්‍ය ආරක්ෂණ හා පෝෂණ අමාත්‍යාංශය යටතේ වන ඖෂධ සංස්ථාව මගින් සිදුවන අතර ඇණවුම් පිළිබඳ ක්‍රියා පටිපාටිය සෞඛ්‍ය අමාත්‍යාංශයේ වෛද්‍ය සැපයුම් අංශය (MSD) මගින් සිදු කෙරේ. ඒ අනුව අවශ්‍ය ආයතනයන් සිදහා වන සැලසුම් කටයුතු මාස 12 ක් ඉදිරියට නඩා සිදු වේ කෙසේ වුවද 2004,2005,2006 වර්ෂවලදී ලැබිය යුතුව තිබුණ සමහර සැපයුම් 2007 ජනවාරි මාසය වනතුරු ද සංස්ථාවට ලැබී නොතිබිණි.

එහි ප්‍රතිඵලයක් වශයෙන් වෛද්‍ය සැපයුම් අංශයට තත්කාර්ය පදනමක් මත දේශීය මිලදී ගැනීම් කිරීමට සිදුවී තිබිණි 2004, 2005 හා 2006 වර්ෂවලදී සිදුකරන ලද එවැනි මිලදී ගැනීම් පිළිවෙලින් රු මිලියන 656, රු මිලියන 1011 සහ රු මිලියන 840 ක විය මෙය මුළු මිලදී ගැනීම් වලින් 11%සිට 16 දක්වා වූ අගයක් නියෝජනය විය.

තවදුරටත් මෙම දේශීය මිලදී ගැනීම් වලදී කරන ලද අධික පිරිවැය පිළිබිඳව සිදුකරන ලද විස්තරාත්මක අධ්‍යයනයන්ට අනුව ඖෂධ මිලදී ගැනීම සිදුකා ගෙවන ලද වැඩි මිල ගණන් 20% සිට 50% ක පරාසයක විය.

කෙසේ වුවද, මේම පදනම් බිඳ වැටීමට අදාල මුළු පිරිවැය දැනගැනීමට සිදුකා අමාත්‍යාංශය මගින් මෙතෙක් විස්තරාත්මක ගණනය කිරීමක් සිදුකර නොතිබිණි''[15]

විගණකාධිපතිවරයාගේ මෙම හෙළිදරව් කිරීම් සම්බන්ධයෙන් සෞඛ්‍ය අමාත්‍යවරයා හා සෞඛ්‍ය අමාත්‍යාංශ ලේකම්වරයා වහාම ක්‍රියාත්මක වී විශේෂ පරීක්ෂණයක් ආරම්භ කළ බවත් කිසිදු මාධ්‍ය වාර්තාවකට අනුව දැනගන්නට නොලැබේ. එසේම පාර්ලිමේන්තුව තුළ ඒ පිළිබිඳ විවාද කර ඇති බවක් ද ''හැන්සාඩ්'' වාර්තා අනුව දක්නට නොලැබෙයි.

විගණකාධිපතිවරයාගේ මේ හෙළිදරව්වේ සරල අර්ථය කුමක්ද? ඔහු මේ පෙන්වා දෙන්නේ සෞඛ්‍ය අමාත්‍යාංශයේ දැඩි අකාර්යක්ෂම හා නොසැලකිලිමත් භාවය නිසා මහජනතාවගේ සෞඛ්‍ය වෙනුවෙන් වැය කිරීම සිදහා වෙන්වූ මුදලින් අතිවිශාල ප්‍රමාණයක් දූෂණයට ලක් වී ඇති බව නොවේද? ''අවශ්‍ය සැපයුම් නිසි වේලාවට නොලැබීම නිසා දේශීය වෙළිඳ පොළෙන් තත්කාර්ය පදනමක් මත මිලදී ගැනීමට සිදුවීමෙන් (එසේ මිලදී ගැනීමට සිදුවන ආකාරයට කටයුතු සැලැස්වීමෙන්?) 20% සිට 50% ක පරාසයක වැඩිපුර ගෙවීමක් සිදුකර ඇතැයි විගණකාධිපතිවරයා කරන හෙළිදරව්ව මහජන නියෝජිතයන්ට කෙසේ වෙතත් මහජනතාවට සුළුවෙන් සැලකිය හැකි කාරණයක්ද? රු මිලියන 656 න් 20% යනු රුපියල් මිලියන 131.2 කි. එනම් රුපියල් ලක්ෂ 1312 කී මිලියන 656 න් 50% යනු රුපියල් මිලියන 328 ක් හෙවත් රුපියල් ලක්ෂ 3280 කි.

ඒ අනුව 2004 වර්ෂයේ සෞඛ්‍ය අමාත්‍යාංශයේ අකාර්යක්ෂමතාවය හා නොසැලකිලිමත්භාවය නිසා ඖෂධ මිලදී ගැනීම් සිදහා පමණක් වැඩිපුර ගෙවීමට සිදුවී ඇති මුදල රුපියල් ලක්ෂ 1312 සිට 3280 ක පරාසයක් ගනී. විගණකාධිපතිවරයාගේ හෙළිදරව් කිරීම් අනුව 2005 වසරේදී එලෙස වැඩිපුර ගෙවීමට සිදුවී ඇති මුදල රුපියල් ලක්ෂ 2022 සිට 5055 දක්වාද, 2006 වර්ෂයේ වැඩිපුර ගෙවා ඇති මුදල් රුපියල් ලක්ෂ 1680 සිට 4200 දක්වා ද පරාසයක විහිදෙයි.

විගණකාධිපතිවරයා ප්‍රකාශ කර ඇති පරිදි ''මෙම දේශීය මිලදී ගැනීම්වලදී දරණ ලද අධික පිරිවැය පිළිබිඳ දැනටමත් විගණකාධිපති දෙපාර්තමේන්තුව විසින් **විස්තරාත්මක අධ්‍යයනයක්** සිදුකර තිබේ තවමත් මහජනතාවට තොරතුරු දැනගන්නට ලැබී නොමැති එම විස්තරාමත්මක අධ්‍යයනය තවත් ප්‍රබල දූෂණ රැසක් පිළිබඳ අපූරු හෙළිදරුව්වක් වී ඇතිවාට සැකයක් නැත.

[15] විගණකාධිපතිවරයාගේ වාර්ෂික වාර්තාව - 2006, පිටුව 57

විගණනයේදී නිරීක්ෂණය වූ පොදු දුර්වලතා

විගණනයේදී නිරීක්ෂණය වූ පොදු දුර්වලතා යටතේ විවිධ ක්ෂේත්‍රයන්හි අයත් දුර්වලතා රැසක් විගණකාධිපතිවරයා පෙන්වා දී තිබේ.

ඒ අතරින් තෝරාගත් ප්‍රමුඛ කරුණු කිහිපයක් මෙසේය

• තමන්ගේ අධීක්ෂණය ක්ෂේත්‍රය තුළ පවතින සංස්ථාවල කාර්ය සාධනය පිළිබඳ සුපරීක්ෂණය හා විපරමි කිරීම අදාළ අමාත්‍යාංශ ලේකම්වරුන්ගේ පාර්ශවයෙන් සිදු නොවීම හෝ එය නොසලකා හැර තිබීම • රාජ්‍ය ව්‍යවසාය තුළ වෘත්තීයභාවය නොපැවතීම හා කළමනාකරණයේ යහපාලන පරිචයන් නොපැවතීම • ගුණාත්මක කළමනාකරණයක් නොතිබීමේ ප්‍රතිඵලයක් ලෙස පාඩු ලැබීම් • දුර්වල (අරමුදල්) කළමනාකරණයි • මුදල් රෙගුලාසි හා පරිපාලන රෙගුලාසිවලට අනුකූල නොවීම • පිළිගත් මිලදී ගැනුම් ක්‍රියා පටිපාටිවලට අනුරූපව කටයුතු නොකිරීම • වාර්ෂික මූල්‍ය ප්‍රකාශන විගණනයට ඉදිරිපත් කිරීමේ ප්‍රමාදය • ආර්ථික නොවූ ගණුදෙනු සහ අරමුදල් අනිසි කළමනාකරණය • නාස්තිකාර හා ඵල රහිත වියදම් ක්‍රියා පිළිවෙත්වලට අනුකූල නොවීම නිසා ගණුදෙනු පිළිබිඳව ප්‍රමාණවත් සාක්ෂි නොවීම සහ ගණුදෙනුවල විනිවිදභාවයක් නොවීම • ගිණුම්කරණයේදී ගිණුම්කරණ ප්‍රමිති අනුගමනය නොකිරීම සැලකිය යුතු වටිනාකමක් සහිත වත්කම් නියක්‍රීයව හෝ ඌණ උපයෝජිතව පැවතීම • ඵලදායී අභ්‍යන්තර විගණනයක් නොවීම[16]

මීට අතිරේකව විගණනයේදී නිරීක්ෂණය වූ පොදු අඩුපාඩු යන ශීර්ෂය යටතේ විස්තරාත්මක ලෙස නොවුවද රටතුළ සංවාදයක් ඇතිවිය යුතු කරුණු රැසක් විගණකාධිපතිවරයා පෙන්වා දී තිබේ.

