



NATIONAL JUDICIAL ACADEMY

Conference on judicial ethics and accountability

6th -8th November 2015

**Rapporteur: Mr. Akhilendra singh
7th Semester, B.A., LL.B (Hons.)
Institute of law NirmaUniversity.**

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Introduction :-

National judicial academy has organized a conference of the judges of the high court on the topic “judicial ethics and accountability” on 6th to 8th November 2015. Eight judges from the different states like Gujarat, West Bengal, Andra Pradesh, Kerala, have participated in this conference. The conference was split into six sessions for each day, out of which four sessions were dedicated to the lectures by the distinguished speaker in the respective fields. Two sessions were kept daily for the library reading and computer skills training. Dr. Parul Joshi, Dr.Aarudra Bura, Dr. Jerome Joseph, Mr. PrashantBhusan, Justice Kurian Joseph, Justice R.V.Raveendran, Dr. Pawan Kr Singh, Dr.Amitabh Deo Kodnani chaired and guided the sessions.

Prof(Dr) Geeta Oberoi, director in charge of the national judicial academy gave warm welcome and brief introduction on all the sessions and deliberated on the objective of the conference. Prof(Dr)Geeta Oberoi, deliberated on the importance of role of ethics in life of a judge which is by their nature more explicit pursuit of and greater fidelity to certain basic societal values. She introduced the distinguished speakers of the day. A brief introduction was given by the participants as well. After a warm welcome they were requested to open the first session of the conference.

Day 1: Session 1

Topic :- Stages of moral development

Speaker :- Dr. Parul Joshi

The first distinguished speaker of the day was Dr.Parul Rishi. She has given her presentation on the agenda of “stages of moral development”and following are the main issues in her presentation:-

- Deontological framework of the ethics
- Myth v reality of the ethics
- Unethical behavior
- Threats to the morality

Her presentation started with the difference between the values, morals and ethics. The values are the beliefs of oneself regarding his way of conduct , life etc. whereas morals are certain rules of conduct which are transmitted to the individual through a gradual process by the society in the same way ethics are those conduct of the life which are

taught to the person by a specific subgroup of the society it like ethics of the judges are made practiced and perpetuated by the judges only. We always believe in the written and stated rules but there are certain operational values that always gives coherence to our thought and action. Dr Rishi posed a question to the house that after all what is it that disconnects us with the ethics and values how many times we break them is it a conscious or an unconscious exercise of the mind. Who is the person who would tell a judge that you are doing something unethical.

To answer her question she stated that there are different kind of threats to the morality of one they are:-

- 1.) External pressure:- these are due the threats made to the one or the allurements made to the person
- 2.) Humanitarian concerns :- these are always personal in nature and responsive to the biases which one possess.
- 3.) Running over:- that's the easy ways of escapism i.e. we generally sit over the problem
- 4.) Practical considerations:- sometimes they take a form that they crush the walls of the conscious as the meaning of the context changes.

She said that these are the certain problems which can be dealt by the introspection i.e. asking yourself, your conscious, facing your minutest fears, believing in the god almighty and so on. She stated that there is always myth in the mind of the person that one is ethical or not and to clear that myth one has to go through the smell test, which says that if there is smell or fishy in the thing about which you are going to act, then that must be considered as not to be ethical.

She very beautifully described two kind of frameworks which we have to pursue in our life to be ethical that are consequential framework which is based on the end point that what would be the effect of the judgment in the society. Second one is the de-ontological framework which always perpetuate that we have to be on the path of virtues, justice and integrity no matter what is the consequence of our decision. These are the problems which are faced by the judges while deciding the case related to the

question on the child labour, prostitution? That whether it is the values or the living of the person which must be taken in consideration.

She has illustrated that the saying rotten apple spoils the barrel does not hold good in this judicial arena i.e. they cannot shift the burden that since one person is doing something wrong so do I have the authority to do the wrong does not hold good meaning thereby that unethical behavior is simply result of your own action and not the replica or the result of the others. Thus although there are codes in the judiciary through which ethics are maintained but the codes only are not sufficient they must be practiced conventionally. She substantiated her point of view by giving an example that ethical behavior is always linked to the ethical leadership which we can infer from the instances of the whistleblowing, she stated a very peculiar Indian habit which consists of making of the escaping statements in the form that in the earlier days people used to be ethical but they are not now a days. But such statements are of escaping nature and shows the lack of concern which you are giving to the ethics.

She gave a logical problem consisting nine dots which have to be joined using the four lines without putting up a pen through this problem she was able to state that life is not so simple in order to connect the dots, we are being constantly being challenged to use our mental capacity, which we have resolved only through out of box thinking. We always have to go beyond the reality which is perceivable to find out the truth.

She stated that there is a principle which is given by Sigmund Freud about the components of the personality and it can be used as a check over our personality to see when one is ethical and not.

- 1.) ID:- it is the pleasure principle that always seeks by the people that what suits to one is the work which he wanted to do. We have to look up to ourselves that are we in that situations
- 2.) EGO:- it is our inner ego which tells us that what we have to do in a response to a certain work, whether our mind is pre-occupied by the notions
- 3.) SUPER EGO:- here we have to see the personal biases that are always coming to our mind whether it is of pecuniary nature of personal nature or any other nature.

She illustrated that ethical as well as unethical decision making always has to fall upon the characteristics of culture variable, context, issue intensity and issue of moral development. During which we have to see the personality measures of the ego strength of oneself and also has to seek that where the locus of control of our personality is resting. There are certain determinants which we have take account of in order to check our intensity and they are :-

- Consensus of wrong
- Consensus of harm
- Consensus of effect of the judgment
- Proximity with the problem

She has illustrated the Kohlberg Lawrence theory to keep up a check over what is right and wrong in our working of ethics he stated in his theory that moral development is a gradual process and there are the categories of the morality i.e moral, immoral, amoral where as there are three stages of the moral development:-

- 1.) Principal:- this consists choosing the self chosen ethical principle and secondly to judge on the basis of the values and the rights upholder as absolute by the society
- 2.) Conventional:- this consists of maintaining conventional order values and doing what other are doing and supposing it to be right.
- 3.) Pre-conventional:-these are those stages that our actions are guided by the end results of the act

She stated that generally people till the second stage and there are only few which can grow up to the pre-conventional stage and it is the duty of judge to guide their actions upon the third stage.

