

Importance of Ethics, Integrity and Discipline

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Sitting and former brother judges. Our most valued participants, ladies and gentlemen.

I feel immensely privileged to have an opportunity to address this august gathering on a very important subject having reference to the strength of judicial system for achieving the object of quality, timeless, free and fair justice.

Judging is not a profession but a way of life. The judge trying a case himself is on trial as he always remains under public gaze. Thus a judge has to lead the life of traditional virgin. Judges have to live and behave like hermits, who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat.

- Judge must observe ethics.
- Ethics is right conduct.
- The canons of judicial ethics have originated in and have been handed down by generation after generation of judges by tradition and conventions.
- A Judge would decide the case uprightly, deliberately and resolutely without suffering from any prepossessed judgment. A Judge is ought to be bestowed with the sense of complete detachment and humility.
- The Bangalore Principles set out **six core values that should guide the exercise of judicial office, namely: independence, impartiality, integrity, equality, propriety, and competence and diligence.**
- The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. The Judges do not do an easy job. They repeatedly do what the rest of us seek to avoid, i.e., make decision. Judges, though are mortals, they are called upon to perform a function that is utterly divine in character.

[See: *All India Judges Association v. Union of India (1992) 1 SCC 119*]

- District judiciary is the final face of judiciary for almost 80 percent of the people in India.
- Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself.

Balancing so many things and acting impartially is not an easy job. But a good judge does it. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law.

Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of judicial ethics diminishes public confidence in the judiciary and injures our system of government under law. Therefore, we need to ensure certain measures like, Respect for law and avoiding outside influence.

Respect for Law. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

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- **Socrates said. four things belongs to a Judge: to hear courteously, to answer wisely, to consider soberly and to decide impartially.**
- **A Judge must detach himself from the private gains and from selfishness of every kind must rise above pettiness, passions, prejudices, obsessions and complexes of every kind.**

- **Shukra nitisara** says: "Five causes destroy impartiality and lead to judges taking sides in disputes. These are, attachment, greed, fear enmity, and hearing a party in private.,"
- **Probity is uprightness; moral integrity; honesty. Thus, the overall objective of guaranteeing judicial independence is to ensure a reasonable perception of impartiality.**
- "Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences.
- In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society." (Ravichandran Iyer v. Justice A.M. Bhattacharjee & Ors. (1995) 5 SCC 457, para 21, per K. Ramaswamy, J)
- As depicted in the classic image of a woman, blindfolded and holding the scales of justice before her, they must weigh conflicting interests dispassionately; see clearly, but not with their own eyes.
- **Justice Hidayatullah:** Not being punctual in Court violates the Rule of Law.
- 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 that the judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. (5.p. Gupta v. Union of India, 1981 Supp. SCC 87.) 'Independence' and 'impartiality', are most crucial concepts. The two concepts are separate and distinct.

'Impartiality' refers to a state of mind and attitude of the court or tribunal in relation to the issues and the parties in a particular case, while 'independence' refers not only to the state of mind or attitude, but also to a status or relationship to others - particularly to the executive branch

of Government- that rests on objective conditions or guarantees (University of New Brunswick Law Journal, Vol.45, 1999.p.81).

- **Rule of Law**-Henry De Bracton- 13th century European Jurist. The King is under no one except the God and the Law.
- In 1610, King James of England tried to get absolute sovereignty and claimed that he was above the law also. Sir Edward Coke, the then Chief Justice said No-you are under the law. The Chief justice was removed by the King but the rule of law prevailed and the king had never been granted sovereignty.
- However high you may be, the law is above you.
- Shantanu-Matsyagandha-Saraswati-Devawat (Bhishm)-oath of celibacy for life.
- Ram banished Sita in matured pregnancy. Rule must have been that if a woman is abducted and remains in the custody of the kidnapper for long, she will not be accepted by the family.
- Judges not to yield to procrastinative tactics of the lawyer:
- S 165 Evidence Act, O 17 R1 CPC, S.309 CrPC
Section 89 CPC

The object of section 89 is to make an attempt of resolution of the dispute by ADR process before the trial proceeds.

