

Acceptance speech by Ambiga Sreenevasan, when conferred the 4th Commonwealth Rule of Law Award by the Commonwealth Lawyers Association in conjunction with LexisNexis (12 April 2019)

Outgoing President of the Commonwealth Lawyers Association Mr R Santhanakrishnan, incoming President of the Commonwealth Lawyers Association Mr Brian Speers, Honourable Judges, Mr Nigel Roberts of LexisNexis, Distinguished Guests, Ladies and Gentlemen.

I would like to express my gratitude to the council of the Commonwealth Lawyers Association (CLA) and to LexisNexis for the honour and privilege of receiving this prestigious award from them. The CLA has been at the forefront of the struggle to uphold the rule of law and LexisNexis, who is so much a part of our lives, has supported many rule of law initiatives internationally, including in Malaysia. Hence the prestige and the honour of being conferred this award.

Thank you to all of you present here today and terima kasih to my colleagues from Malaysia in particular Dato' Cyrus Das, former President of the CLA, for his support of my endeavours and for his wise counsel over the years.

And to Zambia. Thank you for sharing the majestic Victoria Falls with us this week and showing us how to live in harmony with our environment. You have shown us how to respectfully share space with zebras, deer, giraffes and monkeys. (I noticed that the animals wandering about the resort did not need tutoring, but it was the humans who needed signboards telling us how to behave!) The experience has been uplifting and I wondered if we should be looking to nature for inspiration or instruction on how we may bring back the order, balance and harmony that we seek through the rule of law.

Rule of Law in Retreat?

The title of this conference “The Rule of Law in Retreat? Challenges for the Modern Commonwealth” reflects our concern about where we are at, with the rule of law. We are, however, not alone.

Just last month the International Commission of Jurists (ICJ) issued a strongly worded declaration namely “The Tunis Declaration on Reinforcing the Rule of Law and Human Rights” where they reiterated their concerns about the erosion of the rule of law.

The ICJ did not mince their words. They noted that the degradation in the rule of law today was largely driven by a questioning of the value of universal human rights by “populist leaders and movements and other powerful actors to foment a wider global backlash against the rule of law and the international human rights law framework”. This is quite an indictment and we can readily name leaders who fit the bill!

We have seen a rise in the number of “strongman” politicians who are autocrats operating under the guise of a democracy but who govern with an iron fist outside a rule of law framework.

Quite apart from such situations, the increase in the frequency of governments tightening their grip on fundamental freedoms is alarming.

Just in the last week, we have read about a law passed in Brunei imposing the punishment of death by stoning for offences of homosexuality and adultery, amongst others. There was international furore over this and the government's response was simply to say that Brunei must be left to enforce its “own rule of law”. As lawyers, we know that you cannot get further from the rule of law than that.

We have also read about the umbrella protesters in Hong Kong who were found guilty of nuisance. In the same week, we read about Iran where human rights lawyer Nasrin Sotoudeh was sentenced to 38 years in prison and 148 lashes. All this (and more) in just one week!

Going a little further back are the violent events in Christchurch, and Netherlands which show that unbridled racism and extremism are on the rise.

There is also the continuing ill treatment of minorities and vulnerable communities on the basis that might is right. The Rohingya and the Uighurs who are persecuted and forsaken for their beliefs, are just a few amongst many examples.

It seems overwhelming, and as lawyers we know that the only answer is to keep holding governments accountable and to keep advocating for a rule of law and human rights framework in every country. For all its faults, democracy still makes the most sense, especially now, as we “mourn” a strong resurgence of “Man’s Inhumanity to Man” (Robert Burns).

Rays of hope

But there is hope. Two days ago, the United Kingdom Supreme Court allowed a complaint to proceed to trial on its merits against Vedanta Resources Plc, a UK incorporated company, and its Zambian subsidiary Konkola Copper Mines. Konkola Copper Mines had allegedly caused serious harm to the health and livelihood of people living in the Chingola District resulting from toxic waste discharged in its extraction activities in Zambia.

This case will decide if parent companies like Vedanta have a duty of care to those affected, arising out of the activities of their subsidiaries, even if they are in different jurisdictions. We await with bated breath the outcome of these proceedings.

