

NATIONAL LAW SCHOOL UNIVERSITY OF INDIA
CONVOCATION CEREMONY SUNDAY 3 AUGUST 1997
CEREMONY FOR THE CONFERRING OF DEGREES
TO MIDDAY'S CHILDREN IN INDIA - "THE BRIGHT TOMORROW"

The Hon'ble Justice Michael Kirby AC CMG Hon LLD

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A SIGNAL HONOUR

It is an honour indeed to receive the Honorary Degree of Doctor of Laws of this University. Its reputation is known far from India. It sets the highest standards in the training of lawyers who will uphold the law in this, the most populous democracy on earth living under the rule of law.

For many reasons it is a special joy for me. I receive the degree from the Chancellor, one of the famous sons of the law in India. I receive it in the company of Chief Justice Ismail Mohamed, Chief Justice of South Africa. He has been a formidable warrior for the rule

Justice of the High Court of Australia. President of the International Commission of Jurists. Honorary Visiting Professor of Law at the National Law School University of India, Bangalore.

of law and for respect for human rights through the law. I receive it in a land which I have loved from my youth and to which I have often returned. When I was a young lawyer, about the age of most of the graduates today, I drove a vehicle from Madras to Cape Kumari. From there to Kovalam and Goa. From Bangalore to Delhi. From Simla to Darjeeling. I have seen more of India than most citizens of this country. I have seen the glistening sun in the morning on the Bay of Bengal. I have seen the glorious sunset at night on the Arabian Sea. This is not my first Honorary Degree. But it is the first I have received outside my native land. I could not wish for a higher honour than to receive it in India at this place and in your company.

I should add that I am grateful and relieved that there were no examinations attached to the degree. No midnight oil. No anxious study. I would have been so embarrassed if I had failed. The other graduates earned their recognition by work and tests. The only way I can earn it is by renewing my dedication to friendship between Australian lawyers and colleagues in India and by commitment to this fine University.

Having myself been a University Chancellor in Australia, I know only too well that words uttered on occasions such as this are rarely remembered. No Polonian advice, no jest, no nostalgic reminiscence will be recalled a few days from now. Yet we share this occasion as a precious moment in our lives. It is a time to pause and to reflect upon the past and to think about the future.

I have chosen to speak to you about three little words. In my youth there was a song called "Three Little Words"¹. Those three words were "I love you". In a sense, they are still the most important words of human existence. They reflect the central moral dimension of human life. They mirror the quest of human beings to comprehend their own existence in relation to other living things, particularly other human beings, with whom we share our brief span of fiery existence in the great dark ocean of eternity. On such an occasion, all of us, the graduates, should reflect upon the people we love or have loved. We should express our thanks to our family, friends and teachers. The advice of the song "Three Little Words" is not entirely inappropriate to a occasion such as this.

In 1776 Thomas Jefferson penned the three ideas of the American Revolution in the *Declaration of Independence*. They were, you will remember, "life, liberty and the pursuit of happiness". Those words remain a pretty good definition of the proper objectives of government, society and the law - as true of India and Australia as in the United States and everywhere else.

But now, I want to look forward. The three words I wish to mention to my fellow graduates concern the world and the legal

¹ By Kalmar and Ruby. The song was originally used in *Check and Double Check* (1930), and subsequently re-used in the Kalmar and Ruby biographical musical, *Three Little Words* (1950).

profession which they are entering. Draw, if you will, upon my experience. My prognostications can also be summed up in three little words.

THINKING BIG

The first is *globalism*. This is an idea which was certainly not mentioned at my first graduation in law in Sydney, Australia thirty-five years ago. The law was then wholly confined to a particular jurisdiction. Now we are entering a new millennium in which our countries' laws will have to adapt to international law. This will apply to India as to South Africa, Australia and every other land. Seeing the law with a strictly local perspective will change as law is increasingly moulded to a global environment. The duty of lawyers will be to develop local law and to do so in harmony with international law.

This simple truth was brought home to me a decade ago and, as it happens, here in Bangalore. I attended a conference summoned by the former Chief Justice of India, Justice Bhagwati. The *Bangalore Principles*² laid down rules apt to an age of globalisation of the law. Of course, the first duty of every lawyer and judge is to apply the local law. But if that law is ambiguous, if an Act of

² (1988) 14 *Commonwealth Law Bulletin* 1196; (1988) 62 *Australian LJ* 531.

Parliament can have two meanings, if the common law is uncertain, the duty of lawyers of the coming millennium will be to try to resolve the ambiguities and to fill the gaps by reference to international legal principles.

Such a global approach to law is entirely appropriate to the world of intercommunicating fax machines, of jumbo jets and satellites. It is right for the world of great international challenges such as HIV/AIDS, the human genome project and the global economy. Lawyers of the future must play their part in this adaptation of local law to international law. This is a lesson I learned in Bangalore a decade ago. It is a lesson I have practised in my work as a judge in Australia. It is a lesson for all of us.

