

**The full text of the speech by Attorney General Yuwanjan Wijeyatilake
at the ceremony to welcome the new Supreme Court Judge, Justice K.T.
Chitrasiri**

I am happy to welcome His Lordship Justice K.T. Chitrasiri as a Judge of the Supreme Court.

Your Lordship is possessed of an illustrious academic and professional background and is ideally suited for this new appointment. If I may traverse a few of Your Lordship's many achievements, it is noteworthy that Your Lordship has an LLB from the University of Colombo and a post-graduate qualification from Queen Mary College, London. Before adorning the Bench, Your Lordship gained experience not only as a legal practitioner and as a Visiting Lecturer at the Faculty of Law, University of Colombo and a Visiting Scholar at the Law School, University of Deakin, Australia, but also held some significant posts in the public sector. Among them was Your Lordship's tenure as a Legal Officer at the State Graphite Corporation and, subsequently, as an Assistant Legal Draftsman at the Legal Draftsman's Department, as Director of the Human Rights Commission and as the Registrar of Companies. The publication of Your Lordship's book on intellectual property issues in Sri Lanka, presentations on the law relating to children and participation at worldwide seminars on a variety of subjects amply demonstrate the academic experience of Your Lordship. However, it was Your Lordship's appointment as a Primary Court Judge in 1980 which marked the beginning of a long career in the judiciary, culminating with the august appointment we celebrate today. Therefore, having vast experience as a Magistrate, District Court Judge, Judge of the High Court and Judge of the

Court of Appeal, Your Lordship certainly needs no introduction to fundamental principles of judicial ethics. But, in the face of constant challenges and pressures, it is necessary to remind ourselves of those ethics.

In this regard, I refer Your Lordship and all those gathered here today to an important source from the Indian Judiciary, one of the strongest and respected judiciaries in the world. In 1997, the Supreme Court of India in its Full Court adopted a Charter called the “**Restatement of Values of Judicial Life**”. It is meant to serve as a guide to be observed by all judges and indispensable in the impartial administration of justice. Though not exhaustive, it is a complete code of the canons of judicial ethics. There are 16 canons and I now read some of the more significant ones:

1. Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people’s faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.
2. Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.

3. A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.
4. A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.
5. A Judge is expected to let his judgments speak for themselves. He shall not give interviews to the media.
6. A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available
7. Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

This Charter which was ratified and adopted by Indian Judiciary in the Chief Justices' Conference 1999 should be a guide to our judiciary too. Time does not permit me to elaborate on each of the canons in the Charter, but I believe that the first and the last are particularly important to the current Sri Lankan

context and, therefore, these two aspects of judicial ethics need special mention. I begin with judicial impartiality. Certainly, we have constitutional safeguards which are meant to ensure judicial independence and impartiality. Under the 19th Amendment, our Constitution guarantees that the appointment of judges of the Supreme Court and the Court of Appeal shall be by the President, **subject to approval of the Constitutional Council**. It is no longer the case that the appointment is purely by the Executive. Therefore, the public should have no reason to perceive that judgments will be marred with political bias in favour of the Executive. Independence of the higher judiciary is also strengthened by the process applicable to the removal of judges of the Court of Appeal and the Supreme Court. Removal of such judges shall only be by an order of the President after an address of Parliament supported by a majority of the Members of Parliament has been presented to the President for such removal on the ground of proved misbehaviour or incapacity. Since both the Executive and Legislative branches of government are involved in the process of removing judges, a judge has the security to act without fear of removal upon a judgment against the State. However, merely having a legal framework which contemplated judicial independence is meaningless, if it is not reflected in the conduct of members of the judiciary themselves. And as such, a judge must build and maintain for himself a reputation of independence and impartiality.

I now turn to the second aspect of judicial ethics which I choose to focus on today, from among the many canons in the Indian Charter. That is that every Judge should conduct himself in a manner which is not unbecoming of the high office he occupies and the public esteem in which that office is held.