Another ray of hope comes from a relatively small country in the South East Asian region that is valiantly working on a transformation from an authoritarian kleptocracy to a nation built on the rule of law. On 9 May 2018, Malaysia, whose claim to fame (or infamy) until then, was MH370, MH17, and the huge international financial scandal, 1MDB, stunned the world by peacefully removing the party who had been in power for more than 60 years, overcoming a flawed and biased electoral process. I am not here to explain how all of that happened, that is a story for another day. Let us just say that Abraham Lincoln was right. You cannot fool all of the people all of the time!

The challenge for the new government thereafter has been how to rebuild this nation that has been so crippled by the scourge of corruption, abuse of power, oppressive laws and weak institutions. Not to mention the constant diet of extremism, and racism that was unleashed on the Malaysian public by the previous government just to solidify their power base.

How does the new government change mindsets and systems that served the agenda of the government rather than the people? I must say that there have been many positive moves by the new government. We have seen a new Election Commission, Parliamentary reform, repeal of the Anti Fake News Act, much more room for fundamental freedoms and a Judiciary that has taken steps to move the reform agenda with a new Chief Justice appointed last year, and who has just retired.

In the nine months since the new office holders in the Judiciary took over, there have been positive developments. One can see the institutions responding to the aspirations of the people. Just this week a nine-member panel of the Federal Court struck down a provision relating to drug trafficking that allowed for a double presumption against the accused.

We are all painfully aware of what we have faced with the Malaysian Judiciary starting with the Judicial crisis of 1988 until the recent unconstitutional extensions of the Chief Justice and President of the Court of Appeal who have now resigned. Much more must be done to strengthen the appointment process. Recently, the government has announced a Royal Commission of Inquiry (RCI) into allegations made by a Court of Appeal Judge against members of the Judiciary. We believe the RCI will only strengthen the Judiciary.

The Malaysian Judiciary is not beyond redemption. To say that is to do a terrible disservice to the many good and brave judges who never wavered over the years from the straight and narrow, from carrying out their duties faithfully and who remained true to their oath as judges. It is also a disservice to the good people of Malaysia who have struggled to overcome so many hurdles to arrive at this point.

There are many who would be delighted if Malaysia failed in its quest for democracy. Failure will allow many in our region to say: “You see, democracy is a western concept that does not work for us. We must take into account Asian values and have a different type of rule of Law.” Like Brunei saying that they will follow their “own rule of law”. Failure is therefore not an option. It will not serve the country nor democracy.

In our journey to Livingstone from Kuala Lumpur, we stopped in Johannesburg where we were reminded of the great Nelson Mandela, Archbishop Desmond Tutu, the Truth and Reconciliation Commission and of course the spirit of Ubuntu. They all helped to heal a nation who suffered much more serious fractures than we have.

Perhaps there is a lesson there for nations in transition and countries coming out of prolonged abuse. It may be important to first confront our past, look at amnesty systems, and look at healing the nation before we rebuild it brick by brick. We have much to learn from Africa.

What I can tell you is this. We had to fight to establish a democracy and the rule of law in our country. It does not happen on its own and it did not happen overnight. Once established, it requires constant vigilance. Not just by Malaysians, but by all who cherish the ideals of a democracy.

In Malaysia, the Malaysian Bar is constantly on its toes and has even in the most difficult of times remained true to its *raison d’être* of upholding the rule of law without fear or favour. Lawyers and Law Associations must be watchdogs for the rule of law and must be prepared to take to task all governments when they infringe the rule of law. We must believe that each and everyone of us has a role to play in ensuring that all human beings be allowed to live free from fear and with dignity. For lawyers, the rule of law encompasses a universal set of values that are, to borrow a phrase, “self-evident truths”. It is the lifeblood of any nation that seeks to establish a just society.

I conclude by rephrasing slightly what Cicero has said which encapsulates in a nutshell the true value of the rule of law – “Let us all be slaves to the rule of law, so that we may be free”.

Dato’ Ambiga Sreenevasan
12 Apr 2019
Livingstone, Zambia

Note: The above text consists of the written speech that was prepared for the conferment of the Commonwealth Rule of Law award.