එමගින් රාජ්‍ය මූල්‍ය කළමනාකරණය ඇද වැටී ඇති බෙදනීය තත්ත්වය පිළිබිඳව මහජනතාවට පුළුල් චිත්‍රයක් සැපයෙයි එසේම රාජ්‍ය විගණනයේදී පෙන්වා දෙන අඩුපාඩු සම්බන්ධයෙන් අදාළ බලධාරීන් දක්වන ප්‍රතිචාර පිළිබිඳව ද පැහැදිලි චිත්‍රයක් මහජනතාව හමුවේ ඉදිරිපත් වෙයි.

"2006 වර්ෂය සඳහා අදාළ විගණන නියෑදි පරීක්ෂණවලදී අවස්ථා 1334 ක් සම්බන්ධයෙන් එකතුව රු.මිලියන 1545.52 ක් සිදුහා වූ විගණන අඩුපාඩු නිරීක්ෂණය වියි සේවා ස්වභාවයේ වත්කම් - බැරෙකම්, ආදායම් සහ වියදම් පිළිබිඳ. ගිණුම්කරණ අඩුපාඩු. මීට පෙර වර්ෂවල විගණන අඩුපාඩුවලින් පෙන්වා දී තිබුණ ද ආයතන ප්‍රධානීන් විසින් සමාලෝචිත වර්ෂයේ අවසානය දක්වාම එසේ පෙන්වා දෙන ලද අඩුපාඩු සම්බන්ධයෙන් ක්‍රියා කර නොතිබිණි"

"විගණන නියෑදි පරීක්ෂණවලට අනුව අවස්ථා 639 කට අදාළ පාලන ගිණුම්වල යෙෂ එකතුව රු මිලියන 2498.51 ක් වූ අතර එම පාලන ගිණුම්වලට අදාළ ලේඛන / වාර්තා අනුව ශේෂයන්ගේ එකතුව රු මිලියන 2053.06 ක් විය."

"ප්‍රාදේශීය බල මණ්ඩල සම්බන්ධයෙන් වූ විගණන විමසුම් 1984 කට පිළිතුරු සපයා නොතිබිණි. එසේම ප්‍රාදේශීය බල මණ්ඩල 109 කට අදාළව වටිනාකම රු මිලියන 3420. 33 ක් වූ ගණුදෙනු විගණන සන්නිරීක්ෂණය සිදුහා අවශ්‍ය වූ තොරතුරු ඉදිරිපත් කර නොතිබිණි."
"සන්නිරීක්ෂණය සිදුහා අවශ්‍ය වූ ලිපිගොනු හා ලෙජර් ඉදිරිපත් නොකිරීම හෝ ප්‍රමාදව ඉදිරිපත් කිරීම නිසා 2007 මාර්තු 2 දිනට වටිනාකම රු මිලියන 36. 17 ක් වූ වවිචර් 846 ක් විගණනය කළ නොහැකි වියි ශ්‍රී ලංකා ජනරජයේ මුදල් රෙගුලාසි 272 (3) ප්‍රකාරව විගණනයට වවිචර් ඉදිරිපත් කිරීමේ අවශ්‍යතාව පැහැර හැර තිබිණි."

[16] විගණකාධිපති වාර්ෂික වාර්තාව 2006, පිටුව 62

''විගණන නියෑදි පරීක්ෂණවලදී නීති, රීති, රෙගුලාසි ආදියට අනුකූල නොවීමේ අවස්ථා 1468 ක් නිරීක්ෂණය විය.

''බොහෝ ප්‍රාදේශීය බල මණ්ඩල විසින් වාර්ෂික සමීක්ෂණ සිදුකර නොමැති අතර අවසානයට පවත්වා තිබුණු සමීක්ෂණ මණ්ඩලය පෙන්වා දුන් පරිදි අතිරික්ත හා ඌණතා සම්බන්ධයෙන් පෙන්වා දී තිබුණු කරුණු පිළිබිඳ අදාළ රෙගුලාසි ප්‍රකාරව කටයුතු කර නොතිබිණි''

''සිදුකර තිබුණු විගණන නියෑදි පරීක්ෂණවලට අනුව පෙනීගිය වංචනික ගණුදෙනු, නැතිවීම් හා අලාභ එකතුව රු. මිලියන 200.77 ක් විය

රාජ්‍ය ගණන් දීමේ වගකීමට අයත් සියලු යාන්ත්‍රණ සම්බන්ධයෙන් විගණකාධිපති වරයාගේ නිරීක්ෂණ ඉදිරිපත් වී ඇත්ද?

විගණකාධිපතිවරයාගේ වාර්තාව නියැදි පරීක්ෂණ මත පදනම් වී ඇති අතර එමගින් ආවරණය නොකෙරෙන තවත් ආයතන රැසක් පවතී එසේම, කිසියම් ආයතනයකට අදළව බරපතල ලෙස නිරීක්ෂණ අනාවරණය කර ඇති අවස්ථාවකදී එම ක්ෂේත්‍රය පිළිබඳව පුළුල් ලෙස පරීක්ෂණ පවත්වා අවශ්‍ය පියවර ගැනීමට ඵලදායී යාන්ත්‍රණයක් පැවැතිය යුතු වුවද පවත්නා තත්ත්වය යටතේ රාජ්‍ය ආයතන තුළ එවැන්නක් ක්‍රියාත්මක වන්නේ දැයි යන්න ගැන ප්‍රබල සැකයක් පැන නගී.

එසේම විගණකාධිපතිවරයාගේ වාර්තාවෙන් හෙළිදරව් කර ඇති කරුණු මෙන්ම ඔහු නිරීක්ෂණ ඉදිරිපත් කිරීමෙන් වැළකී ඇති මහජනතාවට වැදගත් තවත් බොහෝ කරුණු ඇත්දැයි 2006 වර්ෂයේ ජනමාධ්‍ය මගින් හෙළිදරව් වී ඇති ප්‍රධාන මට්ටමේ වංචා හා දූෂණත් 2006 වර්ෂයට අදාළ විගණකාධිපති වාර්තාවත් සංසන්දනාත්මකව අධ්‍යයනය කර බැලීමේදී සාධාරණ සැකයක් පැන නැගීමටද ඉඩ තිබේ එම සැකය ද බැහැර නොකොට වඩාත් විමර්ශනාත්මකව විගණකාධිපති වාර්තාව අධ්‍යයනය කිරීමේදී පසුගිය කාල වකවානුව තුළ බෙහෙවින් කතාබහට ලක්වූ ''මිහින් ලංකා'' ප්‍රශ්ණය හා ඊට සම්බන්ධව ලංකා පුත්‍ර සංවර්ධන බැංකුව පිහිටුවීම සඳහා පාර්ලිමේන්තු අනුමැතියකින් තොරව ජාතික අයවැය දෙපාර්තමේන්තුවේ වැය ශීර්ෂයෙන් මුදල් ලබාගෙන ඇතැයි එල්ල වූ චෝදනාව[17], ජනාධිපති අරමුදල සම්බන්ධයෙන් විගණකාධිපතිවරයාගේ නිරීක්ෂණ ආදී කරුණු ගැන නිරීක්ෂණ විගණකාධිපති වාර්තාවට ඇතුලත් වී නම් බරපතල ලෙස මහජනතාව අතර කතාබහට ලක් වී ඇති එම කරුණු පිළිබඳ පැහැදිලි අදහසක් ඇති කර ගැනීමට මහජනතාවට අවකාශයක් හිමි වේ.