This is really not a principle which is exclusive to judicial officers. For, any person holding any high public office must be conscious that he is under the public gaze and has to live by a set of standards which instill public respect. However, since members of the judiciary daily judge the acceptability and non-acceptability of actions by members of the ordinary public, judicial officers have an even higher burden of responsibility in ensuring that their conduct is honourable and worthy of respect. Therefore, not only is it that a Supreme Court judge should conduct himself in a manner which accords with public expectation and esteem reposed in the high office that he holds, but he must also be equal before the law in the rare event that his conduct is unbecoming. Indeed, it would be unfair if judges themselves remain unjudged by the very public that they judge every day. And it would be even more unfair if the law gives him special protection and places him beyond the reach of justice. Article 12(1) of our Constitution in no uncertain terms guarantees that **all persons** are equal before the law and are entitled to equal protection of the law. Accordingly, salient features which mark an honourable judge are judicial **and moral** integrity, as well as humility to bow down to the right to equality in its fullest sense, even when the consequences may be adverse to his interests.

Therefore, it cannot be stressed enough that judicial ethics are fundamental to the administration of justice and public confidence in this revered organ of the State. It is in this light that Your Lordship's background is deeply appreciated and Your Lordship's appointment augurs well for the future of our judiciary. I wish Your Lordship well in continuing to maintain the high standards of judicial conduct and in discharging the great duties which lie ahead.

**Speech made by Justice K.T.Chitrasiri at the
Ceremonial Sitting held to Welcome him to the Supreme Court**

The Hon. the Attorney General, the President of the Bar Association, Mr. Alagaratnam, and through you both, the members of the Bar; ladies and gentlemen:

I thank you for the kind sentiments that you have expressed in welcoming me to this Court. I recall the co-operation that was promised me, and which I received in full measure thereafter, when I assumed the office of a Judge of the Court of Appeal seven years ago. I look forward to receiving that same degree of assistance and co-operation in our joint endeavour to deliver justice to the people of our country.

I appreciate the significance of my appointment, which is the first to have been made to this Apex Court under the Nineteenth Amendment to the Constitution. I would like, therefore to thank His Excellency the President, His Lordship the Chief Justice and the Members of the Constitutional Council for the recognition that they have accorded, through my appointment, to the Judicial Service of this country. I believe my experience as a career judge which counts more than 35 years may have been one of the serious considerations that led to my appointment. Indeed, career judges who are appointed to the appellate courts bring with him unrivalled experience of adjudication in civil, criminal, family and commercial litigation, acquired over several decades of service throughout this country.

They have come into daily contact with people of all levels of society, and actively participated in the resolution of their problems and disputes.

Having said that, I take this opportunity to refer to a matter that is being subjected to rigorous discussions these days, the world over. That is the subject of judicial accountability.

As you are probably aware, the phenomenon of judicial corruption has emerged in many countries, on all the continents. The contemporary definition of judicial corruption is not limited to seeking or accepting money or gifts. An equally corrosive form of corruption arises from the interaction between the judiciary and the executive branch of government. For the past fifteen years or more, the international community has been engaged in responding to this phenomenon that debilitates not only the judiciary, but also society as a whole.

The United Nations invited a representative group of Chief Justices to develop a concept of judicial accountability to complement the principle of judicial independence. That concept of judicial accountability is now embodied in the Bangalore Principles of Judicial Conduct, which the Minister of Foreign Affairs recently described in Parliament as “the international gold standard”. He referred, in particular, to the principle that;

“A judge shall not only be free from inappropriate connection with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.”

The Bangalore Principles are based on six judicial values namely, Independence, Impartiality, Integrity, Propriety, Equality, and Diligence and Competence.

In 2006, the United Nations unanimously adopted a resolution in which it called upon Member States to encourage their Judiciaries to take the Bangalore Principles of Judicial Conduct into consideration when developing rules, with respect to the professional and ethical conduct of Judges. Subsequently, the United Nations published a 175-page Commentary on the Bangalore Principles together with Measures for the Effective Implementation of these Principles. All these documents have been prepared by Judges, in consultation with other Judges, and are intended for use by Judges. I understand that over 60 Judiciaries on all the continents have adopted, and are implementing, the Bangalore Principles. Unfortunately, we have not done so yet.