At the end she illustrated a picture showing pebbles put upon each other, at the bottom their was a big pebble upon it was small, then a smaller pebble over it too and asked the participants to give their inferences over the same which were balance, stability, strong base, bigger base, skills and so on she clearly depicted that the larger stone is the judiciary on which the whole trust of the people in the state democracy stands they are being put up with the power to balance the interest of the society in a better possible way and it is their duty to see the least- well off that is the smallest stone must no fell from its place.

Day 1: Session 2

Topic:- Conflict of interest :overcoming ethical values

Speaker :- Dr. Arudra Burra

The baton for the second lecture was given to the Dr. Arudra Bura and he delivered on the topic “conflict of interest: overcoming ethical dilemmas at the first instance he stated some of the examples during which judiciary has to face problems all the times at the time of settling the disputes whether they have to take in consideration the consideration of the economic section, or they have to support the going on judicial problems in the line of the precedents. He stated that in every kind of situation in which one person occupies an institutionalization defined role given by the state which require some sought of judgment or even an action relating the public interest he is bound to take decision over the conflicting interest he substantiated by giving an example of teacher who while teaching his students and while checking their papers must try to become impartial and try not to see the first paper of the answers sheet so that he is impartial then also he will face the problem as might be knowing the writing of his favorite students.

He very categorically stated that there are two kind of conflicts which are faced by the people generally

- 1.) Out of role conflict:-
- 2.) Within the role conflict:- this section is further divided into the two parts which are :-
 - a.) When one person plays role of two people:
 - b.) When one person is faced by the crises cross roles:-

Then he stated that there is nothing wrong in the conflict of interest rather the thing which is important to know that is what one has to do when he is faced by the problem of conflict of interest. He stated that each one of us is having three kind of responses to the any kind of conflict of interest these are :-

- 1.) Escapes :-
- 2.) Disclosure of work:-
- 3.) Managing the conflicts:-

First of all we have to cross the barrier that we are preoccupied by the notions of ourselves to substantiate he gave an example of an implicit exercise in which two picture are shown to the viewer one is of afro-american and one of American and then they are shown some qualities bad and good and they have to ascertain these qualities to one the picture. The person claiming not to be racist have ascertained many of the bad qualities to the afro-american person. This shows ho we are still preoccupied by the notions. By stating that example he stated that biases can become conscious when people are making them virtuous and it is the duty of the judge to understand the difference between advocating a cause and adjudicating a job at the same time they must be reduced to separate the judicial ideology with the political ideology. As they are the reflex ion of the trust of the people and they must ensure that justice must seems to be done. Such exercises require an introspection what the professor said to be of implicit barrier. With following question he left the class :-

- 1.) What are the problems a judge faces while deciding a case ?
- 2.) What is the role of informal norm in determining judicial conduct ?
- 3.) What are the best ways to discuss such issue in judiciary ?

Day 1 : Session 3

Topic :- Indian philosophical values on ethical

Speaker :- DR. Jerome Joseph

Post lunch session was taken by Dr. Jeoreme Joseph on the topic Indian philosophical values on ethical conduct he started his lecture by giving an example how he avoided during his tenure as a admission officer his own personal biases and then he stated the four type of accountability and told that it is up to oneself to determine how accountable one is?

Following are the types of accountability discussed by him

- 1.) Functional accountability :- it is the accountability which a person as well as a institution must possess internally as well it is protected externally. He discussed that it must contain nine principle as discussed below as an explanation the poem of Rabinranath Tagore.
- 2.) Institutional accountability :- this type of accountability depends upon the different kind of variable which every kind of institution much try to seek in itself so that the trust of the general public is uphold in the institution these practices are clubbed as follows:-
 - a.) Consistency
 - b.) Continuous upgradation
 - c.) Competency development
 - d.) Culture supportive system
 - e.) Contribution assessment
- 3.) Personal accountability:- these are the accountability which arises on the personal basis of the role the individual plays but the judges have to take into their account that their

behavior is malleable and ductile so they are not preoccupied with the notions. Such malleability and ductility of the personality helps a person to be more elastic.

- 4.) Role accountability:- he stated that there is a difference between accountability of a lawyer to the society vis-à-vis to the accountability which is expected by the judge and it is duty of the individual to become accountable to the role he is designated to perform.

Then he stated a collegial accountability anthem which has been taken by him from the Geetanjali by Rabindranath Tagore which says :-

Where the mind is about fear	fearless quotient
And head is high	respect quotient
Where knowledge is free	knowledge quotient
Where the world has not been broken into fragments	impartible quotient
Where the time has come out of truth	integrity quotient
Where tireless strings stretches its arms toward perfection	solutions quotient
Where the clearness of the stream has not lost its way into the dreamy desert sand of dead habit	disornment quotient
Where the mind is forward by those into ever widening thought and action interpretation	
Into that heaven of freedom, my father, let my country awake.	Independence quotient

He very beautifully connected each of these issues with the practical life of the judge by substantiating the given points like he gave the example of Hardik Patel being sued on the seditious charges. How judges have to overcome fear in order to determine the grace of his office. The discussion ended that whether the judge has any field to exercise his power freely and the house unanimously concluded that in the adversarial system no judge a exercise the power beyond given by the law and has to decide the case on the merits an analogy for the same was drawn the debate related to the debate between the free speech and offensive speech. The

discussion ended with the study of the case of Devdutta v u.o.i¹ .in brief the case is discussed as follows “ the main question in the case was **whether non-communication of entry in Annual Confidential Report of a public servant on the pretext of any Government Order or memorandum amounts to arbitrariness and violative of natural justice?** The supreme court developed the principles of natural justice in case under consideration by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. It was further held that above position would be correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution. Article 14 will override all rules or government orders. ”². the whole exercise was done in order to make the realization of the increasing inculcation of human resource management into the decision making process by the judiciary has to be taken care off.