The Constitutional validity of section 89 CPC was upheld by the Supreme Court in the case of *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC344.

In India, village panchayat system has been used in a manner somewhat akin to the mediation process today.

Goswami Tulsidas- 16th century.

In the case of *Sitanna v. Marivada Viranna*, AIR 1934 P.C. 36, The Privy Council affirmed the decision of the Village Panchayat in a family dispute, observing that referring matters to a panchayat is time-tested and it void protracted litigation which could be detrimental to the interests of the parties.

Delay - Expeditious disposal is the demand of the time (need of the hour).

- (i) **Cow**- Two parties caught hold of the cow - one from the front and another from the back - two lawyers came and sat one on the left and one on the right side and milked the cow. As the Court had no time to hear them.

- (ii) King Naraga - Chameleon
- (iii) Sanyasi of Bhuwalka (Privy Council 1945)
- (iv) Privy Council -1923 remanded the case to trial court
- (v) Calcutta Case pending for last 180 years

020 R1 CPC- judgment in 30 days or give reasons. In *Anil Rai v. State of Bihar* AIR 2001 SC 3173 the Supreme Court held various remedial measures including that if the judgment is not delivered within six months from the date it was reserved, on the application of either of the parties, the Chief Justice may withdraw the case and list it before another Bench for fresh hearing.

Benaras Court Judgment dated 26.01.1810.

In Madan Mohan Singh & Ors. v. Rajni Kant & Anr., AIR 2010 SC 2933, the Supreme Court had an opportunity to consider a case regarding admissibility of revenue record and entries made in school registers in view of the provisions of s.35 of the Indian Evidence Act, 1872, wherein the case has been examined by the civil court as well as by the revenue court and the High Court. The Supreme Court recorded the following finding of facts:

- Shakuntala gave birth to Asha at the age of 12 years.
- She gave birth to Savitri at the age of 6 years.
- She gave birth to Rajni Kanth even prior to her own birth.

Judicial Bias

The judges and lawyers are cut from the same cloth but judges have large number of restrictions/obligations while the lawyers have none.

The word, Advocate has come from the Latin word, 'advocatus'-means called to help.

On May 7, 1997, The Supreme Court of India in its Full Court unanimously adopted a Charter called the "**Restatement of Values of Judicial Life**" to serve as a guide to be observed by Judges, essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice.

Ex-parte communication is prohibited. It means that judge should not discuss any issue involved in a case with a lawyer in absence of the other party or its counsel.

Close personal contact between the judge, the party and the lawyer may tantamount to bias and prejudice.

Mixing up with the people/public must be avoided.

The claim of bias against a judge must be precise and specific not vague. It must be legally sufficient and required to be made without any delay.

Allegation of judicial bias may be there if a judge has any interest of any kind in the case or is associated with either of the parties. So suspicion of bias displaces an official from acting as an adjudicator. In case such allegation is made without any substance, it would be a disaster for the system as a whole for the reason that it casts out upon a judge who has no personal interest in the outcome of the controversy. The bias and partiality can be defined to mean that there is no total absence of pre-suspicion in the mind of the judge and thus the party will not have a fair trial. It means there must be an apprehension of bias which is reasonable i.e., which a reasonable person can entertain. In case apprehension is inadequate, the party cannot be permitted to choose the bench of its choice. Litigants are entitled to an impartial judge but not a judge of their choice. A judge must remain firm and detached. The lawyer also has a duty, being a member of the bar not to demean and discourage the majesty of justice dispensed by a court of law. The lawyer should not cast such allegation unless he is able to substantiate it. A judicial process is based on probity, fairness and impartiality.

(See: *State of West Bengal v. Shivananda pattuk*, AIR 1998 SC 2050; *Bhajan Lal, Chief Minister, Haryana v. Jindal Strips Ltd.*, (1994) 6 SCC 19; *Rameshwar Bhartia v. State of Assam*, AIR 1952 SC 405; *Justice p D Dinakaran vs. Hon'ble Judges Inquiry Committee*, AIR 2011 SC 3711; *State Of Punjab v. Davinder Pal Singh Bhullar*, AIR 2012 SC 364; and *State of Gujarat v. Hon'ble Mr. Justice R A Mehta (Retd.)*, AIR 2013 SC 693).