Power is given on trust, and judicial power should not be an exception. It is time that we turned the searchlight inwards. We need to recognize the fact that today our judicial system is not perceived in the same way that it was, forty years ago, when it was hailed as the envy of Asia. Legal reforms are overdue.

In our original courts, the trial rolls are inordinately long. Even persons charged with serious crime such as murder are often denied the benefit of a continuous day-to-day trial. They lightly dispense with trial by jury, and one wonders whether they are properly advised before they do so.

The appellate courts are also burdened with heavy backlogs. Many see the cost of justice, the cumbersome procedures involved in going to court, and the inevitable postponements; as indicators of a judicial system in a state of crisis. As Judges, we need to play our part in restoring confidence in our judicial system. For that we need the active co-operation of the Bar as well. It is only when the community has confidence in the integrity and the capacity of the Judiciary that the community is governed by the rule of law.

The Judiciary alone cannot be responsible for maintaining the rule of law. The Legislature and the Executive too must join hands in achieving this goal. On the day I took my oaths as a Judge of this Court, His Excellency the President invited the legal fraternity to bring it to the notice of the Government of the suggestions particularly to minimise delay in dispensing justice. He said so at the recently held book launch of Mr. Sarath Jayamanne ASG.

On that occasion what came to my mind was the plight of persons who come to courts seeking a maintenance order for destitute parents or children, and how, the problems they have to face, could be overcome. As a career judge, I am fully aware of the agony that beneficiaries of maintenance orders have to regularly undergo. They are required to attend the Magistrates' Courts, and sit or stand for long hours, in the company of criminal elements of all types, in order to receive the payments due to them. I was once informed that half the amount of maintenance received had been spent thereafter as the legal fees. It may be due to inadequacy of legal aid or probably due to the amount ordered as maintenance been considerably low. In many countries, family matters are being heard and disposed of in special

courts in camera. The Legislature should seriously address this issue as a matter of urgency.

In my opinion there does not appear to be any good reason as to why, the maintenance due to a spouse, parent or a child cannot be determined by a Conciliation Board, and the payments due to them being made before the members of the said Boards. Members of these Boards, being residents of the area, probably aware of the economic circumstances of the parties, will be in a far better position to decide the quantum of maintenance to be paid, instead of through a legal battle with lawyers arguing legal principles such as burden of proof and standard of proof. Such a process will also help to amicably settle the disputes between the parties since we have a reasonably good system of conciliation of disputes throughout the country. I wish the Ministry of Justice and the Law Reform Commission would consider such measures in providing more expeditious and less expensive access to justice for the people of this country.

Be that as it may, needless to say that over the years the Judiciary has been the guardian of the people's cherished rights. On this occasion, I solemnly promise to uphold the rule of law and the fundamental rights enshrined in the Constitution, keeping away CHANDA, DOSA, BHAYA, MOHA. That is, to act impartially, with no ill will, without fear or favour, and wisely in discharging my judicial functions, in order to safeguard the rights of the people, without any distinction whatsoever, whether based on race, sex, language, religion, social or economic status, or on any other irrelevant grounds.

In conclusion, may I be permitted to express my gratitude towards my late parents for bringing me up with great care and affection. Had they been alive today, they would be the happiest persons. I also recall with gratitude the guidance I received from my teachers at Dharmasoka College, Ambalangoda and Royal College Colombo and the lecturers at the Law Faculty in the University of Sri Lanka and the Queen Mary College, University of London which I attended. These institutions of learning helped me to equip myself to reach my present position. I would also like to thank the members of the staff in the various institutions that I have served for the assistance they have rendered to me to enable me to discharge my duties. Finally, I must place on record, the assistance and encouragement extended to me by my wife Anoma and our two sons, Mahesh and Ramesh and our daughter-in-law Harshini.

Once again, I thank all of you for your presence here today. May the blessings of the Triple Gem be with you at all times.

Justice K.T.Chitrasiri
Judge of the Supreme Court
16th day of December 2015