

Speech of His Lordship The Chief Justice H. N. J. Perera at the Ceremonial Sitting on 22nd October 2018.

Mr. Attorney, The President of the Bar Association,

It is with humble gratitude that I receive the warm welcome, kind sentiments and expressions of confidence that you have expressed in this august assembly today. I wish to approach this great honour with a full appreciation of the magnitude of responsibility that this office brings with itself. It is with a sincere and passionate heart that I assume this position granted to me for the service of my country.

I am painfully aware that we live in a society that is increasingly losing confidence in the ability to uphold justice. The increasing depravity of human values and practices has had its impact on the trust that people in a country may place on the judicial system itself.

We live in a world where people almost by default expect those in power to misuse the same. We are taken by surprise if those in power actually make true their promises. Public often assume that speeches such as this are merely sugar coated and loaded with empty words outside of real commitment. In a society like this we are almost programmed to look at each other with mistrust and much more at those who hold power in positions. As such I am aware that all of this makes it difficult for the general public to look to the judiciary in trust, expecting an independent and just solution.

And to this reality I speak today. I understand some may find it hard to believe that 'I' stand here without a political bias or favoritism or a secret strategic personal agenda that brought me here.

Nevertheless I truly hope that my tenure in this position will disapprove the same to you, if it has not been sufficiently gathered from my journey of 38years through the judicial service. I hope that I could be a beacon of hope to those who have been silently and honestly persevering in administering justice.

My ambition has always been to be diligent in the execution of my services in this field with sensitivity towards the plight of the poorest and weakest in society. The thought of the poor general public being worn out and inconvenienced by a case being unnecessarily postponed has always bothered me. Simple as the thinking might be, it has always stopped me from dragging a case or taking an avoidable leave for my personal matters, even though I may have had the freedom to do so.

In my 38 years long and challenging journey in the judiciary, I have constantly sensed the tension between two ends that any conscientious judge will need to strike a balance. One end being the need to humbly integrate with the society as a real man with real sorrows and weaknesses; and the other being the need to keep my arms-length in such a way that personal favours are not encouraged or accommodated in my office as a judge. While this peculiar tension is not always pleasant, I believe it is something that all judges should learn to handle well with wisdom, humility and non-compromise in the normal course of life.

As in His book 'Judges' (1987) David Pannick affirms, judges are asked to perform a function that is truly divine.

The Holy Bible brings out this idea in the following way: I quote from 2 Chronicles 19:6-7:

“Consider carefully what you do, because you are not judging for mere mortals but for the Lord, who is with you whenever you give a verdict. Now let the fear of the Lord be on you. Judge carefully, for with the Lord our God there is no injustice or partiality or bribery.”

Judges therefore may do well to realize and remember the seriousness of their vocation even before God. For if their office was meant to serve such a high cause, then the failure to rightfully do so on their part constitutes a grave offence.

It is indeed when truth alone triumphs in courts that we can expect people to have faith in the judicial system. As such the integrity of officers functioning in the administration of justice becomes a must. The actual good faith of judges and therefore the ability of the society to rest securely on the same is the bedrock of a successful judicial system. This truth makes the officers in this field strongly bound by a demand for the deepest form of personal and professional integrity.

Therefore if there is any doubt about the integrity of such officers, the Chief Justice bears the responsibility to take necessary action so as to ensure that the system of justice remains unpolluted. And to this end I am deeply committed.

To the members of the minor judiciary I say- Judicial restraint and discipline are necessary to the orderly administration of justice. The duty of restraint, patience and humility should be intrinsic characteristics of our judges.

These qualities in decision-making are as much necessary for judges to command respect as to protect the independence of the judiciary. Even the humblest citizen of the land irrespective of his station in life is entitled to present his case with dignity and is entitled to be heard with courtesy and sympathy. Leave no room for any complaints from the citizens of this country about the slack or apathy in matters of duty.

No longer remain any grounds for complaints about the lack of privileges given to judges. The Government has done much in this regard. Therefore let us work- and work hard! Let there be no doubt about your actual good faith in this profession. Let us be authentic and be found worthy of this high office that we have chosen to occupy.

To the learned members of the Bar I say- yours is a profession which fundamentally calls for devotion to duty. We live in a time where the legal profession is viewed as a qualification coupled with skills. However the truth is that it should primarily be a calling. It should be a vocation that stems out of a passion to be a helping hand to the poor, uneducated and exploited masses. A passion to be a voice to the voiceless. As such there is a responsibility that is cast upon every lawyer to be a beacon of light through their personal and professional examples.