එසේම 2006 වසර සම්බන්ධයෙන් විගණකාධිපතිවරයා විසින් පාර්ලිමේන්තුවට ඉදිරිපත් කරන ලද වාර්තාව මුද්‍රණය කිරීමට පාර්ලිමේන්තු අනුමැතිය ලැබී තිබියදී[18], 2008 වර්ෂයේ ඔක්තෝම්බර් මාසය දක්වාම එහි මුද්‍රිත පිටපතක් පුරවැසියෙකුට ලබා ගැනීමට නොහැකි තත්වයක් නිර්මාණය වී තිබීම ගැනද මහජනතාව වෙත වගකීමට බැඳී සිටින ස්වාධීන නිලධාරියෙකු ලෙස විගණකාධිපතිවරයාට සෑහීමකට පත්විය නොහැකිවාට සැකයක් නැත.

[17] 2007 සැප්තැම්බර් 19 ''හැන්සාඩ්'' වාර්තාවේ රාජ්‍ය මූල්‍ය පිළිබිඳ පාර්ලිමේන්තුව සතු බලතල උදුරා ගැනීම'' - තිරු අංක 265 සිට ඉදිරියට

[18] 2006 වර්ෂයේ විගණකාධිපති වාර්තාව මුද්‍රණය කිරීමට පාර්ලිමේන්තුව විසින් නියම කර ඇත්තේ 2007 නොවැම්බර් 12 වැනිදායි

''රාජ්‍ය පාලන ක්‍රියාවලිය කෙරෙහි මහජනතාවගේ විශ්වාසය පවත්වාගෙන යාම සහ සමස්ථ පද්ධතිය පිලිබිඳ මහජන විශ්වාසය ඇති කිරීමේ අරමුණින්'' ක්‍රියාත්මක වන රාජ්‍ය විගණනය ඛේදනීය ඉරණමකට මුහුණ දී සිටින බව මේ සමස්ථය අධ්‍යයනය කිරීමේදී නැවත නැවතත් තහවුරු වෙයි ඒ අනුව රාජ්‍ය විගණනයේ තොරතුරු මහජනතාවට දැන ගැනීමට සැලැස්වීමේ හා එහි ප්‍රතිලාභීන් වශයෙන් ඊට ප්‍රතිචාර දැක්වීමට ඔවුන් ඇති අයිතියට එල්ල වී ඇති සියලු බාධක වහා ඉවත් කිරීම ශ්‍රී ලංකාව තුළ යහපාලනයක් ස්ථාපිත කිරීම සඳහා නොපමාව සිදුවිය යුත්තක් බවද පෙනී යයි.

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විගණන වාර්තාව අප්‍රමාදව ජනතා සංවාදයට ලක් විය යුතුයි

විගණකාධිපති වාර්තාවෙ අදළ මුදල් වර්ෂය අවසන් වී මාස 10 ක් තුළ පාර්ලිමේන්තුවට ඉදිරිපත් වුවත් එය මහජනතාව අතරට යාමට තව සෑහෙන කාලයක් ගතවෙනවා පාර්ලිමේන්තුවට ඉදිරිපත් කිරීමට මාස 10 ක කාලසීමා අවශ්‍යතාවයක් යොද තිබෙන්නේ වාර්තාව මගින් පෙන්වාදෙනු ලබන කරුණු පිළිබඳව නොවැම්බර් මාසයේ අය-වැය විවාදයට පෙර මහජන නියෝජිතයින් තුළ සංවාදයක් ඇතිවීමට ඉඩ සැලසීම සඳහායි විශේෂයෙන්ම කාරක සභා අවස්ථාවේදී ඔවුන් එම වාර්තාව හොඳින් අධ්‍යයනය කරල එමගින් පැන නැගෙන ගැටලු පිළිබඳ පාර්ලිමේන්තුව තුළ සංවාද කරනු ඇතැයි එයින් අදහස් කරනවා වාර්තාව මගින් පෙන්වාදෙන විමර්ශන පාර්ලිමේන්තුව තුළ සංවාදයට ලක්නොවුවහොත් රාජ්‍ය විගණනයේ පරමාර්ථය මුළුමනින්ම බිඳ වැටෙනවා එවිට මහජනතාව වෙනුවෙන් විගණකාධිපතිවරයා සිදුකරන ස්වාධීන විගණනයේ ඵලදායීතාව සම්පූර්ණයෙන්ම අහෝසි භාවයට පත්වෙනවා

විගණකාධිපති වාර්තාව සභාගත කරනවාත් සමඟම එය මහජනතාවට බෙදහැරීම සඳහා විධිමත් වැඩපිළිවෙලක් ක්‍රියාත්මක විය යුතුයි ඕනෑම පුරවැසියෙකුටල තමන්ට ආසන්නම දිස්ත්‍රික් ලේකම් කාර්යාලයෙන් හෝ ප්‍රාදේශීය ලේකම් කාර්යාලයෙන් මුදල් ගෙවා එම වාර්තාවේ පිටපතක් ලබාගත හැකි ක්‍රමයක් සකස්විය යුතුයි නමුත් අවාසනාවකට 2008 ඔක්තෝම්බර් මාසය වනවිටත් 2006 වාර්තාවේ මුද්‍රිත පිටපතක් ලබාගැනීමට පුරවැසියෙකුට හැකියාවක් නැ එයින් පෙනීයන්නේ රාජ්‍ය විගණනය හා මහජනතාව අතර කොතරම් දුරස්ථ භාවයක් පවතීද යන්නයි.

දැනට පවත්නා තත්ත්වය යටතේ විගණකාධිපති වාර්තාව රාජ්‍ය ගිණුම් හා පොදු ව්‍යවසාය කමිටු දෙකට ඉදිරිපත්කරල එම කමිටු මගින් වාර්තාව අධ්‍යයනය කිරීමට තවත් මාස 6 ක පමණ කාලසීමාවක් ගතවෙනවා ඒ අනුව යම් මුදල් වර්ෂයකට අදළ විගණකාධිපති වාර්තාවක් සාකච්ඡාවට ලක්වන්නේ මුදල් වර්ෂය අවසන් වී වසර 2 ක් පමණ ගතවූ පසුවයි මෙය ඉතාම ඛේදජනක තත්ත්වයක්.

විගණකාධිපති වගකිව යුත්තේ පාර්ලිමේන්තු නියෝජිතයින්ට ද ? මහජනතාවට ද ?

'විගණකාධිපති වාර්තාව පාර්ලිමේන්තුවට ඉදිරිපත් කළ යුතුයි' යන අදහස වඩාත් පුළුල් අර්ථයෙන් සැලකුවිට, එය මහජන නියෝජිතයින් වෙත ඉදිරිපත් කරන්නේ මහජනතාව වෙනුවෙනුයි ඒ වාර්තාවේ කිසිම කරුණක් මහජනතාවට රහසක් විය යුතු නෑ. වාර්තාව පාර්ලිමේන්තුවට ඉදිරිපත් කිරීමත් සමඟම එය මහජන ලියැවිල්ලක් බවට පත්විය යුතුයි එසේම එය පහසුවෙන් ජනතාවට ලබා ගත හැකි විය යුතුයි. රාජ්‍ය සංස්ථා පිළිබඳ විගණකාධිපතිවරයාගේ නිරීක්ෂණ මැයි මාසය වනවිට එම ආයතනවල වාර්ෂික වාර්තාවලට ඇතුළත් කෙරෙනවා. ඒ නිසා එම නිරීක්ෂණ දැනගන්න ජනතාව ඔක්තෝම්බර් මාසය දක්වා බලාසිටීමත් අනවශ්‍ය බවයි මගේ අදහස.

එසේම රාජ්‍ය ගිණුම් හා පොදු ව්‍යවසාය කමිටු වල සියලු කටයුතු මහජනතාවට විවෘත විය යුතුයි තමන් පත්කර යවන මහජන නියෝජිතයින්, තමන් වෙනුවෙන් එම කටයුතුවලට මැදිහත් වන්නේ කෙසේදැයි දැනගැනීමට මහජනතාවට පැහැදිලි අයිතියක් තියෙනවා. එසේම එම කාරක සභාවලට සහභාගී වී ඒවායේ කටයුතු සිදුවන ආකාරය වාර්තාකිරීමට ජනමාධ්‍යවේදීන්ටත් අයිතියක් තිබිය යුතුයි.

විගණන විමසුම් 7190 කට පිළිතුරු නොදීම.

