



*AUSTRALIAN TAMIL
MANAGEMENT SERVICE*

Australian Auditors & Sri Lankan Judiciary

I write in response to the Sri Lankan Guardian article ‘**President Reveals True Nature of His Governance!**’ by **Professor Laksiri Fernando**.

As is usual for me these days, I keep connecting between cause and effect at the deeper level. In this instance, I keep connecting through the energies of Chartered Accountants – my fraternity - to uphold whose name I fought tooth and nail here in Australia. I do believe that even One Chartered Accountant genuinely practicing Doctrine of Separation of Powers between Accounting & Auditing and therefore between Management & Auditors would have added power to those genuinely seeking to protect the independence of the Judiciary. I see no such signs from the Sri Lankan branch of the Audit fraternity.

My Communication with the NSW Auditor General in this regard is in the **Appendix**. I highlight that I stated as follows back in November 2003: ‘Most progressive organizations produce both – Financial and Non-Financial Performance Indicators. They are both for MANAGEMENT purposes and reflect the THINKING and WORK_IN_PROGRESS. If you use Performance Indicators – then you are thinking with them. **This is like the Executive Government participating in the Judicial process.**’

I learnt about the Doctrine of Separation of Powers from Ms Rocky Clifford of the Australian Human Rights & Equal Opportunity Commission. The basis was my complaint of discrimination pain I felt as a Sri Lankan qualified Accountant. When managing my complaint against the Prime Minister and others, Ms Clifford explained to me the Independent role of the Commission even though it was being funded through the Government. Due to my genuine learning as a student of Chartered Accountancy, I received this through my knowledge of the role of Auditor and the importance of an Auditor needing to be independent of management of the client because the auditor reports to the shareholders and to the Public. Later I used it to educate the Auditor General. Due to my sense of independence I was able to derive value from the Human Rights & Equal Opportunity Commission and the Federal Courts – as facilities rather than custodians of benefits. This is a natural way with one who feels part of the whole.

Most Chartered Accountants are seen as Accountants and only some are seen as Auditors. Likewise, most Governments are seen as the Parliament and only during times of crises such as the present one – do they recognize the Judiciary as being an Equal part of the Government. Each member of the Judiciary who is critical of the Government needs to ask her/himself as to when s/he referred to the Judiciary as Government? To refer to the

Parliament as Government and the Judiciary as just Judiciary is the parallel of referring to Sinhalese as Sri Lankans and Tamils as Tamils. This is the problem with physical separation for the physically driven. They tend to ‘forget’ the other part until they think they are going to lose it. There is a saying for this in Tamil ‘Appan Maandaal theriyum Appan Arumai’/The value of the father is seen when he dies. Until they think they are going to lose it, the physically driven biological connections tend not to value those they do not ‘see’. In terms of the family – children see the mother more than the father and hence the saying. In traditional families, it was the father who went out and earned the money to feed the family and hence was seen less by children.

Professor Laksiri Fernando states as follows in relation to the President’s address to the Chartered Accountants *‘He started with general comments on development and achievements of the ICA. Commenting on the accountants, he said they are perceived as obstacles particularly in the government sector, as they raise so many questions and rules. This is the same in semi-government corporations. Then he came to the point of referring to some corporation Chairmen and said that “they even hoodwink the Accountants.” “Then the opposition shouts and we go and punish them. But when we punish, the opposition goes and defend them.” The whole system of democracy, dissent and criticism appeared a joke to him’.*

I do not think that the system of democracy, dissent and criticism was a joke to the President. In his own way he was saying that the Audit minded Accountant submits to the Business minded Accountant within and therefore to the Management that pays the benefits/Audit fee. Take for example the above mentioned suggestion by the NSW Auditor General in relation to using Performance Indicators in Auditing Public Enterprises. NSW Auditor General was not alone in this. I later noted that this was in practice in other parts of the nation. Australian National Audit Office for example states in its ‘Auditing for Australia Report dated 08 September 2011 about Key Performance Indicators (KPI’s) *‘The objective of this audit was to assess how effectively entities had developed and implemented appropriate KPIs to support stated program objectives.’*

These KPI’s are the internal measures used by the client entities. They are the parallels of the Standing Orders of the Parliament – one of which (78A) was used to initiate the Impeachment Process against the Chief Justice. Like illegal economic migrants, Auditors, Judiciary and the Executive who are not wholesome/global, keep crossing the borders to and fro.

