

# JUDICIAL SERVICE ASSOCIATION OF SRI LANKA

## ANNUAL CONFERENCE 2012

**ON 22<sup>nd</sup> DECEMBER, 2012**

**at Roof Top or Samudra Ballroom**

**at Hotel Taj Samudra at 9.30 a.m.**

**GUEST OF HONOUR - KEY NOTE ADDRESS**

## **I N D E P E N D E N C E O F T H E J U D I C I A R Y**

**Gurur brahma gurur vishnuhu gurur devo maheshwaraha guru saakshaat para brahma**

**tasmai shree gurave namaha**

**Mr.Chairman, Your Ladyship, Distinguished Guests, my dear Brothers and Sisters!**

I was indeed pleasantly surprised when your President invited me to address you today. It is eight years since I retired. Though I have been very busy addressing here and abroad many a meeting on legal, social, religious, literary, historical and many other allied subjects, and sometimes writing about them, the Original Judiciary to which I belonged and the tenure of which I cherished so much never invited me so far. Perhaps it was because I spoke and wrote of matters that were not appreciated until now! At least, the fact that when a sense of apprehension, uncertainty and confusion has enveloped you, thanks to what is happening around you in Sri Lanka, you have thought of those who stood for the Independence of the Judiciary, and lived their life under much stress and indignity steeped in such Independence, speaks well of you. It was not very long ago that this speaker together with another senior member of the Original Judiciary had to remind the Secretary to His Excellency the President of the undesirability of interfering with the Independence of the Judiciary when we were called upon to inquire into the dismissals of several Original Court Judges during the tenure of office of Justice Sarath N. Silva. We politely declined to serve on the special committee and indicated that if the request came from the Judicial Services Commission we were prepared to assist.

I have been called upon to speak today on your event-theme "Independence of the Judiciary" just as my esteemed friend Justice Salaam, the

other speaker, today. We seem to be in the habit of attending conferences together - only a week ago Justice Salaam and I were at a USAID Legal Workshop for the Northern and Eastern Lawyers together. I hope our discussions do not overlap.

What is Independence of the Judiciary? Why is it important? Are these not pertinent questions to answer? Let me briefly define this much maligned phrase in my own way. Independence of the Judiciary means simply that the Judiciary needs to be kept aloof as far as possible from the other branches of Government and other interest groups. In other words, Courts should not be subject to improper influence be it from other branches of the Government, that is the Legislature as well as the Executive, or from private or partisan interests. If Judges in a country could decide cases and make rulings in applications before them according to the rule of law and according to their judicial discretion, even if they be unpopular and even if they may embarrass powerful vested interests, then we might say there is Independence of the Judiciary in such a country.

Independence of the Judiciary has two facets – extrinsic and intrinsic or the outside and the inside. The extrinsic component is made up of the structural, systemic and environmental factors that form the set up within which Judges function. The extrinsic component therefore includes the constitutional procedures for appointment of judges, their security of tenure, salaries and perks, as well as their personal security, including threats and inducements. The intrinsic component includes how Judges think, react and behave. This component is what is truly within our power. However, even the most altruistic would agree that the extrinsic component greatly shapes the intrinsic.

What you are facing today with the impeachment of the Chairperson of the Judicial Service Commission and the physical assault on the Secretary to the Judicial Service Commission are the extrinsic dimension. When the Eighteenth Amendment to the Constitution was allowed to be passed by the Supreme Court, some of us were of opinion such outer aberrations might be the result. We had read as Law Students in 1961 or so as to what Lord Acton had said in 1887- ***“Power tends to corrupt, and absolute power corrupts absolutely”*** said he.

Checks and balances were not designed by Law for cosmetic reasons. The concentration of power in one arm disturbs the delicate balance of power among the three arms of Government. When there was already an imbalance of power, further concentration was a recipe for disaster. To understand the extrinsic

evolvments in our Country we must understand what took place in the field of Constitution making in Sri Lanka.

For constraints of time I will not start from 1947. Let me begin with the pre- natal period of the present Constitution. The 1978 Constitution laid the foundations for a changeover from the Anglo – Saxon model of a Parliamentary Democracy to a centralised, almost absolute Presidency, modeled on the German/American Presidential system, though paying pious lip service to Parliamentary Democracy and Parliamentary traditions. While seemingly following the American model, the strict division of powers, between the executive, legislative and judicial, contemplated by Montesquieu, was conveniently ignored.

