INAUGURAL ADDRESS DELIVERED ON AUGUST 19, 2017 BY JUSTICE NALIN PERERA, JUDGE, SUPREME COURT OF SRI LANKA

It is indeed a refreshing experience to gather in the convivial atmosphere of Chandigarh Judicial Academy on yet another occasion of imparting and sharing common themes and values on diverse aspects of law. It is no doubt that diversity characterizes both our legal systems. But we cannot hide the fact that in this diversity lies several strands of unity and that singular unity highlights the need for a constant visit of this nature to strike out in the directions of Indian developments that will stand the Sri Lankan judiciary in good stead.

The fact that 5 days of interactive sessions will give us food for thought goes a long way to strengthen the synergy between the two judiciaries and we are thankful that Chandigarh Judicial Academy hosts this program for the next five days in order to achieve the objective of imparting the latest developments in law to our judicial officers whilst this exercise will also result in great bonds of friendship and continued engagement.

Before we kick off the proceedings of productive interactions, I thought of sharing with you some common strands of uniformity that inform our two legal systems, which in turn showcase our common heritage. Both in regard to substantive and procedural law we have common origins. Why I wish to

reflect on these common bonds is because our meeting today is to reinforce the value of comparative jurisprudence. I hold the strong view that no two legal systems can develop in isolation particularly when their ancestral origins are the same.

It is undisputed that English Law, which is called the common law all over world, has influenced our two legal systems to a great extent. Though English law governs the law of Sri Lanka in diverse areas such as commercial law, banking and international trade law, Sri Lanka is also an heir to the Roman Dutch law tradition. In fact, Roman Dutch Law is called the common law of the country, though English Law plays a truly significant role in our country.

In fact the British enacted a law for Ceylon called *the Civil Law Ordinance* in 1852 introducing English Law in commercial disputes. English commercial law principles were introduced by section 3 of this Ordinance "*with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by land (maritime matters), life and fire insurance*", in the absence of specific statutory enactments.

We cannot deny that the common heritage between India and Sri Lanka is owed so much to English Law as we were colonized and ruled by the British for a long time until our respective independence in 1947 and 1948. I can

speak of several examples where the Indian enactments made by the British were transplanted into Sri Lanka.

The Evidence Ordinance of Sri Lanka is based on the Indian Evidence Act of 1872 with some important modifications. We are all aware that the Indian Evidence Act, No 1 of 1872, became law on March 15th, 1872, when its architect **Sir James Fitz-James Stephen** was invited to introduce it in the Indian Legislature. It was a tribute to Sir **Stephen's excellent drafting** that we followed suit in adopting this Act and enacted our own Ordinance in 1895. I spoke of some modifications in the Sri Lankan Evidence Ordinance. The important difference between the Indian Evidence Act and the Sri Lankan Evidence Ordinance is found in Section 100 of our Evidence Ordnance where provision has been made to bring in the English Law if the Evidence Ordinance is silent on a particular matter. There is no such *cassusomissi*in the Indian Evidence Act.

Other important legacies left by the British are our respective Civil Procedure Codes. The Sri Lankan Civil Procedure Code came into operation in 1890. It was influenced to a large extent by the provisions of the Indian Civil Procedure Code of 1877. In ***Fernando vs. Soysa***-a Sri Lankan case reported in **2 New Law Reports page 40, C**hief JusticeBonser-an English judge said that our Civil Procedure Code is a copy of the Indian Civil

Procedure Code slightly altered and that our Code closely follows the Indian Code in the matter of pleadings.

Though the template is the same, a vast corpus of domestic law has developed in Sri Lanka giving the code a flavor of its own.

Like the Indian Penal Code, the Sri Lankan Penal Code of 1883 owes its parentage to **Lord Macaulay** and today in the interpretation of the provisions relating to offences under the Penal Code we do look across Palk Straits.

So the similarities between our two jurisdictions are more than their dissimilarities and even in the interpretation of Fundamental Rights which was made justiciable for the first time in the 1978 Constitution the Indian authorities have had a tremendous influence. Just as the Constitutional Law of India has borrowed from American jurisprudence, so has the judiciary in Sri Lanka and in the initial days after Chapter 3 containing Fundamental Rights came to be litigated in Sri Lanka after 1978, a number of Indian judgments shaped the thinking and growth of own jurisprudence. In the Indian case of ***People's Union For Democratic Rights v the Union of India*** –writ petition 8143 of 1981 which is known as the ASAD case, the actual violations of fundamental rights took place at the hands of private

contractors, but the state was held responsible because it had chosen to enter into contract with those who violated the fundamental rights.

I must say that this broad interpretation given by Indian courts has taken hold in Sri Lanka as well, in cases such as ***Faiz v Attorney General*** (1995) 1 Sri Lanka Law Reports page 372.