The President has just highlighted in his own way that Chairmen hoodwinking the Auditors happens through the submission of the Auditor to money. In the case of Public Service – the submission is to status. Separation of Powers requires us to use the same goal of governance but different paths. One God and different religions. One who desires the benefits from another’s work submits / assimilates. Auditors who value independence would naturally or consciously separate themselves from the path taken by management. Likewise, members of the Judiciary who value their independence would naturally or consciously separate themselves from Parliamentarians until they merge at the top.

KPI's and Standing Orders are milestones on the path to Governing the Whole/Nation. If we take them as final outcomes – we confirm that we have stopped short of the higher goal of independent governance using diversity. Some of the KPI's and Standing Orders may form part of the final outcome and therefore reflect the finished product that could be measured independently. One needs to 'wait' until then to audit / judge. Otherwise the Auditor runs the risk of being an 'internal' auditor and the Judge becoming a Legal Officer/Attorney General of the Parliament.

In the case of the Tamil University students – the parallel of the Chief Justice is the Vice Chancellor of the University of Jaffna. The armed forces have become the 'internal security' of the University due to lack of independence at the top level. The moment the Vice Chancellor rules against the politicians who 'appointed her' and this could be saying no to the Armed Forces that entered the University – there is high likelihood of impeachment processes against the Vice Chancellor also. The New South Wales Police were also used as 'internal security' by the University of New South Wales. The University security could have done what the Police did. They did not touch me – after I asked them under what law they were asking me to leave? The Police also did not know the provisions of the law – but they carried guns and came in caged vans. They 'interfered' before the University exhausted all its powers to remove me. The Police were once 'waiting' for me to arrive. All against a single woman sitting peacefully to see the Vice Chancellor. They 'show' more than they know. Their duty was to 'wait' for the Security Officers to inform them that I had acted violently or as I suggested – the Vice Chancellor ought to have applied for an Apprehended Violence Order. But like the President of Sri Lanka who saw himself above the law and therefore the Chief Justice – the Vice Chancellor saw himself above such small rules and therefore above the Public who fund the University. Would the Sri Lankan Diaspora including Professor Laksiri Fernando criticize the Vice Chancellor of this Australian University? They would if they had had the parallel experience in Sri Lanka before they came to Australia and v.v.

Professor Laksiri Fernando quotes the President *“In general, whatever the impeachment is about, the opposition is always against it. We are the people who shouted when the impeachment was brought against Samarakoon; it was unreasonable and so on. That is the task of the opposition; otherwise it is not an opposition. When I was in the opposition, whatever the matter, I used to go to the street and shout. That is the duty of the opposition, whether it is correct or not. That is not a concern for me, when we were in the opposition. It is the same at present.”*

True Democratic Opposition is not just about saying 'we oppose it'. That is merely surface disagreement and is the elementary level of ruling by majority vote. This is fine for the legislature so long as such opposition is based on belief. The laws introduced by such a legislature is effectively customary laws and would not include wider world. If both groups see the same picture –they can say only yes and no from one side of the matter. The separation is time based as a continuity of the hierarchical system – under which mother is the first parent and father is the higher parent who connects the child to the world. As per Thesawalami Law dowry is the first distribution and inheritance is the higher distribution. That is the parallel of presenting only one candidate at a time for Presidency. Under