Before introducing the 1978 Constitution, Article 4 of the 1972 Constitution which read as *“The sovereignty of the People is exercised through a National State Assembly of elected representatives of the People”* was changed to read as follows: *‘The sovereignty of the People is exercised through a National State Assembly of elected representatives of the People **and** the President who shall, subject to the provisions of the Constitution, be elected by the People’*.

So too Article 5 of the 1972 Constitution was amended to replace the National State Assembly, with the *“National State Assembly **and** the President”*, as being the supreme instruments of state power of the Republic.

The more important amendment relevant to our deliberations here was that the Executive power, including the defense of Sri Lanka, which was exercised by the President and the Cabinet of Ministers according to the 1972 Constitution, after the Second Amendment, was to be exercised solely by the President, who happened to be the Executive President, unlike the earlier President who was a creature of the Legislature. The Cabinet of Ministers was to thereby lose its importance. Still the Cabinet is sterile. You hardly know these days whether a Cabinet of Ministers exists and what its views are!

This changeover sought by the Second Amendment to the 1972 Constitution completely metamorphosed the institutional set up introduced by the 1972 Constitution.

The Second Amendment to the 1972 Constitution was the catalyst that produced the 1978 Constitution. First the Second Amendment, and then the

1978 Constitution, transformed the office of the President of the Country from a creature of the Legislature to be the controller of the Legislature.

The President of the Democratic Socialist Republic of Sri Lanka was not only going to be the Constitutional President but also the Executive head of the country as well. Like the President of the United States he was to be a Constitutional head plus the Prime Minister, two roles rolled into one.

He would appoint the Prime Minister and the other Ministers of the Cabinet. **(Vide Article 43(3) and 44 of the 1978 Constitution).**

He would appoint other Ministers not of cabinet rank too. **(Vide Article 45-*ibid*).**

He would not cease to be the leader of his political party and therefore it would be **his** policy that would be implemented. **(Vide Article 31( 1) and 33(a)- *ibid*).** So the fertilization and conception for the Chintanayas of the future had taken place then.

The President would not be a member of the Legislature but from time to time he would use his right of audience to address the Parliament very much like the President of the United States who would address the Congress when he felt disposed to deliver a message **(Vide Article 32 (3)- *ibid*).**

In other words the President was to become the supreme instrument of State Power of the Republic under the 1978 Constitution. But he was much more than a mere *primus inter pares* as far as the institution of the President and the Legislature were concerned.

The President was to become the head of the Cabinet of Ministers. **(Vide Article 43(2) *ibid*).**

The whole administration was to be brought under his control **(Vide Article 54 – *ibid*).** By virtue of his office he could give orders directly to any department or official. He could call for any report, documents or any other information from any department directly.

It was said that the President of the United States was a dictator for four years. In the case of Sri Lanka not only is this dictatorship extended by two more years, but it applies with far greater force here! The Cabinet is the President's creature. Most importantly, by allowing Members of Parliament to

become members of the Cabinet, Parliament as an institution has become emasculated. Members of the Cabinet are beholden to the President, as they hold office at the President's will and pleasure. (**Vide Article 44(3) –*ibid***). They serve their Master and do not hold any allegiance to the institution of Parliament. In the US, the House of Representatives and the Senate are completely divorced from the Executive. The Legislature is not an appendage to the Executive, but actually acts as a check on the Executive. With the evisceration of this separation, the Executive in Sri Lanka becomes even more powerful. It is no surprise then that much respected stalwarts of Parliamentary Supremacy and Democracy in Sri Lanka have become starlets kept by the Executive today.

Worse still the President was to keep himself insulated from blame for acts of omission and commission committed by him because it would be the Ministers who would be questioned and criticised in the House for such acts for which the President may himself be responsible. Were there to be a challenge of no confidence in the Government, the Prime Minister and the rest of the Cabinet would have to face it, since the President was not there to answer the criticisms that were to be leveled at the Government of which he is the fountain-head. The President of the Republic according to the Standing Orders of the Parliament cannot be the subject of any adverse comment. And Article 35 of the Constitution assured immunity to the President from suits. As you can see the role of the President appears to be fashioned in the image of a King. In fact Mr.J.R.Jayewardene once said that he is the last of the lineage of Royalty in Sri Lanka!