"විගණන විමසුමක්" යනුවෙන් අදහස් කරන්නේ විගණනයට අදාළ යම් විෂය ප්‍රදේශයක් සම්බන්ධයෙන් කරුනු දැනගැනීම සඳහා විගණනකාධිපතිවරයා විසින් සිදුකරන කරුණු විමසීමකටයි. ඊට පිළිතුරු සැපයීමට සෑම නිලධාරියෙක්ම බැඳී සිටිනවා. කවුරු හෝ ඊට පිළිතුරු දීම ප්‍රතික්ෂේප කරනවා නම්, ඒ බව මහජනතාවට හෙළිදරව් කිරීම. විගණකාධිපතිවරයාගේ වගකීමක්. අදාළ නිලධාරියා පිලිතුරු දීම ප්‍රතික්ෂේප කර ඇත්තේ කවර ක්ෂේත්‍රයකට අයත් විගණන විමසුමකටද යන්න මහජනතාවට දැනගැනීමට සැලැස්වීමක් වැදගත්. එසේ නොවුවහොත් එම විෂය ක්ෂේත්‍රය පිළිබඳව විගණකාධිපතිවරයා විමර්ශනය කර නොමැති බවකුයි මහජනතාව හැඟී යන්නේ. ඇත්ත වශයෙන්ම, අභ්‍යන්තරිකව සිදුකෙරෙන පරිපාලන කටයුතු හෝ පරිපාලනයට අදාළ නීතිරීති කඩකිරීම් වලට වඩා මහජනතාවට වඩාත්ම වැදගත් වන්නේ රාජ්‍ය සම්පත් පරිහරණය සම්බන්ධයෙන් විගණකාධිපතිවරයාගේ නිරීක්ෂණ මොනවාද? යන්නයි.

විගණකාධිපතිවරයාගේ විමර්ශන සම්බන්ධ පසු විපරම්....

විගණකාධිපතිවරයාගේ නිරීක්ෂණ සම්බන්ධයෙන් අදාළ ආයතන ගනුලැබූ ක්‍රියාමාර්ග පිළිබඳව පසු විපරම් කරන ඵලදායී යාන්ත්‍රණයක් පැවැතීමක් ඉතාම වැදගතී එසේ නොවුවහොත් එම වාර්තාවෙන් පෙන්වා දෙන වැරදි හා අඩුපාඩු ඒ වාර්තාවක් සමගම අහෝසි භාවයට පත්වෙනවා.

විශේෂයෙන්ම විගණකාධිපතිවරයාගේ වාර්තාකිරීම් නියැදි පරීක්ෂණ මත පදනම් වී ඇති නිසා එම වාර්තාව මගින් පෙන්වා දෙන විශේෂිත කරුණු සම්බන්ධයෙන් පුළුල් පරීක්ෂණ පැවැත්වීම අදාල ආයතන මගින් අනිවාර්යයෙන්ම සිදු කළ යුතුයි.

විගණන විමසුම් වලින් පෙන්වා දෙන අඩුපාඩු පිළිබඳව ගණන් දීමේ නිලධාරීන් විසින් පියවර ගතයුතු බව මුදල් රෙගුලාසි වල පැහැදිලිව සඳහන් වෙනවා. එසේම රාජ්‍ය සංස්ථා වලට අදාළව විගණකාධිපතිවරයාගේ සවිස්තර වාර්තාවෙන් පෙන්වා දෙන අඩුපාඩු පිළිබඳ අවධානය යොමු කර මාස 3 ක් ඇතුළත යළිත් විගණකාධිපතිවරයාට වාර්තා කළ යුතු බව 1971 අංක 38 දරණ මුදල් පනතේ පැහැදිලිව සඳහන් වී තිබෙනවා. එම නිසා ගණන් දීමේ වගකීමට බැඳී සිටින කිසිම නිලධාරියෙකුට එම වගකීමෙන් මිදෙන්න හැකියාවක් නෑ.

(හිටපු නියෝජ්‍ය විගණකාධිපති **එම්.ඩී.ඒ. හැරල්ඩ්** මහතා සමඟ කරන ලද සාකච්ඡාවක් ඇසුරිනි.)

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Governance and Corruption Measurements: What do they say about Sri Lanka?

Bettina Meier*

Introduction

The importance of good governance for development, poverty reduction and improved living standards has been widely acknowledged, and research has linked improved governance to development aspects such as reduced levels of infant mortality and a rise of income levels.[1]

With governance in the center stage of international policy debate, there has been an increasing demand for reliable and valid information on governance, and for empirical instruments to measure and monitor governance performance. New instruments have been developed to assess governance. Most of these combine quantitative with qualitative information by rating country performance according to numerical scores given by country experts, and complementing this rating with a narrative country report. Sometimes country scores are presented in a ranking, a list that ranks countries according to their score.

This chapter provides a snapshot of six important instruments to measure governance and corruption: Transparency International's Corruption Perception Index, the Global Integrity Report, the Failed States Index, the Worldwide Governance Indicators, the Countries at the Crossroads survey, and the Bertelsmann Transformation Index. All of them have developed a methodology and criteria (or indicators) on which they assess countries' status of governance and/or corruption. They are done on an annual or bi-annual basis, and allow for comparison across countries and across time.

These six governance indices and reports are disseminated globally, and are widely used by policymakers at national and international level. Besides providing a framework for reforms, they are used by civil society and policy makers as a benchmark to identify problems in governance, and to monitor progress of reforms. They also provide a source of information for scholars researching the causes and consequences of good governance, and are used as a basis for public discussion of governance issues.

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[1] http://web.worldbank.org/WBSITE/EXTERNAL/NEWS0,,contentMDK:21815054~pagePK:64257043~piPK:437376~theSitePK:4607,00.html

This chapter focuses specifically on Sri Lanka's rating and scores. It is meant to inform the domestic debate on corruption and governance, and to provide a better understanding of how experts inside and outside Sri Lanka assess levels of corruption and dimensions of governance.

A word of caution

While the simplicity of an index, and even more so of a ranking, may be appealing to the wider public, one should not forget that governance and corruption are broad and complicated concepts, and thus difficult to measure. It is much easier to provide indicators for measures such as economic growth or primary school enrolment. Because it is so difficult to agree on indicators for governance, most existing sources of governance information, including those referred to in this chapter, measure what people think about governance.

Another problem is that scores and rankings tend to provide a false sense of precision. There are complex realities behind these scores, and reducing this complex reality to numbers in a list can be considered as an undue simplification. That is why it is important to show margins of error, i.e. the likely range of country scores together with country scores.

Thirdly, the indices and reports covered in this chapter assess different aspects of governance, and cannot be compared in a narrow sense. The weight they give to the different indicators depends on their focus. Because of this, countries' assessments vary, as will be shown in the example of Sri Lanka. Overall, one needs to take into consideration that country assessments tend to reflect the political or ideological views of the institutions providing the ratings.

All indices and surveys mentioned here rely on assessments of country experts and political analysts to generate consensus ratings. Both Transparency International's CPI and the World Bank Worldwide Governance Indicators both provide an 'index of indices', composed from a number of different sources that all provide a relevant ranking of countries. Several of their sources are the same, and the two indices correlate well.

Corruption Perception Index

The annual Corruption Perception Index (CPI) of Transparency International (TI) is the only index that covers exclusively corruption. It has been widely credited with putting TI and the issue of corruption on the international policy agenda. First done in 1995, the CPI ranks countries in terms of the degree to which corruption is *perceived* to exist among public officials and politicians; it does *not* present true facts about the actual levels of corruption. The CPI is a composite index, drawing on 14 different polls and surveys from 12 independent institutions: risk agencies, development banks, multilateral institutions and independent think tanks. All sources measure the frequency and/or size of bribes as perceived by country experts (resident and non-resident) and resident business leaders evaluating their own country.[2]

