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இலங்கைச் சட்டத்தரணிகள் சங்கம்
BAR ASSOCIATION OF SRI LANKA

16th August 2021

His Lordship Jayantha Jayasuriya, PC
The Chief Justice,
Chairman,
Judicial Service Commission,
Colombo 12.

His Lordship Justice Buwaneka Aluwihare, PC
Member,
Judicial Service Commission,
Colombo 12.

His Lordship Justice L.T.B. Dehideniya
Member,
Judicial Service Commission
Colombo 12.

Your Lordships,

CONCERNS ARISING FROM REPORTS ON A MEETING / WEBINAR TITLED “MATTERS RELATING TO JUDICIAL PROCEEDINGS IN THE CONTEXT OF THE COVID-19 PANDEMIC” CONDUCTED FOR JUDICIAL OFFICERS

Several members have drawn the attention of the Bar Association of Sri Lanka (BASL) to reports published in the media on a meeting / webinar held on Friday, 13th August for judicial officers titled “*Matters relating to judicial proceedings in the context of the Covid-19 Pandemic*” conducted by the Sri Lanka Judges’ Institute with the participation of non-judicial personnel including at least one official whose administrative orders and decisions form part

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Saliya Pieris PC

Deputy President
Anura Meddegoda PC

Secretary
Rajeev Amarasuriya

Treasurer
Rajindh Perera

Assistant Secretary
Pasindu Silva



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of the matters that are currently under judicial consideration in several cases that have been filed or are pending before Courts.

These media reports claim that at this meeting / webinar:

- a) that the issue of trade union protests and the role of the courts also came up for discussion;
- b) that judicial officers had been given instructions on the use of certain sections of the Criminal Procedure Code to control public gatherings on account of the pandemic situation in the country;
- c) that there was a perception among judicial officers that there was an effort to impress upon them to give orders, the police request to curb protests.

The BASL is deeply concerned at the contents of these reports which impact on the rule of law, the independence of the judiciary and on the public confidence in the administration of justice.

The Constitution requires every judicial officer to decide every case based on the facts and circumstances of that particular case and the applicable law. Every party before court has an expectation that his / her case will be decided upon on its own merits, upon a fair hearing given to such party or his / her counsel. Any party including the State, if dissatisfied with such an order is entitled to canvass the same by way of an appeal or revision application to an appropriate forum.

Litigants and their Attorneys-at-Law should have the confidence that judicial officers are free to decide cases on their own merits and not based on any other consideration. These, as Your Lordships are well aware, are fundamental aspects of judicial independence and the Rule of Law. The perception that these reports create, run contrary to the dictum laid down by Lord Hewart, the then Lord Chief Justice of England in the case of Rex v. Sussex Justices, [1924] 1



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KB 256 that “justice must not only be done but must also be seem to be done”, a principle strongly engrained in our legal system as well.

We also wish to draw the attention of Your Lordships to The Bangalore Principles of Judicial Conduct, 2002 (The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002) which states as follows:

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

In these circumstances whilst any move to conduct a meeting / webinar to create awareness among judicial officers of the seriousness of the pandemic and the need to ensure that the courts are administered keeping in mind health guidelines are most welcome, it is our considered view that the contents of such a meeting / webinar should not leave the impression, either in the mind of the participating judges or the public, that it has any bearing on the manner of the discharge of judicial functions or that it was intended to have the effect of stifling any judicial officer from the independent exercise of his or her judicial mind and discretion in a particular case based on the law and accepted principles of judicial interpretation.

In these circumstances it is the view of the BASL that as there is a strong possibility of an impression being created, if not already created, in the minds of judicial officers and of the public, that the above meeting / webinar was conducted with the aim of impressing upon judges to make particular orders in a particular manner, such an impression should be immediately addressed and if necessary be corrected, in the public interest and the interests of all those tasked with the administration of justice.



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As always the Bar remains faithful to its commitment to safeguard the independence of the judiciary and the integrity of its institutions without which the constitutionally entrenched principles of separation of power and rule of law would be of little or no avail.

This communication is made to Your Lordships in the highest traditions and values of the Bar and to ensure that these reports do not in any manner negatively impact the esteem that the judiciary must unreservedly maintain irrespective of the circumstances, however trying they may be.

Thank you,

Yours faithfully,

Saliya Pieris, PC
President
Bar Association of Sri Lanka

Rajeev Amarasuriya
Secretary
Bar Association of Sri Lanka

CC: Hon. H. Sanjeewa Somaratne
Secretary
Judicial Service Commission