So my first little word to the new law graduates is globalism. Think big. You are no longer a prisoner of your own jurisdiction - even one as mighty, diverse and fruitful as India. Lawyers of the coming millennium will be lawyers of the world.

HUMANITY

The second word is *humanity*. One of the greatest changes that has come upon the world, and upon its legal systems, is the development of universal human rights law. This movement received a tremendous impetus from the Second World War and the events that followed it. The *Universal Declaration of Human Rights*, which will, next year, celebrate its 50th Anniversary, laid the foundations for a new world order based upon respect for fundamental human

rights. From that instrument have emerged the great charters of human rights which state the principles that will help to defend our world and our countries against the abuses which autocrats and oppressors, big and small, would inflict upon humanity.

Mahatma Gandhi, a great exemplar of human rights, taught of the moral obligation never to tolerate departures from fundamental rights. He was himself a lawyer. He knew how the law could be used. He and his dedicated band of followers used law and courts and peaceful resistance to achieve India's independence fifty years ago. Yet sometimes laws are not enough. New laws - law reform - must contribute to the building of just societies. Real access to the law and its protection must replace satisfaction with the theory of equal rights. Human fulfilment requires respect for every human being and for their dignity and the protection of their fundamental rights. Law has a part in securing these ends.

In India, by the decisions of your courts, judges and lawyers help to teach the world that the rule of law works. That democracy works. That fundamental human rights are not inconsistent with economic, technological and social progress. On the contrary, they are essential to their lasting success. It will be the privilege of the new graduates to carry this message into the next century and to be an example to a watching world.

SERVICE

The third word I offer is *service*. In the midst of all the technology and globalism and the struggle for universal rights, it is easy to forget the fundamental mission of the lawyer. Ours is a noble calling. It is to be a helper to people with problems. It is to defend the unpopular and to insist on their rights. It is to support the otherwise defenceless, where necessary without fee. Those who graduate in law hope, naturally and understandably, for economic rewards. But their abiding commitment must be to justice under the law. Their duty must be - faithful service to their clients, rich and poor; weak and strong; popular and despised.

When you deal with a client, never forget that for most of them, for the rest of their lives, you will be *their* lawyer. They will talk of you to their families and friends. By your conduct you therefore portray the reputation of the legal profession. Listen to the fears and concerns of those who come to you for advice. Restrain your impatience when you feel you have heard it all before. For the client, a brush with the law is often a fearful and worrying thing. You must look beyond the fee and even beyond the immediate legal problem. The client is a whole human being, like you. He or she is entitled to your respect and full attention. In the midst of so much change in the world, the lasting truth of the professional life remains the same: faithful service beyond purely personal interest. Objectives in life beyond making money. Communication as the bridge between your knowledge and the needs of a vulnerable and dependent client who trusts you and depends on you for honesty, skill and service.

A GOLDEN TIME

And so we approach the fiftieth anniversary of this nation's independence. Only a month ago the world watched another transfer of sovereignty - this time in Hong Kong. It was a moment full of symbols. Symbols rather different from those of 1947. Then, fifty years ago, almost exactly, a mightier transfer took place in this land when India began its "Tryst with Destiny"³. The children of that moment in India were dubbed "Midnight's Children". Despite sufferings, difficulties and occasional mistakes, the tryst with destiny has been kept. Midnight's Children have kept this country's faith in democracy and the rule of law. So will you.

In the golden anniversary that India now celebrates, there is much to be proud of. In the golden hue of this time, India still stands as the great alternative democratic model for the future of humanity. A society open to global forces; unashamedly dedicated to human rights in a state which always is, or should be, the servant of its people. To a very real extent, the judges and lawyers of India are the guardians of this model of constitutionalism. It is vital for humanity that the great Indian experiment in governance survives and works.

³ Nehru's address in the Constitutional Assembly quoted by H R Khanna *Neither Roses Nor Thorns*, Eastern, 1982 Ed, 30.

You are therefore Midday's Children. The sun of Indian independence is in the zenith. Yet the challenges for you are as great as they were fifty years ago for the children of that time. The world will be watching Midday's Children as you accompany and lead India into the new century. May your lives be blessed with the love of family and friends. And with liberty and the pursuit of happiness. May you, in return, think globally, think big. May you defend fundamental rights in all that you do and never become so proud that you forget that, as a lawyer, you are a servant of the rule of law and of the people who are protected by it.

The fine Australian Aboriginal poet, Kath Walker, who reverted to her Aboriginal name, Oogeroo of the Nunuccal, gives us all a song of hope for the coming century. It is a song for all Australians. But it is also a song for you:

"Look up my people
 The dawn is breaking
 The world is waking
 To a new bright day
 When none defame us
 No restriction tame us
 Nor colour shame us
 Nor sneer dismay.

...

To our father's fathers
 The pain, the sorrow
 To our children's children
 The glad tomorrow"⁴.

4 Kath Walker (Oogeroo of the Nunuccal) *Song of Hope* in *Collected Poems*.