

KEYNOTE ADDRESS AT THE INAUGURATION OF THE ASIA PACIFIC MASTERS DEGREE PROGRAMME ON HUMAN RIGHTS AND DEMOCRATISATION OF THE UNIVERSITY OF COLOMBO AND UNIVERSITY OF SYDNEY

by Mr. Saliya Pieris

Vice Chancellor Senior Professor Lakshman Dissanayake, Professor Ravindra Fernando, Acting Director of the Centre for the Study of Human Rights, Mrs. Indira Nanayakkara, Dean of the Faculty of Law, Ms. Wasantha Seneviratne, Deputy Director , Ladies and Gentlemen

I am privileged to have been invited to deliver the key note address on this occasion, the inauguration of the Asia Pacific Master's Degree Programme on Human Right and democratisation of the University of Colombo in collaboration with the University of Sydney.

At a time when we in Sri Lanka are going through an exciting period in our history and in the arena of Human Rights and Democracy this programme gains value more than ever before. Many of the problems faced in these areas are shared by the countries of the Asia and Pacific.

A year after a paradigm shift in democracy and human rights in our country, we live in an era where the hopes and fears of different peoples are coming into play. There are many challenges ahead in Human Rights and Democratisation, especially since there continues to be a large divide between the aspirations of the different communities in our country, or at least perceived aspirations of the different communities.

At this important period in history it is important that the lessons learnt and the experiences shared through this programme help in contributing to the never ending struggle to strengthen human rights and democracy. I say never ending because in the countries with the best of records, there continue to be threats and challenges to human rights and democracy especially in the context of national security.

Increasingly we understand the importance of strengthening and empowering the institutions in our country, rather than placing reliance on individual saviours to protect and foster democracy and human rights.

Sri Lanka now more than ever before has an excellent opportunity to strengthen its democratic framework and human rights.

It is my firm belief that human rights and democratization can only be fulfilled when we as a nation recognize the need to establish a plural Sri Lanka, where the diversity of its people are accepted and encouraged.

Black's Law Dictionary refers to Democracy as *"the form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation, as distinguished from a monarchy, aristocracy or oligarchy"*

The word democracy is derived from the Greek words demos (the people) and kratein (to rule). So where democracy prevails the people rule or at least the people ought to rule.

The rule of the people or democracy is paramount in Sri Lanka's Constitution and The First Chapter titled "The People, The State and Sovereignty" as we all know vests sovereignty in the people.

It is based on this premise that in the Waters' Edge case as well as in the Eppawela Phosphate case the courts have developed the doctrine of 'Public Trust' holding that the rulers exercise their powers in trust for the people of this country. The rulers are not the owners of this land and its resources but merely hold them in trust for the benefit of the people.

Yet we have to ask ourselves whether democracy and the rule of the people really exist within our system. As those students of human rights and democracy we must examine ways and means to vest real power in the people of Sri Lanka

As people of this country we must ask ourselves

- Is power really vested in the people?
- Have we the people of Sri Lanka been content to let go of that power which has been vested in us by the Constitution, even though the Constitution says that power cannot be taken away from the people?
- Are the sovereign powers given under the Constitution- really and truly exercised by a free body of citizens?
- Have we as a people abdicated or abandoned that responsibility and let our rulers exercise uncontrolled and unchecked powers?

The answers to these questions are not found in the events of the last few years alone but over several decades where we the people have gradually abandoned our sovereign power to the politicians and the bureaucracy of this country.

We have become content to exercise our sovereignty merely at election time at voting but beyond mere voting we have become disinterested in government, disinterested in the powers that are really ours and disinterested in the long-term wellbeing of this country.

Pluralism recognizes the diversity of that society- be it the ethnic, cultural or religious diversity of its people and the acceptance of different views and ideas that people hold. Pluralism recognizes that the people in a country have a right to have different ideas and views which others may not necessarily agree with.

Our Constitution recognizes the pluralistic nature of this country where there are different communities, religions and cultures. Ranging from Article 9 which while recognizing the foremost place of Buddhism recognizes the rights of all religions, going on to Articles 10, 12 and 14, the Constitution expresses the pluralistic nature of our nation.

In this context it is important that we in Sri Lanka recognize the diversity of our people.

As a practicing lawyer I have come across cases where people including State Organisations refuse to recognize the diversity of people. Currently in the Supreme Court there are two cases filed by students of a State University where they have been refused entry on the grounds that they were wearing the face veil- the niqab- even though they agreed to remove them at all academic activities and security checkpoints.

Often I hear the argument raised against personal and territorial laws exclusive to sections of the community such as the Muslim and Thesawalamai Law. I recall some decades ago the then President of Sri Lanka referred to the minorities as being the vines growing around the tree which he equated the majority.

It is disturbing to yet hear only the majoritarian views being expressed and people seeing the problems of the minorities as being simply economic. It is equally disturbing to hear that even now we are unable to agree to sing the national anthem of our nation in both official languages on national day.