Our Supreme Court has oftentimes quoted the words of Indian Supreme Court. Interpreting the equality clause in Article 12 (1) of the Constitution, the Supreme Court in the case of **Senarath v Bandaranaike (2007) 1 Sri.LR page 59 at page 75** cited the words of a famous judge of India who later became its chief justice P.N.Bhagwati. His words on rule of law appear in the famous case of Gupta v Union of India (1982) All India Reports page 149 at page 197. I quote-

> "*If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of Law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon the judiciary and it is by exercising this power which*

constitutes one of the most potent weapons in the armoury of the law, that the judiciary seeks to protect the citizen against the violation of his constitutional or legal rights or misuse or abuse of power by the state or its officers."

Justice Bhagwati's innovation namely **public interest litigation**is today permitted in Sri Lanka. Our Supreme Court is nowprepared to entertain an application under the fundamental rights chapter, in the form of public interest litigation even if there is no specific complaint that the petitioner's own fundamental right has been violated. There are two judgements of the Sri Lankan Supreme Court which I can cite namely ***Vasudeva Nanayakkara vChoksy*** and ***Nandalal v Public Enterprise Reform Commission*** reported in 2009 Bar Association Law reports at pages 1 and 4.

Procedurally, the Indian Supreme Court adopted a series of innovations under the **aegis** of "public interest litigation". The liberalization of locus standi rules is likely the most significant innovation. Earlier, the Indian Supreme Court jurisprudence mandated that in order for Petitioners to have the standing to file writ applications under Article 32, they must show that an impugned law directly harmed them. The Indian Supreme Court departed from the early precedents in the 1980s. This process began in the First

Judges' case, where the Court conferred standing on a group of senior advocates who challenged various government policies that interfered with the Judiciary's independence. Justice Bhagwati held that "traditional standing doctrine had to make way for more flexible procedures; specially, "any member of the public "can maintain a petition under Article 32 on behalf of a "person or determinate class of persons (who) is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief". (S.P.Gupta V. Union of India, AIR 1982 SC 149)

As in India the Sri Lankan judiciary has expanded its role in fundamental rights litigation. The Sri Lankan Supreme Court has relaxed standing requirements and moved towards enforcing the Directive Principles of State Policy. Article 126 of the 1978 Constitution confers on the Supreme Court exclusive jurisdiction to adjudicate fundamental rights violations. Like Article 32 of the Indian Constitution, Article 126 empowers the Supreme Court to issue various writs (habeas corpus, certiorari, mandamus, etc.) in the exercise of this jurisdiction, and "to grant such relief or make such directions as it may deem just and equitable". Over time, the Sri Lankan Supreme Court has relaxed its procedures to hear writ petitions filed in the public interest.

A more important development is the expansion of the right to equality under Article 12(1). The Sri Lankan Supreme Court has generally been very receptive to public interest litigation filed on behalf of environmental NGO's. This is due to an expansion in the meaning of right to equality since the early 1990s. The Sri Lankan Supreme Court followed the Indian Supreme Court's judgments in Maneka Gandhi V. Union of India, (AIR 1978 SC 59), and Ajay HasiaV.KhalidMujib (AIR 1981 SC 487), which held that arbitrary legislative or executive action constituted a violation of the right to equality under Article 14 of the Indian Constitution. Thus, much as the Indian Supreme Court has utilized Article 21 to expand its scope of review, the Sri Lankan Supreme Court today users Article 12(1) as a far reaching tool to weigh in on the constitutionality of legislative and executive action.

Article 21 of the Indian Constitution which enshrines right to life has been expansively interpreted by the Indian Supreme Court. Life does not simply means physical existence. The right to life includes the right to live with human dignity. The Indian Supreme Court has held that it also includes the right to food, right to clothing, the right to decent environment and reasonable accommodation to live in.

While right to life is express in the Indian Constitution, it is not so in the Sri Lankan Constitution. In a case called Sriyani V. Iddamalgoda,2003 Sri.L.R, the Supreme Court of Sri Lanka implied it into the constitution s existing through Article 11 of the Constitution. Article 11 is the anti-torture provision in the Sri Lankan Constitution, through which right to life has been read into the constitution. In the proposed new constitution right to life has been mooted as an express provision making human life an express life to treasure and promote as a fundamental right.

This showcases the apparent symbiosis and synergy that exist between the Sri Lankan courts and the Indian jurisprudence.

We have so many common law origins to nurture and nourish us and we are the proud inheritors of the great legal tradition. Cross-border transplants in legal jurisprudence has become the norm today and Sri Lanka and India have a lot to benefit from each other and this relationship would be strengthened a great deal by the interactions of this nature that we begin today .

While thanking the Chandigarh judicial Academy for organizing such a wonderful program of activity for the next five days, I hope and trust that we will continue this partnership for a long time to come.

I have no doubt that such a continuous engagement is bound to help both the Indian and Sri Lankan judiciaries.

Thank You