Since the Presidential Elections would not coincide with the election to the Legislature the possibility of the Legislature and the Executive sporting different political complexions was definitely possible, as indeed we did have such parties of different hues called upon to co-habit after the 2001 Election. However, this was hardly a check on the powers of the Executive. The manner in which the then President cut the Gordian knot by taking over three Ministries stultifying the then existing Legislature's performance thereafter, proves the point. The emasculation of Parliament is almost complete with the power the President wields to prorogue and dissolve Parliament.

What was to be noted was that the Presidential System initiated by Mr.J.R.Jayewardene offered virtually unlimited scope for wielding absolute power, albeit for a limited period then. But the taste of unlimited power grows with time and office and the lust cannot be easily satiated. So the changeover

brought about by Mr.J.R.Jayewardene must be deemed to have been designed to keep the incumbent in office of the President of the Democratic Socialist Republic of Sri Lanka in absolute and unfettered power. In consequence, fundamentals of good governance such as accountability, transparency, consideration of conflict of interests and the avoidance of certain actions thereby, were all sacrificed at the altar of self interest. Yet after the demise of President Ranasinghe Premadasa it was not Mr.JRJ's Party which reaped the benefits of his constitutional tomfoolery.

This brings us on to the state of the Law under the Constitution pertaining to the Judiciary. It is important to examine whether there are provisions in the Constitution which favour the interference by the Executive *vis a vis* the Judiciary. A Constitution tailor-made for the enhancement and the stabilising of the power of the Executive President must no doubt have such secret innovations. Until the passing of the Seventeenth Amendment to our Constitution the discretion of the President with regard to the appointing process was essentially absolute. The 17<sup>th</sup> Amendment restored some balance to the system and made the separation of powers contemplated in Article 4 meaningful.

Before getting on to the calamity that befell our Constitution thereafter, a word relating to the Office of the Attorney General may not be out of place. The Attorney General is the first Law Officer of Sri Lanka and the chief legal adviser to the Government. He and his officers are legal advisers of the national Government of which the Executive President is the head. The close relationship between the Attorney General's Department and the Executive is thus visible. The relevancy of this would be referred to anon.

Dr.Colvin R. de Silva once pointed out "in the field of independence of the judiciary and of judicial independence it is the upper echelons of the judiciary that most matter being the final guardians of such independence against executive intermeddling and even legislative invasion." (vide Socialist Nation of 09/08/1978).

The new 1978 Constitution provided for a transitional provision (**Article 163**) whereby all judges of the Supreme Court and the High Court established by the Administration of Justice Law No: 44 of 1973 holding office on the day immediately before the commencement of the Constitution **ceased to hold office** thus ensuring that thence onwards the appointments to the Higher Judiciary could be kept within the Executive President's control. It is to be noted

that Article 164 categorically stated that all minor judicial officers and such officers and employees could continue in service or hold office on appointment under the same terms and conditions as before (*the 1978 Constitution came into effect*). But why were judges of the superior courts handpicked to “cease to hold office” while the minor judicial officers were allowed to continue? Did it give the then President the liberty to pick and choose for appointment to the Higher Judiciary those favourable to the Executive, leaving out others?

Since then there has been an unhealthy practice of appointing comparatively very young State Officers from the Attorney General’s Department to the Higher Judiciary in large numbers thus effectively debarring older and experienced Original Court Judges as well as senior members from the Unofficial Bar or even senior educated Academics from the Universities entering and/or reaching the higher echelons of the Judiciary. By virtue of their long stint at the Attorney General’s Department these Judges carried with them a conditioned reflex which favoured the State generally. They were also necessarily quite close to the Executive by virtue of their having had to hobnob with politicians during the course of their day to day official life at the Department. This is perhaps the type of judges who, in the words of Lord Atkins’ famous dissent, become “more executive-minded than the Executive”!

Today the Superior Courts consist of large majority of Judges who entered the Higher Judiciary directly from the Department. They have had no experience at the Original Courts, especially the Civil Courts, except for some who came up from the High Courts, which mainly did Criminal cases at the time they were recruited from the Attorney General’s Department. I had noticed the ability to appreciate the nuances of Civil Law notably lacking among these recruits from the Department when I was on the Bench. You cannot blame them. The appointing authority if it was circumspect and farsighted instead of being offensively selfish could have seen through the consequences of such appointments. A long stint at the Original Judiciary is expected to mature and sober the incumbents before they take on responsibilities in the Higher Judiciary.

