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## Can We Expect Justice And Independence From Servants Of Military Dictators?

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By Urvashi Kankubawala

Judges should behave within the judiciary as well as outside of it in such a manner as to consolidate the confidence of the people. Judges have no private behaviour. It should be remembered that when oppressive, arbitrary, drastic actions are taken against the people by the executive or authorities, it is the judiciary that will be the guardian of the people.

- Chief Justice Hema Dassanayake in his inaugural speech on July 2, 1964 -



Justice Sathya Rajaratne, Hon. Chief Justice Anthony Ganes, President Mahatma Rajapaksa, Chief Justice Hema Dassanayake and Justice Salween Marsoof after the swearing in ceremony at Government House.

There is currently a prevalent sense of grave concern and apprehension. One may even say a degree of anxiety, in a section of the legal community that the deeply cherished values of judicial independence and moral integrity among judges are under serious threat and in a state of crisis. The foreshadowed dangers have over the years increased in intensity and

have now reached a critical point.

Two Sri Lankan Supreme Court Judges are also Judges of the Supreme Court of Fiji, which is under a military dictatorship. Many other Sri Lankans are also judges of other courts in Fiji, making them servants of the Fijian military dictatorship. The Sri Lankan Supreme Court Judges who sit on the Fijian Supreme Court are Justice Salween Marsoof and Justice Sathya Rajaratne. The names of the judges can be read on the following website <http://www.judiciary.gov.fj/supremecourt.html>:

### Servants of military dictators

The main issue here is the impact their Fijian jobs have on Justice Marsoof and Rajaratne when they are sitting in the Supreme Court in Sri Lanka. Can we expect justice and independence from servants of military dictators? What is their judicial mentality? What is their ethical compass in relation to the judicial function? What principles of judicial independence do they adhere to? Do they make a distinction between their Sri Lankan and Fijian judicial roles? Can someone serving under a foreign military dictatorship, legitimately and credibly, sit at the same time on the bench of the Supreme Court of Sri Lanka? What can be expected of judges in Sri Lanka who serve a military dictatorship elsewhere?

Some would say there is no difference between a military dictatorship in Fiji and an elected dictatorship in Sri Lanka. But others still have a hope about Sri Lanka's Supreme Court and judiciary, because there are still judges who have been forthright and dispense justice without fear or favour.

Fiji is a country where there is no independence of the judiciary. The president of Fiji's Law Society (<http://www.lawsociety.org.fj/>), Jonathan Tetch says, "that Fiji's judiciary is effectively no longer independent". The Law and Justice Report issued by the Citizens Constitutional Forum found that 42 judicial officers were dismissed in the year to April 2013, in addition to the five recently dismissed magistrates.

"It appears that a government agency - which was purportedly established to fight corruption - is being used in a manner inconsistent with its statutory purpose. The effective dismissal of judicial officers attacks the independence of the judiciary," he says. "Of most concern is these judicial officers apparently dissatisfied for rejecting prosecution cases brought by the military government or its agencies."

Since the coup in December 2006, other Australian lawyers and judges had turned down similar offers to

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