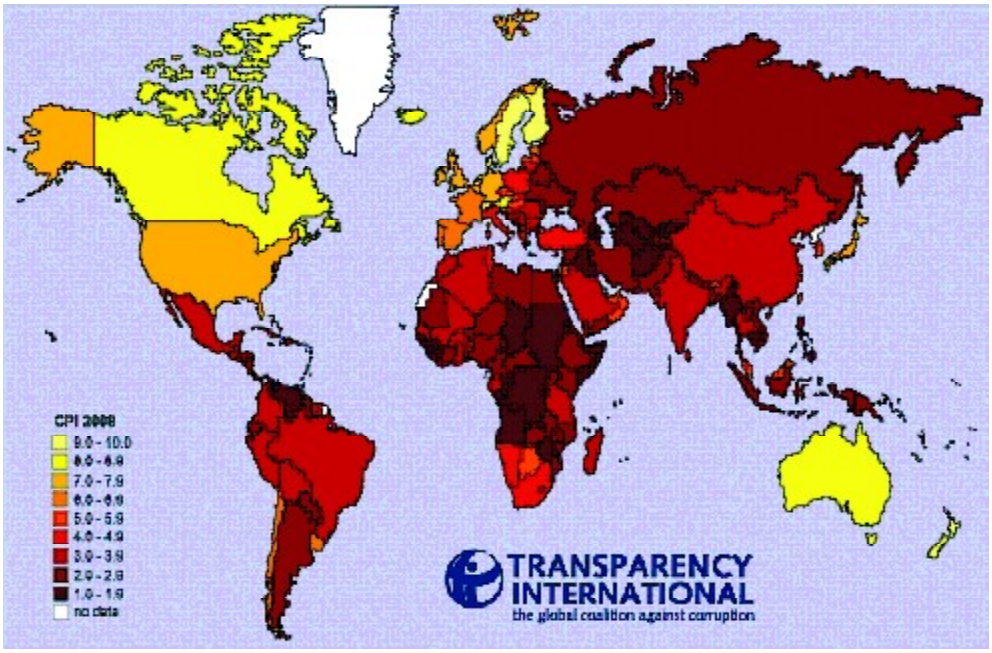
The CPI relies on perceptions because measuring corruption on hard empirical data is difficult. Corruption is by its nature secretive, therefore getting information on the amount of bribes paid is virtually impossible. Other hard data, such as the number of prosecutions or court cases, hardly reflect levels of corruption; rather they highlight the quality of prosecutors, courts or the media on exposing corruption. Therefore, the CPI draws on the experience and perceptions of those who are most directly confronted with the realities of corruption in a country, as documented in the polls and surveys that constitute the basis of this composite index.

The CPI 2008 ranks 180 countries by perceived levels of corruption. Within the Asia Pacific region, 22 countries out of 32 in the region registered scores of below 5, indicating high levels of perceived domestic corruption in the region.[3] A score is calculated through standardization using a complex statistical technique.[4] Scores are given on a scale of 0 to 10, with 0 the lowest and 10 the highest possible score. All countries included in the CPI are ranked, the best country being in position 1.

[2] Sources for Sri Lanka 2008: Asia Development Bank: Country Performance Assessment Ratings; Bertelsmann Transformation Index; World Bank: Country Policy and Institutional Assessment; Economist Intelligence Unit, Global Insight: Country Risk Ratings; Merchant International Group: Grey Area Dynamics Ratings; World Economic Forum: Global Competitiveness Report

[3] For a regional overview of 2008 scores, go to http://www.transparency.org/policy_research/surveys_indices/cpi/2008/regional_highlights_factsheets

[4] http://www.transparency.org/content/download/36193/568706



Sri Lanka's score in the CPI is in the middle field. Sri Lanka was first included in 2002 after which its score dropped; it has been stable since 2005. The score has gone down from 3.7 in 2002 to 3.2 in 2008. This downward trend has been observed in many other countries, and in comparison to other countries Sri Lanka's position has not changed.

Sri Lanka's CPI score and rank from 2002-2008

Year	*Score*	*Rank*	*Number of countries*
2002	3.7	52	102
2003	3.4	66	133
2004	3.5	67	145
2005	3.2	78	158
2006	3.1	84	163
2007	3.2	94	180
2008	3.2	93	180

Source: http://www.transparency.org/policy_research/surveys_indices/cpi

Global Integrity Report

Another important annual assessment is the Global Integrity Report developed by the US-based organization Global Integrity. Global Integrity works with local teams of researchers and journalists to monitor openness and accountability, and to provide information on governance and corruption. Since 2005, the Global Integrity Reports have captured trends around the world. The 2007 report covered 76 countries. The index is calculated on the basis of 300 aggregated indicators based on peer-reviewed questions and answers which are scored by in-country experts, journalists and researchers. The Global Integrity Report provides a rating based on scores, but it does not rank countries.

Indicators are clustered into six areas, each of which consists of various sub-areas:

- **civil society, public information and media**: civil society, media, access to information
- **elections**: voting and citizen participation, election integrity, political financing
- **government accountability**: executive, legislative and judicial accountability, budget processes
- **administration and civil service**: civil service regulations, whistle-blowing measures, procurement, privatization
- **oversight and regulation**: national ombudsman, supreme audit institution, taxes and customs, state-owned enterprises, business licensing and regulation
- **anti-corruption and rule of law**: anti-corruption law and agency, access to justice, law enforcement

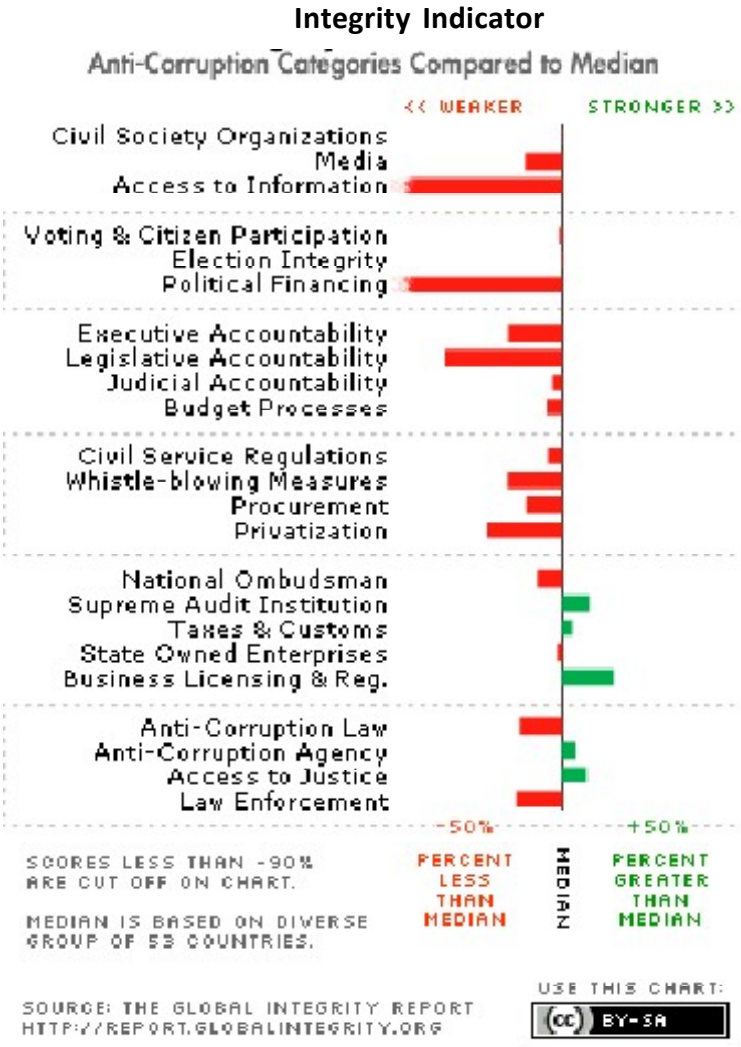
In the 2007 Global Integrity Index, Sri Lanka is rated as 'very weak', with a score of 58 out of 100, with 100 being the best possible score. India, for example, scores 75 out of 100 ('moderate'), and Bangladesh scores 64 ('weak').