The role of the Attorney General and so-called Independent Commissions of Inquiry in relation to the Executive Presidency came into focus a few years ago. The International Independent Group of Eminent Persons (IIGEP) who were invited by the current Executive President himself from a number of Countries to observe the work of the Commission of Inquiry to Investigate and Inquire into Serious Violations of Human Rights, in their final Public Statement

released before withdrawing from their responsibilities **in disgust** said as follows *“An astonishing event occurred in November 2007 at the plenary meeting held between the Commission and the IIGEP. A letter dated 5th November 2007 from the Presidential Secretariat and addressed to the Chairman of the Commission was revealed to the meeting. It stated that: ‘The President did not require the Commission to in any way consider, scrutinize, monitor, investigate or inquire into the conduct of the Attorney General or any of his officers with regard to or in relation to any investigation already conducted by the relevant authorities’”*. The report goes (**vide page 13 under the heading (a) The role of the Attorney General**):-on to say *“It was the single most important event prompting the IIGEP to decide shortly thereafter that it should bring its presence in Sri Lanka to an end”*! In this case the IIGEP had been expressing its concern about the role of the Attorney General from the very beginning of its work saying there was a fundamental conflict of interest since the Attorney General while being legal adviser to all levels of the Government including the armed and security forces and the police was at the same time potentially in the position of being a subject of the inquiry where the incriminating hand by the dependents of the victims pointed at the armed services, police and paramilitary armed units.

It would therefore not be wrong to conclude that the Executive Presidency is in a position to interfere with the Judiciary on account of its close relationship with the Attorney General’s Department. The appointment of personnel in large numbers from the Attorney General’s Department to the Higher Judiciary can be seen as an extension of the process of such interference.

It might be argued that in the United States the appointments to the Supreme Court are made by the President. There is a glaring difference. The President of the United States, it must be noted, is hamstrung by the concurrent power of approval conferred by the Constitution on the Senate. As stated earlier, the Senate is not a mere appendage to the Executive, and thus takes its tasks seriously. The Senate does not toss aside its obligations as a mere formality. That august body delves deep into the integrity, moral uprightness and the general demeanour of the President’s nominee. We saw this independence manifest itself a few years ago with one of the nominees of President George W. Bush.

Let me now come over to the national calamity - the Eighteenth Amendment.



The Eighteenth Amendment has fundamentally transformed Sri Lanka's political system, stripping away even the façade of democracy. It ended Presidential term limits, eliminated the Constitutional Council, increased the Executive's control over appointments and gave the President the power to regularly attend and address Parliament, without being subject to question. It has removed vital checks on Executive power and has further undermined Sri Lanka's imperfect democracy. As we traced at the outset the Executive was already hegemonic. Now the hegemonic Executive President had been made a juggernaut!

Were the consequences of removing vital checks on the Executive unknown to our Higher Judiciary?

**Rebecca Buckwalter-Poza of the Asian Human Rights' Commission** had said quite some time ago, that *"Presidential term limits are critical to democratization. The concept of Executive term limits has been a part of discussions of democracy since its inception in ancient Rome and Athens. Without term limits, an individual and party may accumulate tremendous power. Incumbency advantages allow them to increase and preserve that power perpetually. The incumbent may rely on popular support, regime tactics, and opposition fragmentation to stay in office and set the country's agenda ad infinitum. The consequences extend beyond the immediate issue of individual accumulation of power over a lifetime. As power becomes concentrated with a single individual and party, the range of views within the party decreases and opposition parties weaken and fragment, diminishing the representation of diverse views in democracy. The weakening of opposition parties undermines electoral choice, as voters have fewer alternatives to the party in power. Government and politics stagnate."*

She further continued- *"In the absence of a Presidential term limit, corruption will increase within and outside of government. As an Executive and ruling party accumulate power, they become more likely to abuse that power. Parties are less vigilant in rooting out vice and officials are more prone to corruption when they perceive little threat of removal or electoral repercussion. Conversely, without the potential for political turnover, businesses and other non-governmental actors have a greater incentive to invest in bribing and corrupting government officials, whose positions are more likely to be long-term and secure."*(unquote)

All that this Political Consultant had said even before the Eighteenth Amendment became Law here, have found confirmation in Sri Lanka later.