Those who refuse to recognize the diversity of our country and those who fail to see all people as equal have a lesson to learn from one of the greatest jurists this country has produced.

As Dr. C G Weeramanthry in his work *“An Invitation to the Law”* said *“There was a time ...when what has been described as the ‘melting pot’ theory held sway. Adherents of this theory believed that it was both the interest and duty of minorities living with a majority community to give up their individuality as a group, in the interests of harmony with the majority and to work their way towards absorption in the larger group. The wheel has turned a full circle in this regard and the growing value attached to individuality has meant a realization also that it is valuable to retain individual differences in a free society. There is a growing belief that the richness of a society depends on variety rather than uniformity. No longer is there a general desire to shape everyone in a common image.”*

In this context it is my firm view that if we are to encourage plurality we must recognize that racial and religious extremism is a threat to the democratic fabric of our society, it is time that the State deals with the issue of hate speech. I am not talking of those merely expressing views on different issues, however unpalatable they may be. I believe the right to disagree or dissent is an important right in any society.

However this should not be extended to instances where raw hatred and incitement to violence is spread among people against communities, religions and those who hold differing views. One has to only look at social media such as Facebook, to understand the level of intolerance and hatred which exist among many people- ranging from ethnic and religious hatred to political hatred. One year after the Aluthgama incident we have yet to deal with the perpetrators of that incident. I am firmly of the belief that it is time that the provisions of the ICCPR Act which has criminalized hate speech and incitement to violence on ethnic and religious grounds be implemented by the State including the police and the Attorney General.

It is also opportune for me to speak on the protection of the rights of the people.

There is a fundamental duty of every citizen to uphold and defend the Constitution and the law. This duty is very much related to upholding the rule of law in Sri Lanka and in ensuring that the Constitution and the law are respected.

No country can have a future if the Constitution and its laws are not upheld and defended and if the Constitution is observed in the breach.

In this regard in the last thirty or more years we have seen the failure of those holding high political office to observe and respect the spirit of the Constitution and the law. One can see many people blaming the 1978 Constitution for the many ills in our country, but the fault lies not in the Constitution, but in the men and women who have failed to operate the Constitution in the correct spirit.

In this context we have to admit that key sectors in our country including the police, the public service and the justice system have faced systemic failures. These failures need to be recognized and remedied.

When the integrity of the police force or the public service is affected, when their independence is diminished, the public are affected adversely. In respect of the police the past decades have seen increased allegations of brutality and lack of integrity and professionalism. This is directly attributable to the fact that for many decades there was no independent authority to monitor their discipline and professional conduct.

While the establishment of the independent Police Commission is a significant step in tackling police indiscipline and brutality, nevertheless much more needs to be done.

It is no secret that many of the deaths in custody are highly questionable. In most instances there has been no serious investigation nor any serious effort to stem the tide.

One suggestion put forward by the Rule of Law Committee of the Bar Association of Sri Lanka is to establish a special mechanism to investigate deaths in custody.

There is an urgent need to raise the level of consciousness among the public of these issues, which go to the very heart of the protection of the Constitution and the rule of law.

One of the greatest failures of our justice system has been the laid back attitude demonstrated towards fundamental rights violations. One of the most significant failures of the justice system was the failure to deal with deaths in prison custody and the cases of the IDPs who were held in the different camps and whose challenges went unanswered. In one Fundamental Rights matter relating to the violent death of a prisoner in custody, filed by his father, the then Chief Justice asked me 'How else do you want terrorists to be dealt with?' I was compelled to reply 'My Lord, we expect them to be dealt with according to law'. The application was dismissed.

A word about the Human Rights Commission. The HRC has in the past seen to be largely ineffective. Many people saw the HRC as a post box to file a complaint to stop time bar from running when filing a Fundamental Rights Application in the Supreme Court. One significant problem posed is the lack of an implementation mechanism. At the moment the HRC can only make recommendations but there is no mechanism to deal with failure to honour recommendations.

However we do feel it there is a moral obligation on the part of the State and its institutions to honour and implement the recommendations of the Human Rights Commission, established as an independent institution.

As a vibrant national human rights institution in Sri Lanka, the HRC is tasked with advising the state on implementing international human rights standards in legislation and administrative practices. It is this function which the Commission exercised when in January 2016, it wrote to His Excellency the President recommending that Sri Lanka accede to the 2nd optional protocol to the ICCPR and abolishes the death penalty.

In the course of my work, one issue which I have observed is the lack in many institutions of a mechanism to remedy grievances of ordinary people. Even in the HNDA case it was observed that the violence could have been avoided had the students' grievances been properly heard and a timely remedy granted.

In the words of Jane Adams *"Justice can only be worked out upon this earth by those who will not tolerate a wrong to the feeblest member of the community, and that it will become a social force only in proportion as men steadfastly strive to establish it."*