The discussion ended with the discussion on the nine step of functional quotient as discussed above in the report and the issue of the difference between the role accountability and role functional accountability, since the role accountability is being more effective in the judiciary and requires following qualities more as the judge is required to play not only functional accountability rather a role-functional accountability :-

Efficiency :- Analysis of oneself Professional integrity	Effectiveness :- Thirst for requirement of knowledge Enthusiastic approach
Enabling :- Contribution made in the transformation Mutuality of orientation taken	Enhancing :- Decision independent Taking holistic approach Strategic capability

¹ Appeal (civil) No. 7631 of 2002

² <http://gplawsolutions.blogspot.in/2008/05/dev-dutt-vs-union-of-india-ors.htm>

Day 1: Session 4

Group discussion :-

Topic :- Independence and accountability as core ethical values

The fourth session was initiated with the introduction of art 235 of the constitution of India by Prof(Dr) Geeta Oberoi which says:-

Art 235 :-

She started with an invitation to the participants to discuss upon the issue that how each high court is dealing with the issue of the transgression of the power of the lower judiciary or their subordinate staff. Four points which were majorly discussed are as follows:-

- 1.) There are lot of complains in the efficiency level of the lower judiciary since some of the judges are coming with no experiences as a lawyer, earlier what used to be a three year experience required to give the exam for the lower judiciary, since this bar has been removed the judges are being inducted are not having any practical experience.
- 2.) A case from the Allahbad high court has been discussed in which 15 of the sub-ordinate judges were sacked by the high court as they have went to the bar on their last day of training and a feud had taken place between them on a petty issue the high court stated that such acts are demeaning the stature of the judiciary and must be punished severely.
- 3.) An experience of the Andra Pradesh high court was shared by the respective lordship in which he suggested that their state has introduced a workshop on judgment writing and ethics which is helping them to curb the above stated two problems.
- 4.) Another experience of the respected Andra high court was being discussed in which another course for their trainees in the area of development of the PDJ going for the alternate dispute resolution.

Then the discussion turned to the steeper problems which the various high courts are facing on the issue of the transgression of the power by the subordinate judicial officer when it comes to the question of their ethical and unethical conduct following participants discussed their problems :-

- 1.) Hon,ble lordship from Bihar stated that at the first instance they are not having a mechanism to access the transgression of the lower judiciary. Even the vigilance department set up by the board is not working up to the mark as they are not possessing the power to issue a warrant for the search and seizure and the judiciary fears to put such a delicate job in the hands of the police
- 2.) Hon,ble lordship from the Kerala high court discussed that their system of checking the transgression is working up to the mark as they have devised a formula in which the administrative court is being set up possessing the portfolio officer who is of the district level judge stature, the same has been given power to do the investigation in the issue of the transgression, if only he is satisfied then he can directly put up the issue to the chief justice of the high court and it will be dealt their and then only.
- 3.) In Karnataka the introduction of institution of the lokaayukta has resolved the problem which is being discussed as above
- 4.) Lordship R.M Chaya discussed they are bifurcating the complaints into the three aspect naming anonymous, with affidavit, informal. Since they have an independent secretariat to deal with such kind of issues, it is very helpful too them.

Some of the basic problem discussed and put forth are :-

- a.) Registrar vigilance is not having the power of search and seizure
- b.) Most of the complaints are made informal
- c.) The problems come with the registrar vigilance is that he is in the utter confusion that if he take the action on any of his fellow judges then when he will be transferred again into the field he might have to face the problem.

Some of the suggestion made by them are :-

- a.) A need to review the lower structure of judicial process
- b.) Separate cadre can be made into the judiciary for the issue of transgression
- c.) It can put forth by taking help from the public sector.
- d.) It is up to the high court only to go into the question of maliciousness.
- e.) All of them unanimously dropped the idea of appointing a retired IPS officer on that post as he might not be aware with the practical difficulties. At the same time whole house came to the consensus that a panel may be employed for this purpose which can be analogues to the working of the tribunal. But at the same time such policies must never be hostile to the judiciary.

Day 2: Session5,Session 6

Topic:- :- Values for ethical conduct :Equality, Values for ethical conduct :propriety

Speaker :- Mr. Prashant Bhushan, Justice Kurian Joseph, Justice RV Raveendran

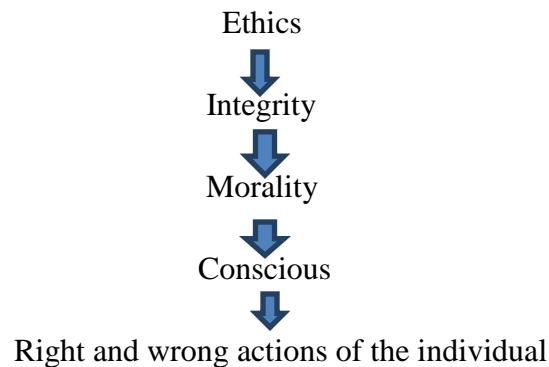
A warm welcome was given to the participants and the speaker by the Pro(Dr) Geeta Oberoi and the participants were asked to give their introduction to the distinguished speaker.

Justice Kurian J oseph initiated the discussion by stating that ethics and morality are such things which can be made forcibly taught to a person even it cant be taught it can only be learn through inculcate these habits through group discussion and conferences because a person can only learn about such habits if he is having a open mind. He stated the oxford dictionary meaning of the word ethics which is “proper conduct touching the morals of the society” in another dictionary it was told that it is the “conduct of profession” and is depending upon the office one is holding and the services one is discharging. At the last it is inclusive of the basic fundamental qualities like integrity, honesty and so on.

The dictionary meaning of the word integrity was discussed and the dictionary meaning of the word is “firm adherence to the moral values” . that is integrity is something which controls the behavior of the person. It is a subjective and an internal phenomena which must always come from within the person, they have to come from within the conscious. In general we can say that it is the standard of conduct of person in reply to the demand he is facing from the society. For the judges it means that they have be such that they are uninfluenced by anything.