The Eighteenth Amendment expanded the power of the Executive to make appointments, eroding the independence and power of other government actors and branches. Changes to the appointment process within the Eighteenth Amendment has presented a special threat to the independence of the Judiciary. The President's expanded appointment powers has extended to the selection of the Chief Justice and the Judges of the Supreme Court, the President and the Judges of the Court of Appeal, the Members of the Judicial Service Commission other than the Chairperson, the Attorney-General, the Auditor-General, the Parliamentary Commissioner for Administration, and the Secretary-General of Parliament. Additionally, the Eighteenth Amendment's expansion of the President's privileges with regard to Parliament has compromised the autonomy of Parliament. The prerogative to address Parliament and the acquisition of full Parliamentary privileges has significantly increased the President's influence on the Legislative branch, virtually eliminating the separation of powers between the Executive and the Legislature.

Thus the 18th Amendment has destabilised the Sri Lankan political system. Its effects will only grow with time. The drama taking front pages in the Newspapers these days is only proof of such demoralizing effects. The Amendment has removed essential limits on Executive power and has crippled the Judiciary and reduced the independence and influence of the Parliament; further, it has ensured political stagnancy and precluded progress. By, passing the Eighteenth Amendment, Sri Lanka has destroyed what democratic framework that was in place rather than improving it. When the Supreme Court decided on this issue it ought to have borne in mind the precarious balance of power and ought to have realised that changes of this nature change the essential structure of the Constitution and as such the very nature of a democracy.

Thus the Executive power under the 1978 Constitution, which is the Constitution still in vogue with many amendments so far, is reposed absolutely in the President. But the checks and balances on his arbitrary activities have been effectively blunted. The office has all the hallmarks of a veritable dictator. The desire to hold on to power by any means seems to have motivated the enactment of the existing Constitution which was passed effectively with the help of the steamroller majority that Mr.J.R.Jayewardene enjoyed during his tenure of office and now the majority enjoyed by the present incumbent has given birth to

the Eighteenth Amendment. Use of violence, deception, and unethical means characterized JRJ's tenure in office. Stoning of Judges' residences found its origins during J.R.'s time.

He effectively established a constitutional structure which appeared democratically feasible but in actual fact was a design for dictatorship. His deception lies in his successful enactment of the present Constitution. The present incumbent seems to be proving himself to be a worthwhile political progeny. And he is a self-confirmed artiste with histrionic abilities!

It is in the light of such constitutional provisions one has to look at the unfortunate assault effected on the Secretary to the Judicial Service Commission and the Impeachment process now enacted on the present incumbent to the post of Chief Justice.

No one had dared to assault a Judge until recently, just like none had stoned Judges' houses until it was done during J.R.'s time. It is the gumption that none would punish them because they are protected that allows such thugs to resort to such acts. There are some politicians who would raise the bogey of foreign conspiracies, and magnify insignificant incidents, as reasons for such happenings, forgetting that such occurrences, whatever be the reasons that prompted them, cannot be condoned. Then again the process adopted to impeach the present holder of the office of the Chief Justice has been roundly condemned as unconstitutional and violative of any notion of Natural Justice or fair play. The public domain is filled with learned discourses on this debacle and there is little that can be added, except that it is the logical extension of the process of aggrandizement of power by the Executive to the detriment of the judiciary and democracy. And if I may say so, honest reflection will show that the Judiciary played its role in allowing this to happen.

To state that the extrinsic dimension of the independence of the Judiciary is in a perilous state would be an euphemism.

Let me now move over to the intrinsic dimension.

Whatever may be the extrinsic outward offensives undertaken and orchestrated by ill-advised political stooges and others *vis a vis* the Judiciary, there is an inner dimension which Judges must not lose sight of. By virtue of his or her office a Judge has per force to be independent. If a Judge has a condition of mind that sways judgment to one side or the other and renders such Judge

unable to exercise his or her functions impartially in a particular case then his or her Independence could be said to have been lost. It is an elementary rule of natural justice that a person who tries a cause should be able to deal with the matter before him or her objectively, fairly and impartially. No one can act in a judicial capacity if his or her previous conduct gives ground for believing that he or she cannot act with an open mind. The Law requires even handed justice from those who occupy judicial office. It expects the Judge to come to his or her adjudication with an independent mind without leaning towards one side or the other in the dispute. A judge must not be oppressed by the high status of a party in the dispute. In Courts of Law there cannot be a double standard- one for the highly placed and another for the rest. A Judge should have no concern with personalities who are parties to the case before him or the lawyers appearing for them but only with its merits. Judicial bias may be inferred sometimes from the manner in which a judge conducts the proceedings. Not granting a fair hearing to one of the parties may also lead to an inference of judicial bias.