It must be understood that a Lawyer is the point of contact that the general public primarily has with the judicial system. As

such much of their actions and character would rub off on the entire judicial system as a whole. Through a lawyer's ability to act as a true gentleman or lady with a high standard of conduct, he or she will be able to strengthen the common man's belief in the judicial system. Your task as lawyers is to assist the court to arrive at the truth and dispense justice.

There cannot be an independent judiciary without an independent and fearless bar in a country. An independent judiciary is a sine-qua-non for a functional judiciary where courts are regarded as temples of justice. It has been said that the lawyers are the pillars of the temple. Therefore, the lawyers hold a paramount duty towards upholding the temples of justice. Hence they are equal partners with the judges in the administration of justice.

The necessity of this interwoven relationship between the Bench and the Bar is very much felt at this hour, where the judiciary is striving to build public confidence. I am confident that the Judges would get that unstinted support from the members of this noble profession.

The respect for the judiciary is not enhanced when Judges at the lower level are criticized intemperately and castigated publicly. Whatever complaints or grievances one may have must be first brought to the notice of the Judicial Services Commission or to the attention of the Chief Justice himself. I assure you that I will always be available as the Chief Justice of this country to give you a patient and fair hearing and to find a just solution to your grievance.

It is disheartening to note that there is a growing tendency among certain practicing lawyers to malign the reputation of judicial officers whenever they fail to secure their desired outcomes through a judgement given. It must be noted that a lawyer or counsel should never act in contempt of court through unacceptable language or by intimidation of judges.

In such an event a lawyer has no wider protection than a layman and must be made to face the legal consequences of the path he or she has taken by way of disciplinary action.

Your main responsibility is to preserve and safeguard the independence of the judiciary of the country. Therefore, you are obliged to give your wholehearted support and assistance to the Judges of this country, especially to the Judges of the minor judiciary to carry out their duties in a pleasant atmosphere.

I would request the honorable members of the Bar to bring any complaints you have about the conduct of a Judge to me, through the Bar Association. In the recent past we have witnessed lawyers criticizing Judges in public, overlooking the harm caused to the judicial system in general, to the litigant, to the public and to themselves through such public outcry. Let us join together and resolve our issues, without resorting to methods which in my view would ultimately bring down the reputation of the judicial officials in the eyes of the public.

As Justice P. B. Sawant observed in *Vinay Chandra Mishra* in re, 1995 (2SCC584): “A lawyer has to be a gentlemen first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the court.”

Therefore rise up to your duty with all due diligence and actively support the Judges to arrive at the truth that leads to justice. Be committed to help the court system to function in its highest efficiency.

Do not be caught up in a pursuit of personal welfare, benefits and the like, but rather serve the cause for which you have taken your oath.

No doubt that you represent the party who has retained you and your aim is to get the judgement in your client's favor. But you must win by justice. The guidelines laid down for us by Justice Thomas Edward Scrutton in 1920 are still applicable with this regard. I quote "Do not make the mistake of thinking that you are to go into the profession to win for your client by whatever means you can - you must win by justice. You fight with the sword of a warrior, not with the dagger of the assassin. You are taking part in the administration of justice and if you succeed in bringing justice, you are engaging providing one of the greatest necessities of any civilized countries"

At this point I would like to turn to the general public of Sri Lanka and make a humble request to take heed that judges themselves are mere mortals and are not in any way infallible. However, they can and should be expected to operate with the highest of diligence, integrity and commitment to justice.

As such any party aggrieved by the order/judgement passed by a judge may recourse to any legitimate legal remedy that is made available to the public in such cases. The legal system makes this process possible through allowing such party to challenge the judgement given by way of appeal or revision and certain other legally permissible modes.

To criticize a judgment fairly or even fiercely is no crime. When such criticism is fair, reasonable and objective and is directed to a judgment which is a public document or to a public act of a judge in duty, it would not constitute contempt. Given that judges are not perfect, a fair and reasonable criticism must be encouraged and would be a necessary right to be availed when needed.

Moreover right to freedom of speech and expression, which is guaranteed under Article 14 of the Constitution is vital for all citizens to exercise and must be protected. However if any criticism directed to judicial institutions transgresses all limits of decency and fairness or displays a total lack of objectivity or when there is a deliberate attempt to undermine the dignity of the courts, then it amounts to contempt of court.

As Chief Justice M. H. Beg observed in *S. Mulgaokar, in re* (1978) 3SCC 339,para.16):

“If fearless and impartial courts of justice are the bulwark of a healthy democracy, confidence in them cannot be permitted to be impaired by malicious attacks upon them”.

Article 105(3) of the Constitution arms the Supreme Court with very wide and special powers as a court of Record, to punish its contempts. One of the cardinal principles of the rule of law in a democratic setup is the maintenance of the dignity of courts. Any criticism of the judiciary must arise from the highest

motives and should not be colored by any partisan spirit and tactics.