The dictionary meaning of the word morality was discussed and it was “code of conscious” thereby it is that part of your mind which tells us that whether action is right or wrong. It is more of like going by the virtues and having a sense of righteousness. In general it can be said as the principles of right and wrong behavior and such right and wrong behavior can only come through the conscious. This means that a person who is moral is always listening to his conscious.

At the end of the discussion the house was able to make a hierarchic table which is follows:-



Actions of the person are the right and wrong from the individuals own point of view. But actions can be ascertained right and wrong by the person who does introspection and think before doing them in his mind then certainly it is his own conscious which will guide him. If such realm of conscious guides one's action then he is the person who is adhering to the moral principle because the conscious is being developed by the society through certain norms and behavior which controls the behavior of the person. Now such morality when it becomes subjective it would turn into the integrity and when integrity is restricted to certain principles which have to be followed by a group it becomes ethics which can be turned as conduct of profession.

The discussion then turned to the question that what is the need of judicial ethics and are the ethics of the judicial officer is different from the ethics of the common man. The judges are inn more explicit pursuit of and greater fidelity to certain basic societal values. Thus their profession requires that they have to maintain their good conduct both inside and outside of the office and there is a need that such conduct needs to be perfect in public and private spaces because if at all judge who is not able to maintain his conduct in the private space, it will perceived by the society that he is not the man of integrity in his personal life then how can he become the person of integrity in his public life. At the last it will shake the trust of the people in the society and such situations can lead to anarchy. Thus two important need for the judges to maintain good conduct follows from the two points:-

- 1.) Problem of being vulnerable, accusable to the public.
- 2.) The job demands that a judge must be a person who is of moral rectitude.

He emphasized that we have to adopt the method which father of our nation has told us that it is not necessary that only our means must pure rather it is important that the means to achieve them has to be pure. E made it clear that it is not the suppression of the conduct which one's like rather it is a pre-requisite of a judge it is the way that they must be guided.

Then Justice Raveendran. Emphasized that the good conscious is not only asked from individualistic point of view whereas it tis the collective responsibility that the whole of the judiciary shares. As we all know that even a single bad act of the judge will have a effect that whole of the court would be brushed with the bad act. And at last it will be a slap on the face of the judiciary. Their in the society we have to follow the hierarchy of the standards. He gave the example of the judge who is known to be of particularly adhering to certain kind of values, beliefs, religion and so on bit when he becomes a judge it is assumed that he will not be biased by such kind of approaches. And such qualities must perpetuate from the higher judiciary to the lower judiciary. To substantiate the same the speaker gave references of the writings of the Lord Dennis and quotes him

“when the judge is deciding a case it is e who is on trial.” Justice has nothing to do what is done in the courtroom but it is what comes out of the courtroom.

Mr. Bhushan stated the importance of the ethics of judges vis-à-vis the principle of the equality and told that

- 1.) Judges must give equal treatment to the litigants:- it is the complaints made by more of the litigants that the upper section of the society is being given more concern as in comparison to the lowers section of the society, rather it is the duty of the judiciary to protect the poorest of the poor.
- 2.) They must give equal opportunity to the lawyer :- a common allegations made on the judges is that they do not give enough time to the beginners as well as to the person who are not having good names. And they are giving more time as well as listening patiently to the person who are having good named in the corridors of the court.
- 3.) They must try to get free from the bias whether of pecuniary or of personal interest at their conscious and sub-conscious level. This is the kind of allegation mostly made on the judges that they are bias in one way or the other.

He then substantiated these points by making a reference to the three of the existing problems of today, scenario :-

- 1.) Face value : this shows the palpable bias of the judges that if a SLP is made by a young lawyer then they give him very less time as in comparison that if the SLP is being made by the senior bar members then it is the possibility that at the least they will listen it him and will not discard him at the first instance
- 2.) Forum shopping : we all know that the courts are being alleged of the forum shopping that advocates are able to institute the case in the court of the judge they wanted .
- 3.) Class bias: it is being submitted by the senior council that still we live in the feudal society to substantiate he gave the example that still we have servant in our house and we treat them in a degrading manner and if suppose the case of servant is coming to the court of a judge who himself is treating a servant on an unequal basis then whether he will be able to come out of his conscious that it is not the

servant who is asking for relief rather he is an individual who must be treated with dignity.

- 4.) Other kind of biases :- the senior council states that every judge is being attacked on the grounds of the biases whether they are of pecuniary or personal or professional bias

He substantiated these points by giving the example of the NJAC debate that during the whole debate we were not able to concentrate over the important factors

- 1.) Judicial temperament :- these are the factors which must be taken in consideration while appointing a judge that whether he is possessing the required judicial temperament or not and these are the factors which have not been discussed in the NJAC debate.
 - a.) Willingness of the judge to listen to the case: it is the first and foremost quality which is required of the judges that whether they have open mind or not whether they are patient enough or not, whether they will listen to the advocate patiently or not, there must be some criteria to ascertain such qualities of the person.
 - b.) Open mindedness of the judge : whether his mind is pre- occupied by his notions or his own ideas which will govern his actions and decisions and if at all it is there then it must be dismantled.
 - c.) Fairness of the judge: it is equally important that he is above suspiciousness.
- 2.) Uncle-judges syndrome: It is the very known syndrome that if the child of the fellow brother judge of the court is coming to the court of another judge then it is very difficult for him to remain impartial.
- 3.) Son stroke phenomena here the discussion was made on the Nesargi case. “ the problem of son stroke and spouse stroke has at long last come before the

supreme court of India in case of Nesargi, A former chairperson of the Karnataka bar council, who recently married judge Nesargi of Karnataka High Court. In keeping with the conventional understanding of rule 6 she did not practice before the judge husband”³

- 4.) Sensitivity: whether the judges are sensitive to the matters which are being put in front of them are they more reflexive to the different kind of approaches which their job requires in the different case.