While Sri Lanka's legal framework is considered reasonable (68 out of 100), there is a huge gap in implementation (44 out of 100). The summary states that, "Sri Lanka has deep problems in the governance and anti-corruption framework, most notably in measures which might expose high level officials to risk: Sri Lanka's executive, legislative and judicial accountability mechanisms are among the worst assessed in 2007. Political financing is completely unregulated, lacking even token legal codes. ... Freedom of information is very limited. Many other areas — police, civil service, and others — earn very weak ratings. Positive news is found in an active civil society and somewhat inclusive elections." While

in a few areas such as Supreme Audit Institutions and Business Licensing and Regulation, Sri Lanka is perceived as above average, it scores below average in the majority of indicators, and it scores zero in Access to Information and Political Financing (see table below).[5]

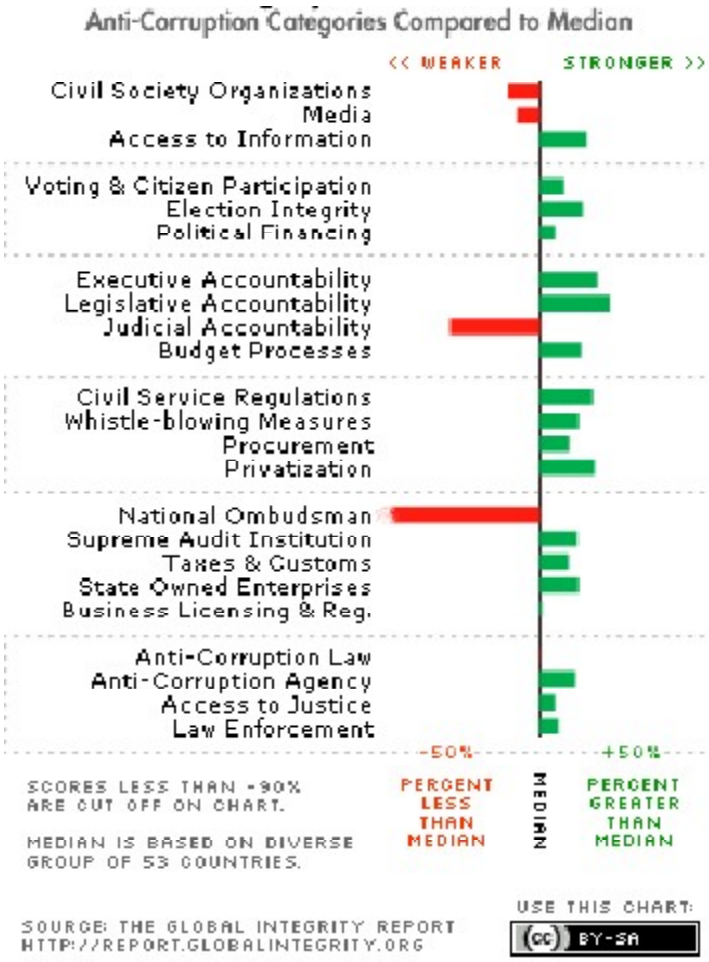
Sri Lanka

India



[5] The Global Integrity report Sri Lanka 2007 (105 pages) can be seen at http://report.globalintegrity.org/reportPDFS/Sri%20Lanka.pdf

India
Integrity Indicator



The Failed States Index

The Failed States Index is an annual index that measures political, economic and social stability of countries. It was first done in 2005. In 2008, it included 177 states listed in order of their vulnerability to violent internal conflict and societal deterioration. The scores in the Failed States Index 2008 were given by independent experts and were based on more than 30,000 publicly available sources collected between May and December 2007. The Failed States Index is issued by the US-based research organization Fund for Peace and by Foreign Policy, a publication of the Carnegie Endowment for International Peace.

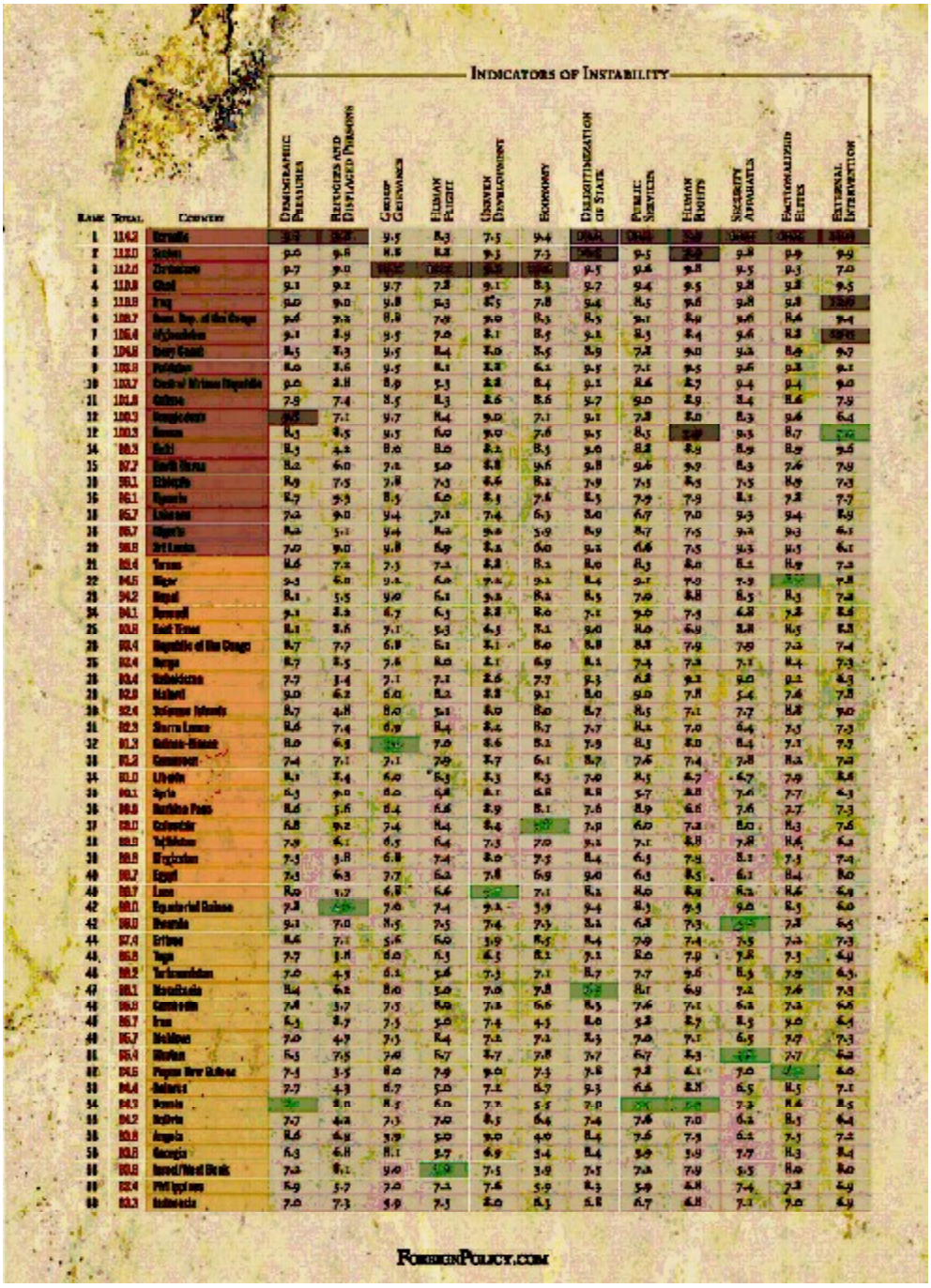
The Failed States Index uses a set of 12 indicators clustered in three groups: social, economic and political indicators. Some of its indicators, such as Legitimacy of the State, Deterioration of Public Services and Arbitrary Application of the Rule of Law, can be seen as proxies to measure the prevalence of corruption. Scores in the index are substantiated in Country Assessment Reports.[6]

In 2008, Sri Lanka came in position 20 out of 177, with 1 being the worst position. That is, it was rated as a Failed State together with countries like Uganda, Lebanon and Nigeria that held positions 17 to 19. The list is headed by Somalia which "claims the unenviable distinction of being the state most at risk of failure;"[7] Bangladesh and Burma share position 12 and Pakistan is at position 9.

[6] Latest country report on Sri Lanka dates from 2006: http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=22&Itemid=75

[7] http://www.foreignpolicy.com/story/cms.php?story_id=4350&page=1

Failed States Index 2008



NOTE TO EDITOR: MAKE SURE THIS TABLE IS LEGIBLE. IF NOT, GO TO BELOW WEBSITE AND GET HIGHER RESOLUTION TABLE

http://www.foreignpolicy.com/story/cms.php?story_id=4350&page=1

Sri Lanka scores particularly badly in the following categories:

- **Group Grievance**: …patterns of atrocities committed with impunity against communal groups, specific groups singled out by state authorities … for persecution or repression, and institutionalized political exclusion. Sri Lanka score: 9.8 on a scale of 1 (best) to 10 (worst)

- **Rise of Factionalized Elites**: fragmentation of ruling elites and state institutions along group lines, use of nationalistic political rhetoric by ruling elites. Sri Lanka score: 9.5

- **Security Apparatus Operates as a 'State Within a State'**: this includes the 'emergence of elite or praetorian guards that operate with impunity; emergence of state-sponsored or state-supported private militias that terrorize political opponents, suspected 'enemies', or civilians seen to be sympathetic to the opposition; emergence of an 'army within an army' that serves the interests of the dominant military or political clique; emergence of rival militias, guerilla forces or private armies in an armed struggle or protracted violent campaigns against state security forces; and nationalistic political rhetoric'. Sri Lanka score: 9.3

Overall, Sri Lanka's position in the Failed States Index has declined since 2006 and 2007, when in both years it held position 25.