This was emphasised by Justice Dr. Arijit Pasayat, in *Haridas Das v. Usha Rani Banik* when he stated, I quote:

“Judge bashing” and using derogatory and contemptuous language against judges.....tend to scandalise and lower the authority of the courts and cannot be permitted because, for functioning of democracy, an independent judiciary to dispense justice without fear and favour is paramount. Its strength is the faith and confidence of the people in that institution. That cannot be permitted to be undermined because that will be against public interest. Judiciary should not be reduced to the position of flies in the hands of wanton boys. Judge bashing is not and cannot be a substitute for constructive-criticism.”

Having said that I also wish to address some critical barriers within the justice system.

I wish to remind the citizens of this country that corruption must not be tolerated at any cost. Corruption is an enemy of a nation. I call every citizen to a true commitment to remain corruption free in our daily course of life. If any person is found to be guilty of corruption, the status of the offender is of no relevance. Corruption particularly at high places must be put down with a heavy hand. As the Chief Justice of Sri Lanka, I wish to affirm that the judicial system of this country will remain strongly opposed to corruption and deeply committed to eradicate the same.

The Holy Bible affirms that “When justice is done, it brings joy to the righteous but terror to evildoers” (Proverbs 21:15).

I appeal to the legal fraternity that there should be no place for exploitation or disrespect of the masses that depend on our services. They must not be made to feel powerless in the face of the legal administrators. The position or prestige enjoyed by legal administrators must not be used to create a power gap that leaves the masses feeling insignificant and helpless.

Measures are also to be taken to prevent the trend of increasing frivolous lawsuits. These cause much mental, emotional and financial stress to the parties concerned. There needs to be a mechanism that anyone who initiates and continues senseless litigation will need to pay for the same.

As Justice Dr Dalveer Bhandari in *Ram Rameshwari Devi vs Nirmala Devi* 2011 (8SCC 249) observed “Wrongdoers should not get benefit out of frivolous litigation.”

Therefore, disgruntled litigants should not be permitted to vent their frustrations by cheaply invoking the jurisdiction of the court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution.

I take this opportunity to thank His Excellency the President of the Democratic Socialist Republic of Sri Lanka for the trust he has placed in me by appointing me to the apex of the Judicial Services of this country. I commend and thank His Excellency the President for being willing to depart from the status quo and grant the hope of this position once again to Career Judges. It is my sincere hope that my tenure in this position will fully affirm the wisdom of His Excellency’s decision in this regard.

In this occasion I cannot possibly fail to mention with deep gratitude all those who have guided me and walked by me through this long journey to the apex.

I recall with gratitude the unfailing love and affection of my late parents and their every effort to lay the initial foundation of my education.

I wish to remember with gratitude all my teachers at my alma mater St. Thomas' College Gurutalawa and St. Thomas' College Kotte. I am particularly grateful to late Mr. Daya Perera P.C , Mr. D. C. Priya Amerasinghe Advocate Supreme Court and Mr. Jayantha Gunasekera P.C under who's guidance I learnt the rudiments of practice.

I am deeply grateful to my wife Sriyani, who has been that constant pillar of strength in my life and for all her silent prayers for me day in and day out. To my daughters Nadishani and Amanda, sons-in-law Sharon and Sam I say a big thank you for standing by me always, with much love and support.

At this point I also lovingly recall my sister late Justice Chereen Madawala who also passed out as an Attorney-At- Law together with me and joined the Judiciary and served as a Judge of the Court of Appeal at the time of her demise.

I also extend my heart felt gratitude to the official and unofficial Bar, to my brother and sister Judges of the Supreme Court, to honourable judges of the Court of Appeal, High Court, District Court and Magistrate Court, Registrar and staff for your presence here today. I also thank all my dear friends and relatives who have made a special effort to be present here

today. I truly appreciate your solidarity with me in this special occasion.

In closing there is something to which I must testify: You who know me well are my witnesses that I was unassumingly minding my own duties as a Supreme Court Judge until the 12th of this month.

It was to my own great surprise that I was called out and made to sit in this honorable chair in the most unexpected manner. I am convinced beyond doubt that this was the work of Lord Jesus Christ.

I am humbled and reminded that I am answerable to the people of this country and ultimately to God in my duties as the Chief Justice of Sri Lanka. I am confident beyond doubt that God will stand by me and grant me His grace to carry out my duties fearlessly and independently.

I quote from the Holy Bible (Micah 6:8)

“And what does the LORD require of you? To act justly and to love mercy and to walk humbly with your God.”

And to this end I commit myself.

Thank you for your presence and patience.

May God bless you all!