A suggestion was made by the participants that such kind of problem can be solved at the level of high court by not appointing the judge in his own territory. But it was being countered by Justice Raveendran by the following points :-

- 1.) Problem of recognition : the lawyers strive hard to get the recognition among the fellow lawyers by becoming the judge at the high court where as at the same time they are posted in the different states then there would be no striving lurement for that post.
- 2.) Problem of language : when it comes to the transfer of the high court judge in the different state it has to be considered that he will not be familiar with the language spoken in the state in which he is posted.
- 3.) Problem of transfer : the main problem of the transfer is that at the end of the weekends the transferred judges are finding ways to go to their parent house so the work of the court is delayed in that process.
- 4.) Problem of the local laws : if the judge is at the first instance made the judge of the high court of the state to which he is not belonging than it would become very difficult for him to adjust with the personal laws prevailing in that state.

Some of the points discussed at the last of the sessions are

³ By Upendra Baxi, “The pathology of Indian legal profession”

- 1.) Retirement age of high court judges must be made 65 : the most of the striving for the high court judges to become the supreme court judge is because of the retirement age which is 65 in the supreme court where as it is 62 in the state high courts. In the line of becoming supreme court judge they are trying to not get in the matters which are of high sensitivity and are rescuing themselves from taking harsh decision.
- 2.) Hindrances in the appointment of the judges in the high court: when the judges are selected from a pool of lawyers to take an example suppose from among the ten person they have to select one then they give rejection reason to the 9 of them which are not selected, the speaker was of the view that it is this precise of the selection procedure which must be curtailed.
- 3.) To bring more transparency: there is a need that such procedure is made more transparent. As it is the appointment procedure which establishes the independence of the judiciary.
- 4.) Discussion on the Bangalore principle:- A judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other protections fail, it provides a bulwark to the public against any encroachments on its rights and freedoms under the law. These observations apply both domestically within the context of each nation State and globally, viewing the global judiciary as one great bastion of the rule of law throughout the world. Ensuring the integrity of the global judiciary is thus a task to which much energy, skill and experience must be devoted.

Day 2: Session 7, Session 8

Topic :- Values for ethical conduct : Integrity Values for ethical conduct : Impartiality

Speaker :- Dr. Pawan Kr. Singh Justice Kurian Joseph, Justice RV Raveendran

The session started with establishment of the fact that people expect a higher degree of probity in their life i.e. it is not only sufficient in that the scale is straight but rather it must also be seen that it is not tilted thus whenever in any case the judges must recuse himself of giving a decision in which it might be perceived that he is connected to the party in any way although he might have not been biased if at all he was allowed to give the decision. The speaker stated that it is not sufficient that the conscious of the judge is clear but the image must also go in public that there is no apprehension that judge is biased. He substantiated it with the example and quoted Justice Venkatchaliah that a judge must recuse himself of giving a judgment even if the connection is indirect. The base that is the trust of the people in the judiciary must not be broken. To substantiate he told the example of moist state of Chhattisgarh that where each and every person is being attacked from bureaucrats to the high level of politician the judges are not at all being made a target, even in the state of J&K the judiciary is never alighted by the separatist. But the speaker emphasized that in this context we have to learn the meaning of the word “suspiciousness” and what is the “credibility of the institution” which must be protected by us. To substantiate the two expression used are explained by giving the example :-

- 1.) Sister tenant case :- it is the case when the judges who are not given the accommodation by the government they go and take a house on rent and then they are barred by the by an societal obligation to not to take decision on such cases in which their landlord is a party.
- 2.) Justice Raveendra,s example :- he gave his example of property distribution case of the reliance brother that when the case started the advocate was charging a very hefty amount and after the five hearing the speaker got a letter that his daughter is promoted as a partner in a law firm which is over taken by a bigger

law firm which is handling the case of one of the brother in the property dispute. He immediately recused himself from deciding the case because it was done so then it would have created a room for accusation against him, although many other type of accusation were made against him as he had spoiled the time and money of the court but the speaker emphasized that it is the credibility of the institution which must be upheld.

Some of the other points discussed at the end of the session are :-

- 1.) Foreign visit :- the differences comes when the judges ask for the foreign visit to the ministry and the same is looked upon by negativity by the executive, they are being harassed by the executive for the same their should be a committee of the judges examining the foreign visit of the judges and their should be a case to case examination of the case if at all the judges are using the government facility or going to the other country and enjoying the facility of the host country as a state guest.
- 2.) Foreign treatment :- Their should be a committee which look after the foreign treatment of the judges as same as reoffered above.
- 3.) Microsoft example :- the speaker gave an example of the judges who wanted to go on a foreign trip and in this regard the Microsoft company help them in a way that they were invited to the expert lecture in foreign country on cyber laws, if at all the judges go their then how they can remain impartial if the case of the Microsoft comes in front of them. The speaker said that the judges must try to recuse them from going to foreign visit on such kind of invitation and must discard such type of practice.

- 4.) Teesta Setalvad case :- the speaker said that there is a price which is paid by everybody in regard of their works and in the case of the judges it is the biggest sacrifice that they have to make in the form that there is no room that they left for the accusation. In this particular case where the fight was closely revolving around the PM and the Teesta Setalvad , the judges deciding the case have invited the PM to their daughter's wedding, by doing a such act they have allowed a room for accusation which can be levied against them. The speaker told that such practices must be discarded by them.
- 5.) Recusal of one time means recusal of all time: - The speaker referred the case of state of Himachal Pradesh where the judge once had given the refusal of the case and after a break of time the case came in front of him through a appeal and then he never made an application for the recusal of the case. The speaker was of the view that such practices must be discarded and the recusal of once in the case shall e treated as recusal of all the time to come.
- 6.) Discussion on collegiums by Justice Kurian Joseph in reference to the case Supreme Court Advocates on Record v Union of India. "The judicial process demands that a judge move within the framework of relevant legal rules and covenanted modes of thoughts for ascertaining them. He must think this passionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it."⁴
- 7.) Post retirement benefits: The judges are lured by this that they wanted to get the other posts after the retirement and thus they are always favoring the government in the last two to three months prior to their retirement.