While it would be naïve to think that the extrinsic aspects have no effect on the intrinsic elements of independence, the ultimate power to resist adverse extrinsic elements lies in how Judges control the intrinsic elements. It is the proper exercise of the intrinsic elements that is the true source of power for a judge. A judge who deals purely on the merits of cases and who respects the Bar whilst being firm will get the reciprocal respect from the Bar. There is no substitute for this respect. There is also nothing that a tyrant fears more than an independent judge. A Dictator is not as worried about protesting or striking judges as he is about judges who uphold the Law. As Judges we must remember that manipulating crowds and processions are in the domain of the political animal. Judges who, by virtue of their office, are isolated cannot win that battle easily. The battle that can be won of course is the battle in their domain – the legal domain.

Being independent does not mean holding against the powerful, but being unafraid to do so. A reaction which results in holding against the Executive merely because the Executive is interfering with the Judiciary is as bad as being afraid of the Executive or seeking to curry favour from the Executive. Such a situation will only play into the hands of those who seek to undermine the Judiciary. Balance, though difficult at times, must be maintained.

After I made my speech in all three languages on being welcomed by the Bar consequent to my elevation to the Supreme Court, there

was heavy criticism by a senior lawyer which appeared in the papers. This irritated my close friends. I laughed it off. A week or so later that senior lawyer appeared before me. I had studied the case the previous night and found merit in his case. I allowed both Counsel on either side to address me, as they would normally do and gave the determination in favour of the senior lawyer who had castigated me in the papers. My lawyer friends were even more annoyed. One of them phoned and said "You have lost a good opportunity to teach that fellow a lesson" meaning the senior lawyer who criticised me. "You should have dismissed his case and taught him a good lesson" he said. I retorted "What nonsense! A lawyer fights his client's case. If a Judge does not like the Counsel and therefore make a one sided order purposely, his client would suffer. My problem with the lawyer is something else. Don't talk like that" I warned him. I did not allow the conduct of the lawyer turning abusive towards me, to colour my judgment.

Let me point out some of the common contributory causes, which lead to judicial bias-

Political pressures brought about directly or indirectly.

Desire on the part of a Judge to curry favour for his or her future prospect.

Pecuniary interest of the Judge in the subject matter of the case before him or her.

A desire to patronize any former colleague at the Bar or elsewhere.

Inherent tendency in a Judge to show favour to certain classes of cases.

Interest of the Judge in one or the other litigating parties for any reason whatsoever.

There are many more.

A Judge needs to be alert with regard to his or her conditioned reflexes when hearing a case. We are all human. But it would do us good if we know ourselves - know our biases, prejudices, predilections and so on. Inter alia gender bias, communal bias, racial bias and political bias have been noticed in recent times. I know of a Lady Judge who would not seriously consider the need to have corroborative evidence to support that of the complainant in a rape case, regardless of how reliable the evidence was. I know of a Judge of an Original Court who refused to read a judgment of the Supreme Court produced in his

Court by Counsel, which recommended corroborative evidence to support the confession given by the accused in a case under the Prevention of Terrorism (Special Provisions) Act with regard to the actual happening of the event mentioned in the charge sheet. The principle there was, even if a confession might be considered to have been voluntarily made, if the act confessed did not take place in reality how could an accused be convicted. Since the Judge refused to accommodate the Supreme Court Judgment in his anxiety to convict the accused, the matter is now in appeal.

There are other interesting cases of judicial bias. A senior High Court Judge told me this about thirty years ago. This Judge had been recently appointed a High Court Judge and sent to this station. A senior lawyer who practiced in that Court had been a batch mate of the High Court Judge at the Law College. The lawyer would daily come into the Judge's Chambers and wish him "Good Morning" and inquire about his health and conveniences at the Official Bungalow, about his family, children and so on. The Judge attributed the lawyer's concerns to their friendship at Law College until one day the Judge casually walked up to the window overlooking the pathway within the Court's premises. The lawyer had just left after inquiring into the health and well being of the Judge. Standing behind the curtain in his Chambers, the Judge overheard the lawyer telling a client in Sinhalese "Work is done. I have given the Judge's dues. You will be acquitted. You must bring me extra Rs.5000/- before evening today after you are acquitted"! The Judge was shocked. On looking into that day's trial cases he found the one in which his Law College friend appeared, there was hardly any evidence to convict the accused. The lawyer knowing that the accused would be acquitted had made use of the Judge's name to make a fast buck.

