

# Elements of judicial behaviour- ethics, neutrality and professionalism

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JUSTICE MUHAMED MUSTAQUE JUDGE HIGH COURT OF KERALA

- LORD KRISHNA AND FAILED MEDIATION
- Reasons failure
- Failure to win trust of Duryodhana
- SURAH ABASA
- Frowned a blind man who came to LEARN QURAN
- Preferred Arab leaders
- Mistakes and errors happens

- What is “ Value”
- What constitute “value”
- Value and virtue
- Values are goals
- Virtue are means to attain goal
- Virtues example ,impartiality , honesty etc
- Virtues are qualities
- Judicial behavior is developed through values

- Dharma is virtue
- Plato considered justice as a virtue
- Rawls considers justice as a virtue of social institution
- Why judicial values?
- Virtues are either natural or artificial
- David Hume in his book refers to distinction between two

# Artificial virtues

- Depend on social structure
- Types , justice, allegiance to promise, chastity , modesty, duties of sovereign states to respect boundaries, to protect ambassadors etc
- It varies from society to society

# Natural virtues

- Originated in nature
- Types , compassion , generosity gratitude , friendship, charity beneficence, clemency, equity , prudence, ambition , courage parental devotion goodsense etc
- It is universal

- Re examine Lord Krishna`s role in peacemaking and surah Abasa
- Artificial virtues matters along with natural virtues
- Justice as virtue in modern justice delivery system is blend of both
- Judicial values are personal values of judge and institutional value
- What is judicial values?
- It is nothing but quality of service at expected level
- Standards and norms
- Process and substance

# Objectives of judicial behaviour

- Objectivity revolves around an effort to “get right” in reality
- Like any other sector beneficiary wants to have efficiency in service
- Gain access to justice with convenience and promptness
- To uphold rule of law in all spheres of dispute both in procedure and substance
- Integrity : service must be reflective of adherence to honesty ,high moral standards and removing barriers of prejudice
- Transparency : process must be in such nature one could understand and follow:

- Accountability :judges shall remain accountable for their actions and decisions
- Independence: to create sense feeling that judges are working without any directives and interference
- Commitment: dedication to the satisfaction of all
- Excellence : to achieve standards above ordinary
- Professionalism: to demonstrate high level of competence , efficiency in executing judicial work



# Impact of technology and level of values

- Values are not constant
- Expectation level changes as attitude changes in society
- Judges require to pay more attention litigants- focused values through technology
- Technology plays key role as value addition – services
- Technology can be used for data management and case management
- Using technology for legal research
- Adopting best practices using technology

# Enhancing judicial values through ADR

- ADR as an important tool for resolving disputes
- Court annexed mediation
- Judges role
- Counseling litigants
- Encouraging lawyers
- Judicial settlement
- Vetting compromise

# Personal values

## Canons of judicial ethics adopted by American Bar Association 1924

- 1. Relations of the Judiciary.
- The assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct which concern his relation to the state and its inhabitants, the litigants before him, the principles of law, the practitioners of law in his court, and the witnesses, jurors and attendants who aid him in the administration of its functions.

- 4. Avoidance of Impropriety.
- A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his every day life, should be beyond reproach

- Essential conduct
- He should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

- 6. Industry.
- He should exhibit an industry and application commensurate with the duties imposed upon him.
- 7. Promptness.
- He should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on his part justifies dissatisfaction with the administration of the business of the court.

- 10. Courtesy and Civility.
- He should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court.
- He should also require, and, so far as his power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to the court and to jurors, witnesses, litigants and others having business in the court.

- 14. Independence.
- He should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.
- 15. Interference in Conduct of Trial.
- He may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.
- Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, he should avoid a controversial manner or tone.
- He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to the unnecessary display of learning or a premature judgment.



- 18. Continuances.
- Delay in the administration of justice is a common cause of complaint; counsel are frequently responsible for this delay. A judge, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detriment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public interest, to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the dispatch of business before the court.

# RESTATEMENT OF VALUES OF JUDICIAL LIFE (AS ADOPTED BY FULL BENCH OF SUPREME COURT ON 7 TH MAY 1997)

- Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly any act of the judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.
- 2. A judge should not contest the election to any office of a club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.
- 3. Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.

- 4. A judge shall not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.
- 5. No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

- 6. A Judge should practise a degree of aloofness consistent with the dignity of his office.
- 7. A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.
- 8. A Judge shall not enter into public debate or express his views in public on political matters that are pending or are likely to arise for judicial determination.

- 9. A Judge is expected to let his judgments speak for themselves. He shall not give interview to the media.
- 10. A Judge shall not accept gifts or hospitality except from his family, close relations and friends.
- 11. A Judge shall not hear and decide a matter in a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.
- 12. A Judge shall not speculate in shares, stocks or the like.

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13 . A Judge shall not engage directly or indirectly in trade or business, either by himself or in association with any other person

- 14. A Judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund for any purpose.
- 15. A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this behalf must be got resolved and clarified through the Chief Justice.
- 16. Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

# Bangalore principles of judicial conduct

- Value 1 independence
- Value 2 impartiality
- value 3 integrity
- Value 4 propriety
- Value 5 equality
- Value 6 competence and diligence

# Universal charter of judge 2017 international association of judges

- Distinction between judicial ethics and judicial discipline
- Ethics per se need not constitute breach of rule brings with it disciplinary action
- Ethics are rules which should inspire conduct of judge
- It speaks about initial in service training to ensure judicial independence
- Merit based promotion



# Impartiality as a critical value in judicial process

- Mental exercise in entering judgment
- Judges are human , thought process conditioned by sensibility
- Subjective elements influence judge`s mind, prejudice and bias enter their mind
- Cultural background, gender ,race, religion ,sexual orientation, political beliefs etc influence their objectivity

- Beverly McLachlin PC Chief justice of Canada
- “For impartiality does not require that we adopt a view from nowhere, on the contrary ,it relies on our close connection with the community in which we judge and its core value.It requires us to cultivate detachment only in the sense that we must try always to increase our awareness of our preconceptions , and to see that our mind are open to other perspectives and amenable to persuasions”

- Developing character of impartiality
- Introspection on his own values and judgements
- Openness -must be very receptive to new ideas & thoughts , criticism etc
- Empathy, ability to understand and share feelings of others , feeling about diverse experience and view points , perspective see world in experience of other. Human feeling
- Discussion with peer group

# Institutional values

- Distinction between individual values and institutional values
- Capacity building
- Responding to evolving needs
- Enhancing role
- Structuring and managing working environment
- Pursue best practices to enhance judicial productivity
- Ensure procedural fairness
- Procedural fairness is an important element in public satisfaction

# Contemporary issues affecting judicial values

- Social media and judges
- Engagement in social media shall not transgress limit prescribed in brick and mortar system
- Shall not contact or communicate with litigants or lawyers
- Shall not use as a platform for expressing opinion
- Always be reminded about public confidence
- Do not use for discussing about jobs or career in which judge is involved
- Could be used for healthy discussion among community of fellow judges
- Always subjected to code of conduct of respective High Court

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THANK YOU