⁴ Writ Petition (Civil) No. 13 of 2015.

8.) Ashok Kumar case of Madras :- the speaker told a case that this is the era of the coalition government and in this particular case the judge Ashok Kumar was the one judge who gave bail in the district court to a famous politician and he was in lieu of promotion to the judge of the high court and that politician made a pressure on the central government to appoint him as the judge of the high court although he was not made but still such kind of practices must be discarded by the judiciary as well as the pressure must be mounted on the executive that such practices are discarded.

9.) Trust deficit (in terms of nepotism, transparency, casteism, loose talks): The speaker emphasized the credibility of the judiciary as the third pillar of the democracy, and told that to uphold that credibility the judges must try to get rescued them self from the allegation like of nepotism, as far it is possible they must try and get transparency in their working style.

10.) International appreciation of the Collegiums system: The speaker also told that while the NJAC case was in the court, the speaker went to the foreign visit and it was told to him by the judges of the other country that it is the collegiums system that is ensuring the independence of the judiciary in true sense in India. The speaker has told that it is only that we have to copy the system of the foreign countries all the time if at all we are possessing a good system let the west copy us.

11.) Integrity in reference to the two impeachment cases:-

“HISTORY OF IMPEACHMENT PROCEEDINGS IN INDIA : The impeachment proceeding is done only in extreme cases, in India the Impeachment proceedings were done on three judges while in united States the house has initiated impeachment proceeding for 64times since 1789.

Two judges are:

(1) Justice V. Ramaswami: He was the Punjab and Haryana high court chief justice of in the year 1993 when he was impeached by the Lok Sabha by 196 votes because of his incapacity to do work; the supreme court had charged Justice V. Ramaswami as failed “TO DO COMPLETE JUSTICE”.

(2) Justice Soumitra Sen: He was the Calcutta high court chief justice, the chief justice of India K.G Balakrishnam had recommended him for impeachment to the parliament because he had misappropriating Rs. 22.83 lakh .than on 2009 a three members committee was set up and investigation was started and he was found guilty and finally on 17 August 2011 he was impeached by Rajya Sabha.”⁵

⁵ http://www.lawyersclubindia.com/articles/IMPEACHMENT-OF-JUDGE--3952.asp#.VkQ_6g5kppY

Day 2, Session 9

Speaker : Justice RV Raveendran, Dr.Amitabh Deo Kodnani

Topic: Knowing and understanding self : prerequisite for ethical conduct

The speaker initiated the discussion by giving a brief over the word “integrity” that the word is indicating the believes which are confided in a system and there are many kind of belief that can be ascribed to the judiciary and then he started the discussion on the morality according to the speaker that it is the individualistic idea which one possess about the principles prevailing in the society. And both the terms morality and integrity are such terms which have a holistic view. It is not only related to the state of being honest rather it is responding of the group which you belong to the outside world

The speaker then made a difference between a moral obligation and a legal obligation :-

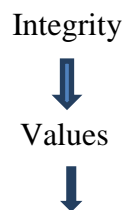
- He told that with an example that if one person gives 100rs to another person, according to law he might cant ask him to repay him the amount after three years but the other person still remains under a moral obligation to pay him 100 Rs and such is the difference between a legal and moral obligation but the law is made with the objective of making people moral.

- The speaker was of the view that there are four kind of person according to him and the such are the person which have to look upon their traits by introspection and must try to improve either heir intention or their actions .the speaker referred the actions as paper work and tells that it is very important that we must try to go into the fourth category and see that we have moral intentions and are actions and thought are guided by them.

1.)	Person whose intentions are very high	But his paper work does not correspond to this intention due to several factors
2.)	Person whose intentions to do an act is very less affected by the principle of the morality honest and so on	But the paperwork done by that person is always replica of the work done which can be appropriated as moral.
3.)	Person who is not having any intention to be guided by the principles of the principles prevailing tin the society	His paper work is also not corresponding to the ethics and morals
4.)	Person who is having a high intention to work morally with integrity and so on	His action are guided by the intention he possess and his work is also can be ascribed to be of the

The speaker told that it is the individual capacity which(he had told in the preceding table) must be developed that we must possess values that are backed by the conviction and he illustrated the relation between the integrity values and conviction through two illustration:-

Illustration 1.)



Conviction

Explanation :- convictions are determination which possess in his life which can become even a matter of death and one must inculcate a habit of having a strong determination to live and abide by certain principles. The principle he chooses must be in consonance to the society he is living in and also demand which is made by his job. Such principle will become his values and when such values are cherished then they turn into the habit of integrity which one's hold regarding his office.

Illustration :-

- 1.) In life we have to take decision in deciding which we are always white and black and there are certain areas which are grey and we have to take decision in that regard too i.e. we are certain about our decision and at the same time we can be uncertain in certain areas, these are the areas in which the probability of a decision to go wrong and right is very high. For judges these grey area represent the integrity part i.e. if at all they are taking a decision on which the credibility of the judiciary, even their individual image and the trust people keep in the judiciary depends. Now it becomes their duty to reduce such areas of ethical conflict.

White	Grey area	Black
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- 2.) Now when they are able to determine such grey area then they must try to reduce it to the minimum. These grey areas are the ethical dilemmas which one possess, it is the clarity which is the pre-requisite to reduce these areas. A judge must

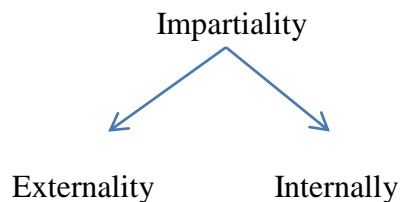
always be clear about the decision which will bring bad names to the judiciary as a pillar of the democratic society and must try to act diligently in the society. Now it is this conviction of not to bring bad name to the judiciary will help to inculcate in the judge the principle which help him to uphold certain values and ultimately he will be holding the integrity of the himself as well as the judiciary.