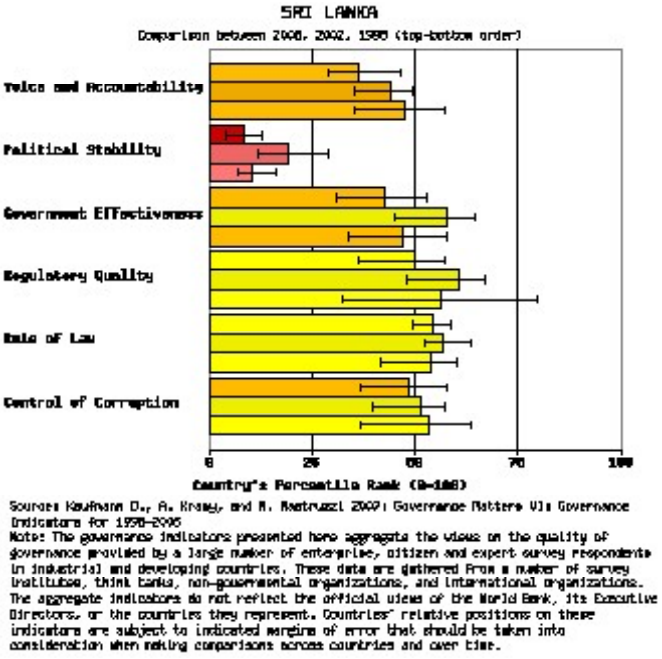
Worldwide Governance Indicators

The Worldwide Governance Indicators (WGI) have been published annually by the World Bank since 1996. They provide a wealth of data on various aspects of governance in 212 countries and territories. From these data, trends over time can be measured and regional or global comparisons made. The WGI constitute probably the most extensive set of governance data, both in terms of geographical coverage and time span. The WGI do not provide a ranking of countries.

The WGI measure six dimensions of governance, each consisting of a variety of aggregate and individual indicators:

- voice and accountability
- political stability and absence of violence
- government effectiveness
- rule of law
- regulatory quality
- control of corruption

The table below shows governance trends in Sri Lanka from 1998 to 2006, as measured by the WGI:[8]

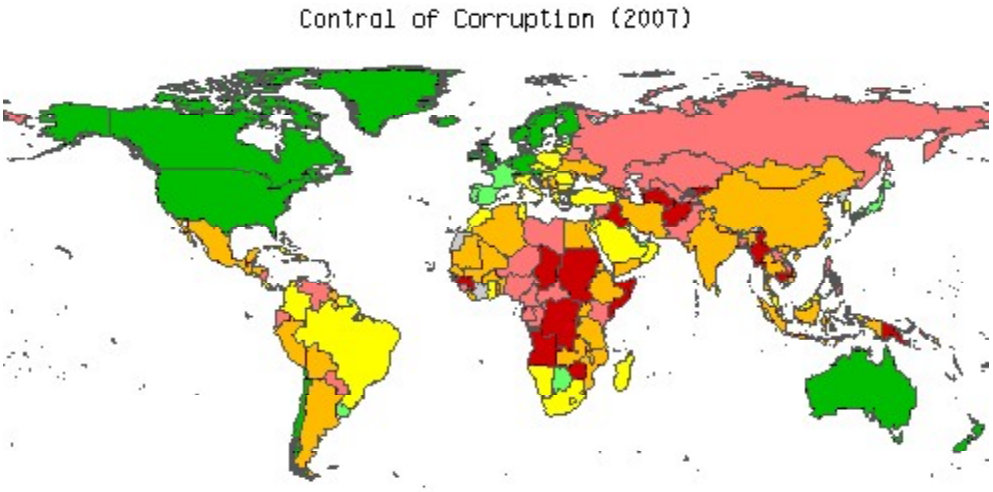


[8] Complete data sets for Sri Lanka, including data sources and scores since 1996, are available in the Country Data Report for Sri Lanka, 1996-2007 at http://info.worldbank.org/governance/wgi/pdf/c129.pdf and http://info.worldbank.org/governance/wgi/sc_country.asp

The aggregate indicators combine the views of a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. They are drawn from a diverse variety of survey institutes, think tanks, non-governmental organizations and international organizations, most of them identical to the sources used by the CPI.

In its 2008 report, launched in June 2008, the World Bank states that, "… many developing country governments (are) making important gains in control of corruption, and some of them matching rich country performance in overall governance measures. … Progress reflects reforms in those countries where political leaders, policymakers, civil society and the private sector view good governance and corruption control as crucial for sustained and shared growth."[9]

The following table shows worldwide ratings of the WGI Control of Corruption indicator:



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2008: Governance Matters VII: Governance Indicators for 1996-2007
Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The aggregate indicators do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources or for any other official purpose.

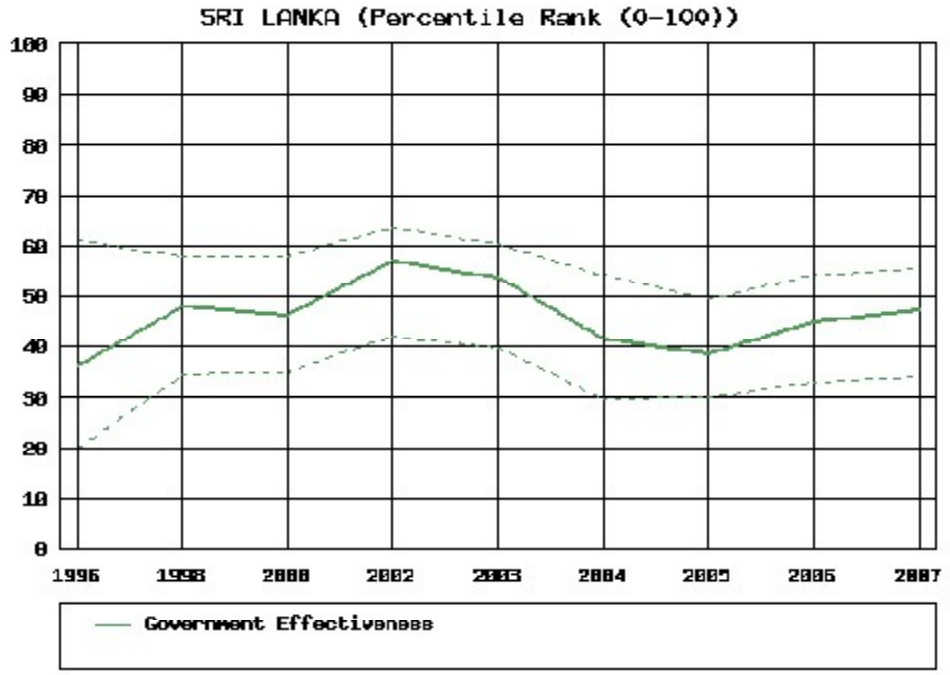
[9] http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21814712 ~pagePK:64257043~piPK:437376~theSitePK:4607,00.html

In comparison to other countries, Sri Lanka's status of governance is about average. Since 1998, Sri Lanka's position has seen a constant improvement in the area 'control of corruption', that is the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as 'capture' of the state by elites and private interests, and the area 'voice and accountability', that is the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association and a free media. However, in comparison to other countries, Sri Lanka performs relatively badly in this area.

Over time, a trend can be observed in all governance categories. Scores reached a peak in 2002 when the Sri Lankan Government signed a peace agreement with the Liberation Tigers of Tamil Eelam (LTTE). However, since 2002 a decline of scores can be observed in three areas:

- **government effectiveness**: the quality of public services, the capacity of the civil service and its independence from political pressures; the quality of policy formulation;
- **regulatory quality**: the ability of the government to provide sound policies and regulations that enable and promote private sector development;
- **political stability**: the likelihood that the government will be destabilized by unconstitutional or violent means, including terrorism.