Recusal by the Judge

In *Subrato Roy Sahara v. Union of India*, (2014) 8 SCC 470, the Supreme Court held that unless there is a real likelihood of bias, the judge must show judicial independence and courage and should not recuse from the case. In NJAC case, the Supreme Court held that the judge should not recuse on mere asking by a litigating party unless justified. Otherwise, it would give an impression that the

judge had been scared out of the case just by the force of the objection. The parties may ask for recusal as they could not be beneficial Of continuation of the judge. The judge must stick to the oath.of office and, more so, such request could be made at the earliest stage Of the proceedings.

(Supreme COURT Advocates on Record Association v. (Union of India, AIR 2016 SC 117).

Court cannot decide on a point that is not agitated

The court should not decide an issue not agitated by the party as the other party did not have opportunity to meet it and such a course would violate the principles of natural justice. In case there is no challenge to the policy decision taken in the Government orders, the court cannot hold it to be faulty and strike it down unless such a policy decision itself is challenged.

(See: New Delhi Municipal committee v. State of Punjab AIR 1997 SCC 2487; Secretary to Government v. M Senthil Kumar, AIR. 2005 SC 1579; Sanjay Kumar v. Narinder Verma, (2006) 6 SCC 467; and State of Jammu & Kashmir v. Ajay Dogra, AIR 2011 SC 1830)

Citing over-ruled judgment

In the State of Orissa v. Narini Kantha Muduri, AIR 2004 SC 4272, the court held that the members Of the Bar are officers of the court. They have a bounded duty to assist the court and not to mislead. Citing an overruled decision is a matter of serious concern. The court expressed its anguish for the falling standard of professional conduct.

Hindu philosophy beautifully compares a judge with a flower which would never wither and remains ever fresh. An anecdote very appropriately explains this concept - "A religious discussion was to take place between Adi Shankaracharya and Mandan Mishra. Sharda or Saraswati was judge. Both were offered similar asanas to sit on. Having plucked fresh flowers, Sharda strung two identical garlands. She put them round the necks of the two scholars and said, "During the discussion, the garlands will decide the winner and the loser. The wearer of the garland whose flowers fade first will be considered to have lost...." Sharda maintained that he who possessed intellectual clarity, ower of thinking and self-confidence will be calm and peaceful. His voice will be like the cool spring.

Therefore, the flowers will remain fresh for a longer time. On the other hand, one who does not have a clear intellect or a strong sense of logic or whose self-confidence staggers, will be frustrated. His voice will become harsh' the circulation of blood in his veins will become rapid and his breath will become hot. Hence, the flowers around his neck will wither sooner.

(See: Canons of Judicial Ethics, by Justice R C Lahoti)

The Judge must be even-handed. His approach must be consistent, irrespective of the fact as to who is before him in the dock. He cannot act on pre-conceived notions. His personal whims or caprice can have no role to play in the discharge of his official duties. His life must be one open to probity. It is his duty to judge and he must hold the scales of justice evenly. He has to be merciful, decisive and upright.

Willful abuse of judicial office, willful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehavior. Misconduct implies actuation of some degree of *Mens rea* by the doer.

The High Court has to protect honest and upright judicial officer against motivated and concocted allegations. However, the court cannot ignore or condemn any dishonest deed on the part of any judicial officer.

It is thus taboo for him to give a private audience to the litigants or their lawyers. He has to shun social interactions with such category of persons at all costs. It is based on the principle of transparency because that reinforces faith and confidence of the public in the system.

[See: "Canons Of Judicial Ethics" - Speech as part Of M C Setalvad Memorial Lecture Series by Hon'ble Mr. Justice Y K Sabharwall]

(Justice Ali Mohammad Magrey)