White	Grey area	Black
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Then the speaker put on the discussion on the debates of

- 1.) Nature v nurture debate : the speaker deliberated on the view that either the one's remain in the way they are nurtured and in the way they have their nature. But the pre-requisite of becoming a judge is that one must possess the nature of being the judge, then only one will be selected and then it is the duty of the other fellow judges to help one another to keep up such habits by nurturing them. The speaker was of the view rather going into the debate of nature v nurture one must try to learn from both the ways.
- 2.) Values vis-à-vis behavior :- the speaker was of the view that we are in constant state of the VAB dilemma (values-attitude-behavior) he told that it is the values which decide the attitude of the person' the values which possess it will surely guide the attitude of the person, because ultimately it is the conviction of being always on certain principle which is deciding your values and then it is these convictions which will decide your attitude, if such practice is made common then it will lead to the good behavior but is this journey according too the writer in which one looses his integrity, if at all one is not able to bend his attitude according to the convictions, and that can be prevented from not allowing anything to cloud your reason. According to the speaker it is this attitude which must be developed by the judges so that they are ultimately able to protect the image of the judiciary.

The discussion was concluded by the Justice Raveendran. He stated that the impartiality is something which is holistic in nature, it can only be inculcated through a constant practice of removing the biases and removing the prejudices according to the book of Stephen cooking a judge must be able too see the jungle in one go at the same time he must also be able to see one tree if required in one go separately. The speaker was of the view that impartiality can be can be divided into two parts :-



External :- these are the kind of impartial behavior which is very evident to the public and most of the judges are aquatinted with it. They are like personal bias, pecuniary bias, professional bias and so on. They are that evident that if they are not taken care of then they will undermine the image of the judiciary. This according to the speaker can only be done by a judge by restricting oneself from becoming popular. Rather a judge must strive for the respect, it is his duty that he is doing such work through which he is able to maintain the respect and at the same time avoid of being popular.

Internal :- this according to the speaker can be inculcated through the individual practices and it will remain dependent on the VAB debate which we have discussed earlier.

Day 3 :Session 10 :-

Speaker :- Justice RV Raveendran, Dr.Amitabh Deo Kodnani

Topic:- Knowing and understanding self : prerequisite for ethical conduct

The speaker started by stating that there is a pre-requisite of each and every kind of job and the pre-requisite of the judges is to be honest, impartial, to be moral and so on but we have to learn that if you are giving a decision or even interacting with one another there is a certain kind of transaction which is going on between the mind of the person or between the two person. Now such transaction going in mind or between the two person determine the future relationship of the two person or it will determine the future actions of an individual judge.

Example of transaction :-



Illustration :- if A is having a conversation with B then there will be certain transaction which will be going on between the two person which will determine the future relationship of these person, suppose if A is wishing B good morning! Then rather reciprocating the same B asks A that what is so good about the morning that you are wishing. Now such negative transaction will surely ruin their relations and it is the duty of the individual that such conversation must not take place, in the same way it is the duty of the judge that he always recues himself from such conversation and circumstances which will bring bad names to the image of the judiciary.

The speaker also gave the analogy to determine that how one can try to introspect the individual :-

- 1.) FIRO-B according to him it is the four level test which is known as fundamental interpersonal relationship orientation behavior according to which there is a test which

the faculty conducted which is able to determine the tentative inclination of one's personality. He cited two books by "I am ok and you are ok" by dr. tom harris and "games people play" byericberme these are the books which will help a particular judge to know about his personality and then mould it accordingly.

2.) EGO STATES AND EGO PORTRAITS :- according to the speaker there are three types of ego which one individual possess and they are

- a.) Parent :- the speaker is of the view that a person who is either always critically lecturing and it the way consolidating the others have a ego which is of parental in nature
- b.) Adult :- this is the ego in the person who enables him to remain objective rational and oriented towards problem this is the most balanced approach according to the speaker
- c.) Child :- he is of the view that there is two kind of childish approach which generally people possess i.e. adaptive and natural; adaptive one is little adoptive behavior which person generally acquire to adapt or manipulate something or the other whereas the later type of childish ego is the one which helps a person to be impulsive, playful and naturally curious in everything but the thing is a person who is in habit of inculcating such type of ego may be considered as child forever. According to these egos we are having the problems in the transactions it is interpreted by the writer in the following way :-

Ego portraits

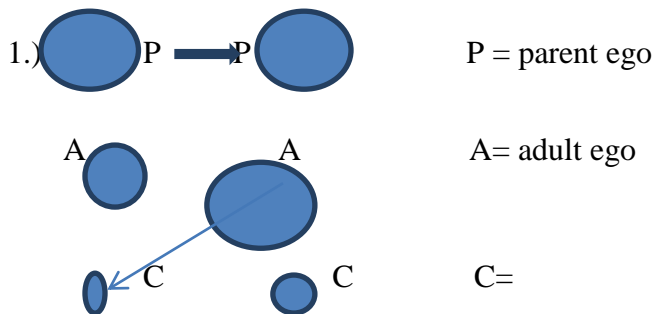


Illustration :- according to the speaker if the person who is possessing same level of ego, suppose in the above transaction two person having same size of parent ego are in conversation then their will be not be any problem but if at all there is a conversation between a person who is having a very high adult ego and a person who is possessing a child ego, now certainly their the person having the adult ego will talk on the basis of objectivity whereas the other person would not take him seriously and then their transaction will not go in a smooth way. Hus it is necessary to the judge that he is of the balanced nature and egos so that he is able to compromise and is able to make conversation to everyone.

- 3.) DISCUSSION ON SELF :- In this discussion the theory of the famous sociologist was discussed in which an individual is not what he thinks of himself and he is not what others think of himself but he is what he thinks of other's think of his.

The discussion was concluded by stating that we must always keep an open mind and must always think that we are not infallible and at the same time their should not be correct formulation of image of others as the human nature is always a subject to its surrounding circumstances. In furtherance of it he gave two example :-

- 1.) Example of Churchill :- this example was told as in the view that people know how they have to make their choices as the Churchill was the prime minister of England and he made the country win in the world wars but he was not selected by the people in the election which were conducted just after the war as people were knowing that he is a good leader in the war time period but not a good leader in the peacetime period.
- 2.) Example of Maoist :- in this example the maoist were told not to be threatening to the judiciary as the institution has maintained that trust and they must try to respect the same.