Democracy and therefore Equal Opportunity principles there are two independent parents / heads / candidates – each one producing their own outcomes along different paths. This promotes diversity. Lack of independence results in monotony and lower level of participation. In true democracy both parents / heads would not be using the same path with the children / the public at the same time. When the mother uses likes and dislikes the father needs to use rights and wrongs. Similarly, when the Parliament uses likes and dislikes, the Judiciary needs to use rights and wrongs instead of saying ‘no’ I don’t like it and v.v.. Judiciary needs to do the right thing as per its practice of the law. The picture presented by such an independent head would not have many elements of the picture produced by the primary custodian. It would clearly show the two sides of the common value manifested through the common principle. The Executive is common to both and when the legislature presents a proposal the Executive needs to act as the internal Judiciary and v.v. Given that the Executive is physically connected to the Legislature – the Executive acting as Head of State has the duty to use Affirmative Action and start with the thought that the Judiciary is right until proven otherwise. Towards this the advice that the President is proposing to seek in relation to the PSC report needs to come from members of the Judiciary and needs to be seen to be from them. The other alternative is to observe public opinion on this or seek the advice of the UN.

If the President takes advice from his own side – then he would be leading at best only half the country towards a just society to merge with wider world. The current reports on Sri Lanka by wider world confirm that Sri Lankan leadership has been shrinking. This leadership is not limited to the Executive headed by the President. The Judiciary that has remained silent until the problem came to their doorstep are as guilty. When there is sudden financial downfall – not only the Accountants but the Auditors are also to be blamed. The Accountants are responsible for the physical fall/reduction and the Auditors for not keeping the Shareholders and the Public informed periodically so that the Public could have taken their investments elsewhere. Likewise this fall in the Judiciary is primarily the responsibility of the Judiciary and the lack of disciplinary action on an ongoing basis is the responsibility of the Executive through its Attorney General and Auditor General. One needs to ask the question whether the President learnt from the failed Accountants or the irresponsible Auditors? – the failed Legislature or the irresponsible Judiciary?

Gajalakshmi Paramasivam 14 December 2012

Appendix

Mr. Sendt wrote on 20 November 2003 in response to my Public demand for him to pay his Dues as an Accountant::

Ms Param, I fully understand that auditors are not to participate in the management of the entities they audit. That is basic. What I said in my report is that external financial reports only give a partial view of the performance of many public entities. Such entities are not established to earn a profit or a return on assets, but to provide services to the public. So to

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give a true and fair view of how well they are providing services, they also produce non-financial performance indicators. If financial reports are required to be audited – to give the public confidence in their accuracy – then so too should the performance indicators. I fail to see how you can state that this is participating in the management of the entity.

Bob Sendt

NSW Auditor General

My response to the above indicates the deep wisdom I have in Audit and Compliance, largely based on my Sri Lankan training:

Thank you Mr. Sendt for the prompt response. Most progressive organizations produce both – Financial and Non-Financial Performance Indicators. They are both for MANAGEMENT purposes and reflect the THINKING and WORK_IN_PROGRESS. If you use Performance Indicators – then you are thinking with them. **This is like the Executive Government participating in the Judicial process.** Your Non-Financial Reports are the Legal records that these organizations are required to maintain – such as the Recruitment and Employee Assessment records. Where there is a big gap between Law and Practice – it requires YOUR staff to do the additional work. Taking the Performance Indicators distracts you away from this work. It is in breach of the Doctrine of Separation of Powers. These organizations must be allowed to confidentially do the cooking and it's up to your staff to do the spy work from the finished product to the LAW and not to their dreams and goals. You are seeking the short path because your staff are not trained to find out from the client staff what is going on. Staff often 'hide' information from you because you are third party. So they should. That way your staff would improve their skills. Using client-staff's work-in-progress deters your staff from thinking through their own specialty = AUDIT on the basis of existing LAW. Then we would become a uniform society instead of a diverse society challenging each other – you within the existing law and the operational staff towards tomorrow's laws. Challenging leads to creativity – as you can see from me. Gandhi also said that the night he was thrown out of the first class compartment of the South African RAILWAYS was his most creative experience.

You need to get the client organization to publish their non-financial reports that are mandatorily maintained. Public service organizations primarily make goodwill. This can also be positive or negative – profits or losses. They are collected together and are balanced with the total costs through Common Funds. It will be useful for you to develop a standard dollar value for these legal requirements so the People can SEE and know the Truth. Your role is not to help them make a profit but to report whether they are and how much. How about doing one on UNSW? Or State Rail?

Thank you again for responding. It has helped deeply.

Regards, Gaja

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