The Judge was furious. What did he do? He while hearing the case put many matters into witnesses' mouths, made out a case which was not there and convicted the accused sentencing him with maximum punishment. I inquired from him "Sir! Was it correct to punish the client for a mistake made by the lawyer?" He said "May be you are right. But at that time I was furious and until I convicted him I could not control my anger. I refused permission to any lawyer thereafter to come into my Chambers." Judicial bias thus could be the outcome of anger and annoyance.

A senior lawyer had played out several clients. While hearing the criminal cases against him I had shown my disapproval of his conduct at some stage. That was good enough for the accused and his lawyer to say I was prejudiced and have the

case transferred to another Judge when in fact the lawyer's cases were at their tail end after leading so much of evidence. I was annoyed with the transferring authority for not asking me anything or calling for my observations. I discussed this with Justice Jameel, who was then a High Court Judge. He said "The fact that you are annoyed and angry confirms the fear of the accused. What does it matter if a few cases are less for you? Whether this lawyer will ultimately get convicted or not is not your concern. You have done your part. Just leave it at that!" The lawyer died soon thereafter – due to natural causes of course!

Faith in the administration of justice is one of the pillars on which democratic institutions function and sustain. To establish that faith, Judges must do what is right both legally and morally. Whatever difficulties you face from outside agencies you must try your best to do what is legally and morally expected of you. For that we must require a degree of detachment and objectivity in judicial dispensation. If we think that we might not be impartial in a case it is best to have it transferred to somebody else. Nothing should be done which creates even a suspicion that there has been an improper interference with the course of justice. But if it is necessary to act without fear or favour you must do so.

When I was District Judge/Magistrate, Mallakam the Army had shot dead a lame person traveling in a cycle near their Camp in Atchuveli. I had to go for the Inquest. They said in consequence of a shot from the direction in which the cyclist was traveling they had shot in self defense. Since the killers were known I asked the Police to take into custody the two soldiers who had shot and after Inquiry into the question of self defense they could be released. This had irked the Army. The next day when I walked up to my Chambers from my Official Bungalow behind the Courts there were over 25 soldiers with guns pointed at my direction standing outside the Courthouse. There were a number of Trucks and Jeeps inside the premises of the Court. When I went into my Chambers I inquired from my Arachchi why they were there. "May be because you had ordered the arrest of two soldiers" he said. I asked him to call the Commanding Officer of that unit. One Major Wijeyeratne came into my Chambers. When questioned he said that they had come to give protection to the two soldiers. I told him protection to all prisoners is given by the Police. I further said there was need for the Army to be in the Court premises. Then I looked into his eyes and told him "I give you two minutes to take the Army personnel and your vehicles out of the Court premises." He just stood there stunned. "I hope you heard me Officer!" "Yes Sir!." There was a salute and the vehicles were all out within two minutes.

But another Officer could have refused. I had thought if that happened the Court was not going to function that day, prisoners were to be in Police custody and litigants and Staff would wait for the Army to leave even until 4.30 p .m. I was going to inform the Chief Justice of what was happening.

The Officer, Major Wijeyeratne, I must say was a gentleman! Therefore I had no problem!

If you are known to be serious in carrying out your duties I believe those who are used to violence still respect you.

I know these days there is much stress in carrying out your duties. Your personal security is at stake. Interference extends not just to your duties, but to other areas as well. Even this Conference was sabotaged. That is why I have given one-tenth of my pension to your Association as my meagre contribution to defray your expenses. I, however, see a silver lining at the end of all this. If the powers that be feel threatened by the Annual Conference of the Judges, surely that is a sign of fear. That is a sign of weakness. That is a sign that what you do and say matters. That is a sign that together you are strong. That is a sign that the tide has turned, that a battle has been won and that intrinsic independence shines strong amongst you – the younger members of the Judiciary.

You must continue performing your duties however challenging they are, bearing in mind the need to be balanced. You must continue to remain together, for you can be certain that there will be moves to split asunder the unity. You must continue this historic struggle for extrinsic independence. Not just for the judiciary but for democracy. Thank You!

**Justice C.V.Wigneswaran**