

Sentencing: Principles and Practice

Judicial Seminar

19th and 20th February 2015

Opening Remarks

By Hon. Durai Karunakaran, Acting Chief Justice

Honourable President of the Court of Appeal, Honourable Justice Fernando, Honourable Dame Linda Dobbs, Leader of Government Business, Leader of the Opposition, the Judges of the Supreme Court, Hon. Attorney General, Your Worship the Magistrates, Chairman of the Bar Association, Invited guests, Ladies and Gentlemen, Good Morning to everyone! Welcome to Palais De Justice. Thank you all for your esteemed presence!

It is a matter of great pleasure for me, to begin this auspicious day by making a delightful announcement. That is: The capacity of the Supreme Court of Seychelles to deliver timely and effective justice has been strengthened by the addition of a new Supreme Court Judge, Honourable Mrs Justice Samia Govinden, who took her Judicial Oath yesterday. Congratulations Honourable Mrs Justice Govinden! We welcome Your Ladyship to join our judicial family. We wish you a very successful and a distinguished judicial career with the blessings of the Almighty!

Now, it equally gives me great pleasure to welcome all Judges and the Magistrates for the Two-day Seminar on Sentencing Principles and Practice, the first of its kind held in Seychelles. To transform the Seychelles Judiciary as a **Centre of Judicial Excellence**, it is important that we have an excellent, efficient and well-trained team of judicial officers in place with high standard of professionalism. This judicial seminar is another step towards achieving that high standard of judicial professionalism by

sharpening our tools of legal knowledge, skills and techniques on sentencing.

On behalf of the Seychelles Judiciary, I extend a warm welcome to our distinguished guest Honourable Dame Linda Dobbs, who has come from the United Kingdom to provide us the much needed training on sentencing. Dame Linda Dobbs has a very distinguished judicial career and she needs no introduction in the legal and judicial circles. She was appointed a high court judge in 2004. She is the immediate past Chair of the Judicial Studies Board, Director of International Training at the Judicial College and Senior Liaison Judge for Diversity. She holds five honorary doctorates. She has lectured extensively on the justice system, criminal and human rights law and ethics all over the world. We are so privileged and honoured to have such a great legal luminary and a judicial personage with us today.

We sincerely thank her for having kindly accepted our invitation. I would also like to take this opportunity to convey our heartfelt gratitude to the UNODC for sponsoring this event. We wish to express our sincere thanks to the Judicial College of Seychelles especially, to Honourable Mr Justice Fernando of the Court of Appeal and Honourable Mrs Justice Robinson for their valuable support, coordination and hard work for making this event a reality. It is in fact, a coincidence that this seminar is now taking place at an opportune time, when the Seychelles Judiciary has embarked on a project for establishing a Sentencing Advisory Committee to formulate the Sentencing Guidelines for the judicial officers.

From time immemorial, sentences imposed by the authorities in the past on great personalities such as the Greek Philosopher Socrates, Jesus, the Joan of Arc, Galileo and many others, have revolutionised human thoughts and changed the course of human civilisation. Since the beginning of human history we have been blessed with many theological philosophies and teachings, which have revealed many sentencing principles and concepts for humanity. Indeed, sentencing an offender for a crime is a divine duty, which ought to be performed with utmost care and guidance of divine virtues.

Sentencing is undoubtedly, a difficult human task, which traces its divine origin from the day God arraigned and sentenced *Adam* and *Eve* in the *Garden of Eden*- See, Genesis 3:9 and 3:11. Before passing the sentence, God in fact, gave them ample opportunity to mitigate. However, they never repented, not even said “Sorry” to God. Adam blamed Eve and he even blamed God for giving Eve to him. In turn, Eve blamed the serpent for deceiving her. It was all a vicious cycle of blame game. Above all, the most aggravating factor namely, the motive for Adam and Eve’s disobedience was not appetite to eat the fruit, but the ambition, the desire to be as God-See, Genesis 3:5.

In comparing sins or offences the way people commit, the philosopher Theophrastus of Ancient Rome says that the ones committed out of desire are worse than the ones committed out of anger, which is a good philosophy. The angry man seems to turn his back on reason, out of a kind of pain and inner convulsion. But the man motivated by desire, who is mastered by pleasure, seems somehow more self-indulgent, less manly in his sins. Theophrastus is right and philosophically sound, when he says that the sin or crime committed out of pleasure deserves a harsher rebuke than the ones committed out of pain. The angry man is more like a victim of wrong doing, provoked by pain to anger. The other man, who rushes into wrong doing on his own, is moved to action by desire like Adam and Eve did in the Garden of Eden. And the measure of the penalty imposed by God on them obviously, was commensurate with the measure of the enormity of the offence and the aggravating factors.

Speaking from experience over a quarter of a century on the bench in Seychelles, I would candidly admit that the most difficult of all judicial tasks I carried out, was arriving at an appropriate sentence for the offenders. Sentencing an offender for an offence is not a mechanical process or a mathematical operation. No sentencer will be able to arrive at the desired result with accuracy, correctness and precision in order to meet justice in each case under consideration. There is no litmus paper, either a blue one that turns red, when the acidic factors of aggravation outweigh the others or

a red one that turns blue, when the alkaline factors of mitigation do likewise. It is not easy to calibrate the scale and arrive at an appropriate sentence with precision. For, all factors in the equation, are variables and differ from case to case on facts and degrees. At times, facts of the case are so bizarre and any attempt to titrate tends to neutralise the equation. Each case exhibits a variety of factors, which are very peculiar to the offence as well as to the offender. At times reasoning has been found to be fallacious; views formed from our books may well be found to be wrong. The objects of sentencing, at times, appear to be elusive.

As Lord Denning once stated, it is a mistake to consider objects of punishment as being punitive, deterrent or reformatory or preventive or retributive or nothing else. The ultimate justification of any punishment is not that it is deterrent but that it is an emphatic denunciation by the community of the crime. It is therefore, the duty of the Courts to show the public revulsion at the particular type of crime, by the punishment which is imposed. The punishment imposed for a crime should relate to the moral conscience of the community on whose behalf they are being inflicted. Unless the aims of the punishment take into account the sensitivity of the community, the penal system will not serve one of its primary functions, that is, to maintain “communal stability”.

Should the punishment fit the crime? Wouldn't “an eye for an eye” eventually turn the whole world blind? These are some food for thought to stimulate the wise minds on the subject. I hope that the knowledge you obtain and the sentencing skills and techniques you develop in this training will enhance your abilities to excel in your divine judicial duties and to make a difference in the administration of justice.

Before concluding my remarks, it is now my duty to declare the Judicial Seminar on Sentencing 2015 is officially opened. I wish all participants a fruitful deliberation and a successful training over two days of interesting and beneficial programs. I also wish our guru Honourable Dame

Linda Dobbs a pleasant stay in Seychelles. I thank you all for your attention and kind indulgence.