The following tables show Sri Lanka's WGI rating over time in the area of 'government effectiveness'.[10]



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2007: Governance Matters VII: Governance Indicators for 1996-2007
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Countries at the Crossroads Survey

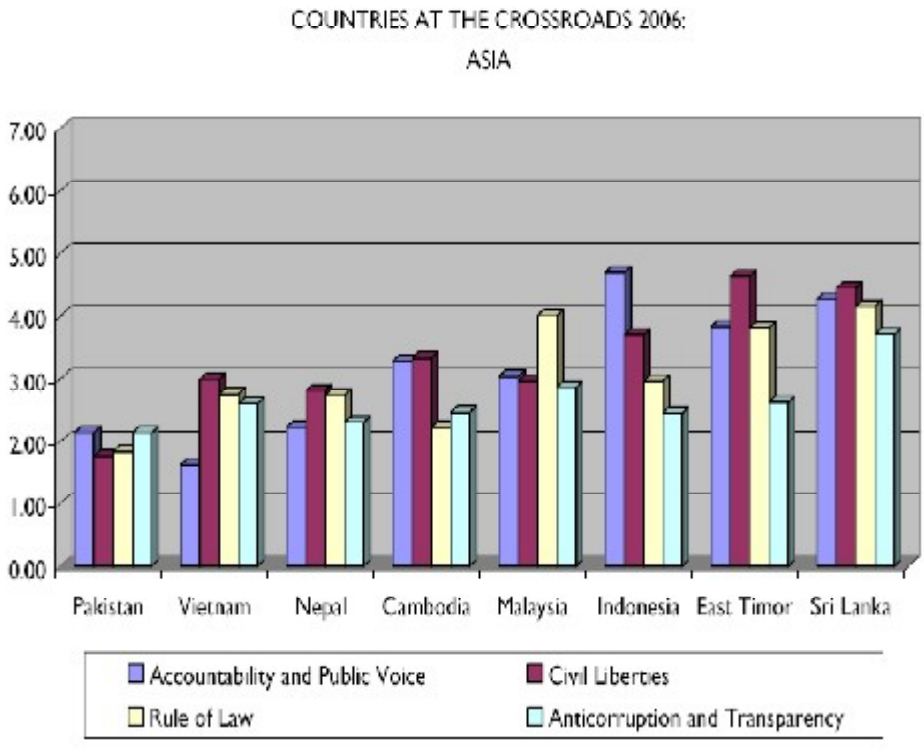
Countries at the Crossroads is an annual survey of governance, with one set of 30 countries analyzed in odd years and the other 30 in even years. First done in 2004, Crossroads covers strategically important countries that are at a critical turning point in determining their political future. Sri Lanka is one of those countries. Crossroads is done by Freedom House, an independent organization supporting the expansion of freedom throughout the world. In addition to country scores, country reports provide in-depth narrative including concrete prescriptions for reform. They are written and evaluated by independent experts. Crossroads assesses the state of democratic governance in four categories:

[10] http://info.worldbank.org/governance/wgi/sc_chart.asp#

- civil liberties
- rule of law
- anticorruption and transparency
- accountability and public voice

In 2006, Sri Lanka's scores ranged in the middle field (on a *scale from 0 = weakest to 7 = strongest performance). Its highest score was in civil liberties (4.45), and itslowest in anticorruption (3.71). Compared to 2004, Sri Lanka's scores went down in all four aspects.*

However, in comparison to the other Asian countries covered by Crossroads, Sri Lanka's status of democratic governance was not too bad. However, one has to bear in mind that only countries that are at a critical turning point are included in this survey.



Source: http://www.freedomhouse.org/uploads/ccr/2006datacharts.pdf

In regard to anticorruption and transparency, the 2006 report states that, "three significant types of corruption prevail in the Sri Lanka political system: efforts to circumvent bureaucratic red tape, personal bribe solicitation by government officials, and nepotism and cronyism. … The excessive slowness of the judicial system has also inspired numerous bribe attempts. … Sri Lanka has long had anticorruption laws in place, but enforcement of the laws has been a serious problem. … Sri Lankans widely believe that corruption is rife in their society. Yet there are very few arrests for corruption. The lack of protection for whistle-blowers limits the public disclosure of corruption. … Sri Lanka has one of the best government data reporting systems in the world. … However, reporting of regulations and laws or court decision is limited. It is very difficult to learn of government regulations without legal counsel. Without freedom of information legislation, information remains difficult to obtain for average citizens in Sri Lanka. "[11]

Bertelsmann Transformation Index

The Germany-based Bertelsmann Foundation advocates reforms towards constitutional democracy and socially responsible market economy. To provide a benchmark for measuring progress in this regard, the Bertelsmann Foundation has developed the Bertelsmann Transformation Index (BTI). This consists of two components: the Status Index that attempts to measure the status of democracy and market economy, and the Management Index that measures political leadership towards democracy and market economy.[12] The indices are backed by country reports that substantiate the scores given in the indices. Using a standardized code book, country experts examine the extent to which a total of 17 criteria are fulfilled, and provide both score and written assessments. The BTI includes only countries that are yet to achieve a fully consolidated market-based democracy, and that have a population of more than 2 million. Sri Lanka is one of these countries. The BTI has been done bi-annually since 2003.

The Status Index consists of the clusters Political Transformation and Economic Transformation. The criteria for Political Transformation are similar to the governance indicators used by other institutions. They include:

[11]The country report 2006 is available at http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrpage=31&ccrcountry=132
[12] http://www.bertelsmann-transformation-index.de/11.0.html?&L=1

- stateness
- political participation
- rule of law
- stability of democratic institutions
- political and social integration

In 2008, Sri Lanka scores 6.3 (on a scale from 0= lowest score to 10= best score) in Political Transformation. In the ranking, Sri Lanka comes in position 35 of a total of 125 countries included in 2008. The Czech Republic receives the highest rating (position 1) and Somalia the lowest (position 125).[13] In comparison to previous years, there have been no significant changes in Sri Lanka's ranking and score. Sri Lanka is classified as one of 27 'fragile states'. It is also one the 52 states that are rated as 'defective democracies', characterized by insufficient primacy of the rule of law and weak structures of representation.

The Management Index evaluates the governance capability by political decision-makers while taking into consideration the level of difficulty. It combines Management Performance, consisting of the criteria Steering Capability, Resource Efficiency, Consensus-Building and International Cooperation, with *level of difficulty* that takes into account a country's structural conditions, traditions of civil society, intensity of conflicts, level of education, economic performance and institutional capacity. In this Index, Sri Lanka receives a medium rating and takes position 52 in the ranking of 125 countries, with 1 being best performer and 125 the worst.

The BTI also includes a country report that provides a qualitative assessment of a country's status of democracy.[14]

Conclusion

Overall, Sri Lanka's governance performance is perceived as weak in the indices discussed above. However, there is a surprising variation in opinions on Sri Lanka's state of governance.

Sri Lanka scores extremely poor in the Failed States Index that focuses on political stability. Also, its scores in the Failed States Index have gone down since 2005. Similarly, Sri Lanka's assessment in the Crossroads survey is very negative. This is not surprising given the failure to implement the peace agreement with the LTTE and the current war situation.

[13] http://www.bertelsmann-transformation-index.de/fileadmin/pdf/Anlagen_BTI_2008/BTI_2008_Ranking_EN.pdf

[14] Sri Lanka report 2008: http://www.bertelsmann-transformation-index.de/130.0.html?&L=1

Contrary to these negative ratings, Sri Lanka receives relatively high scores in the Bertelsmann Transformation Index that combines political with economic aspects. The BTI also shows stability in its rating of Sri Lanka, and no deterioration can be observed. The same applies to the Corruption Perception Index. The Worldwide Governance Indicators show improvement in some and decline in other areas of governance. No comparison can be done in the Global Integrity Index as Sri Lanka has only been assessed in 2007.

In regard to corruption, assessments also vary greatly. While the Worldwide Governance Indicators show a clear improvement in controlling corruption, Sri Lanka receives a very low score on anticorruption and transparency in the Crossroads survey. The CPI arrives at yet another assessment by showing a consistently poor rating with no changes since 2005.

This variety in ratings of Sri Lanka's state of governance shows that the truth has to be found somewhere in between figures and scores. After all, country assessments - rather than providing an objective measurement - reflect the views of the institutions that provide the ratings, and their focus and priorities. Concepts such as governance and corruption are inherently difficult to measure. Nevertheless, the value-added of indices lies in the wealth of information they provide, and in the stimulus they provide for public debate. Indices and measurements are an indispensable tool in the effort to curb corruption and improve governance.

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Transparency International (TI) is the global civil society organization leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

Transparency International Sri Lanka (TISL) commenced active operations at the end of 2002 and has since progressively escalated the fight against corruption in Sri Lanka. TISL now functions as a self financed, autonomous chapter developing its own local strategic direction.

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