Session 2 :-

- The last session started with the reading of the abstraction from the compilation formed by the speaker himself Justice Raveendran. And the abstract read are as follows :-

“the constitution of India uses the expression "subordinate judiciary" to describe the judges other than those belonging to the supreme court and the high court. it is not with the intention of putting any factors on the judicial interdependence. the word subordinate literally means someone in lower position than someone else. the constitution uses the expression merely to describe judges who hold a lower position than the judges of high court in the judicial hierarchy. the higher courts have power to correct you after you render your *judgment* but not can direct you as to how you should decide in the first instance on what should be decided. in your independence to decide in accordance with law is not subject to any restriction or control. in exercise of a judicial function you are independent and not subordinate to anyone. the difference between the member of subordinate judiciary and member of higher judiciary is only in jurisdiction.

judicial independence is not freedom to do what do you like or what you consider just and equitable. judicial independence does not mean you can exercise your discretion as per your whims and fancies. you are required to render justice in accordance with law and not the justice as per your convictions. or what you consider is just. justice Cardozo warned;

the judge even when he is free is still not wholly free. he is not to innovate at pleasure, he s not a knight-errant, roaming at will in pursuit of his own ideals of fairness and justice. he has to draw his inspiration from well consecrated principles. he is to exercise discretion informed by tradition, methodized by analogy, disciplined by system and subordinated in the prime ordial

necessity of order in social life. wide enough in all conscience in the field of the discretion that remains.

judicial independence it is said not a privilege enjoyed by judges but is the reflection of the privileges of the people to the rule of law in democracy. in *Union of India v. madras bar association* the supreme court observed; independence is not the freedom of judges to do what they like. it is the independence of judicial thought. it is the freedom from interference and pressures which provides the judicial atmosphere where he can work with absolute commitment to the cause of justice in constitutional values. it is also the discipline in life, habits and outlooks that enables a judge to be impartial.”

➤ Another abstract recited which was on the issue of judicial independence is as follows:-

“everyday, everyone, inside and outside the court address judges as " my lord" or "your honor". everyone goes, greets and salutes them and shows them respect and defense. day after day, they decide the fate of litigants by granting and rejecting submissions, arguments, complaints, requests and prayers. they can send people to jail. they can declare people to be paupers. they can decide who is right and who is wrong. they have captive audience in their courts. it is but natural that after sometime some judges start thinking that they are personification of wisdom, knowledge and intelligence; more importantly, their word is law and their wish is command. R. Medina therefore warned; a judge is surrounded by his subordinates, lawyers and litigants who keep telling him what a noble, wonderful, wise and knowledgeable person he is. the moment he starts believing them he becomes a lost soul, ending up the opposite of all that a judge should be.

humility is the quality which makes a judge realize that he is neither infallible nor omnipotent, that he should hear the lawyers who have studied the facts and researched on the law and that he should decide or issues by keeping an open mind. without humility a judge becomes arrogant and

starts believing that lawyers do not know much and he knows better and that his decision are always just and right. he tends to showcase his cleverness, knowledge and erudition in his judgment and orders, relegating justice to the back seat. in the short he ceases to be a judge in true sense.

you should be more concerned about rendering justice rather than trying to exhibit your intelligence or power. justice frankfurter described "judicial humility" as having a mind that respects law, that can change its thinking, that can accept that another view is possible, that can be persuaded by a reason and that which is detached and that puts passion behind its judgment and not in front of it.

you should be careful and balanced in what you say inside and outside the court. the Bangalore principles of judicial conduct gives you the following advice; a judge like any other citizen, is entitled to freedom of expression, belief, association and assembly but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of judicial office and the impartiality and independence of judiciary.

you should not try to force a compromise or settlement.”

These following points were laid down on the issue of impartiality related to the judicial temperament and humility are discussed by the speaker as follows :-

- 1.) Acknowledging our mistakes :- the speaker was of the view that judge must never in his mind become obscure to other's interpretation and must be very ready to accept his mistake because if the judge has not developed this habit the lawyer might take advantage of this and may win the case without substantially adjudicating upon the issues.
- 2.) Judicial independent:- the judge must try to inculcate the habit of judicial temperament they must always be free from the biases and interferences, they have to learn that they

are free not to do any act which they feel to be compatible as they consider themselves as free where as they must try to do what is compatible to the law.

- 3.) Discussion on justice Cardozo :- the speaker was deliberating on the issue that justice Cardozo has told four points according to which the judgment of the judge must be circumscribed and it must be based on the those points only and they are :-
 - Method of analogy
 - Method of history
 - Method of tradition
 - Method of sociology
- 4.) Example of judges asking the cars of the local businessmen :- the speaker was of the view that till what may come judge must borrow any mean from the common public as if the case of the person from whom one has borrowed a thing that will bar him from deciding the case in an impartial way. The cars in the remote areas are being frequently taken by the judicial officer and such practices must be curtailed.
- 5.) Obsession of inauguration :- the speaker told that now a day judges are in the obsession that they must inaugurate as many as building they can and told an example of the building that was inaugurated by the judges seven times the speaker is of the view that if the judges goes to certain inauguration then it is the time of the court wasted at the same time a room for allegation is left open on the judge.
- 6.) Functions must be discriminate :-the judges must be able to discriminate between their administrative work and their judicial work, they must try and inculcate such habit and must concentrate on the judicial work as it is primary this for which they have been appointed.

At the end a discussion and reading of some of the paragraphs of the reading material as compiled by the speaker was discussed and the participants were asked to fill the feedback forms and give suggestion. Some of the suggestion given by them are :-

- 1.) To improve the facility of wi-fi in the guest house of the NJA

- 2.) To improve the gym facilities
- 3.) The absentness of the other judges must be bring to the notice and what is the reason that they are not coming.
- 4.) It is the part of the duty of the judges to attend such training programs then still many of them are not coming then what is the need of conducting such programs.