

Judicial Training Programme

Session 1: Elements of Judicial Behaviour - Ethics, Neutrality, Professionalism

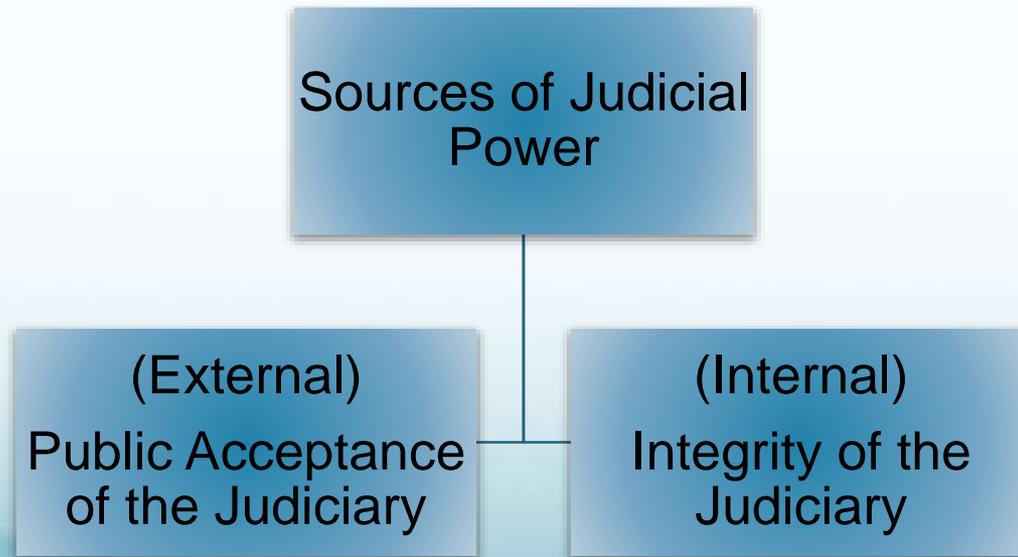
Session 2: Judging Skills: Art, Craft and Science of Drafting Judgments

Session 3: Judge the master of court: Court Management and Case Management

Judicial Ethics

- Judicial Ethics consists of the standards and norms that bear on judges and covers such matters as how to maintain independence, impartiality, and avoid impropriety.
- There are two key issues -
 - a. The identification of standard to which the members of the judiciary must be held.
 - b. The adherence to such standard.

- Courts of law act as Guardians of the Rule of Law. *However, who would be the Guardians of the Guardians themselves?*
- Source of judicial power is the rule of law embodied in the Constitution and the laws. But in practice, there are 2 sources: Public acceptance of the authority of judiciary (external) and the integrity of the judiciary (internal).



Codification of Canons of Judicial Ethics

- “Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.” –Socrates
- A popular Judge is a deformed thing...Do good to the people; love them, and give them justice; but let it be as the psalm says, 'nihil inde expectantes,' looking for nothing, neither praise nor profit. – Francis Bacon, Speech in the Star Chamber before the Summer Circuits
- The canons are best reflected in the following documents -
 - A. The Oath of a Judge under the third schedule of the Indian Constitution.
 - B. Restatement of Values of Judicial Life by the Chief Justices' Conference, 1999.
 - C. The Bangalore Principles of Judicial Conduct, 2002.

Restatement of Values of Judicial Life by the Chief Justices' Conference India, 1999

- It is a 'restatement of the pre-existing and universally accepted norms, guidelines and conventions' observed by Judges. It is a complete code of the canons of judicial ethics.
- Prescribes the following behaviour
 - Justice must not merely be done but it must also be seen to be done.
 - A Judge should not contest election to any office.
 - Forbids close association with any member of the Bar.
 - Forbids any family member to appear before him in any cause.
 - Forbids family member to use judge's place of residence for professional purposes.
 - To practice a degree of aloofness consistent with the dignity of his office.
 - Forbids hearing a case which involves a family member or friend.

- Forbids entering into public debate or express his views in public on political matters.
- To let his judgments speak for themselves. He shall not give interviews to the media.
- Forbids acceptance of gifts or hospitality except from his family, close relations and friends.
- Forbids hearing a matter in which a company, in which he holds shares, is concerned.
- Forbids speculation in shares, stocks or the like.
- Forbids engaging directly or indirectly in trade or business.
- To not ask for, accept contributions or otherwise actively associate with the raising of any fund.
- To not seek any financial benefit in the form of a perquisite or privilege attached to his office.
- Every Judge must at all times be conscious and there should be no act or omission by him which is unbecoming of the high office he occupies.

The Bangalore Principles of Judicial Conduct, 2002

- The meeting was held in Bangalore, India where jurists developed a code of conduct drawn principally from common law countries.
- It emphasized on an urgent need for an universally acceptable statement of judicial standards that was consistent with the principle of judicial independence which could be enforced by national judiciaries without any intervention from the executive.

The core values in The Bangalore Principles

1. Independence

Judicial independence is a prerequisite to the rule of law and a fundamental guarantee to fair trial. A judge shall therefore uphold and exemplify judicial independence in both his individual and institutional aspects.

- **Individual and Institutional independence**
- Individual independence ensures that Judges should not be beholden to the Government of the day. They owe allegiance to the laws and not the ministers of the state.
- Institutional independence is achieved through security of tenure, financial security, etc. which guarantee independence and insularity from other branches of government.

2. “**Impartiality** is essential to the proper discharge of duties of judicial office. It applies not only to the decision itself but also to the process by which the decision is made.”

“Non arbitrariness and fairness are the two immobile and unalterable cornerstone of a legal behaviour baseline.” – *E.P. Royappa v. Tamil Nadu* (1974) 4 SCC 3

3. “**Integrity** is essential to the proper discharge of the judicial office.”

4. “**Propriety**, and the appearance of propriety, are essential to the performance of all of the activities of a judge.”

5. “Ensuring **Equality** of treatment to all before the courts is essential to the due performance of the judicial office.”

“It is the power of punishment alone, when exercised impartially in proportion to the guilt, and irrespective of whether the person punished is the king’s son or an enemy, that protects this world and the next.” – Kautilya in Arthshastra

6. “**Competence and Diligence** are prerequisites to the due performance of judicial office.”

These principles find their presence in the Fiji Judicial Code of Conduct for Judges also.

Supreme Court Cases on Judicial Ethics

- *In High Court of Judicature for Rajasthan vs. Ramesh Chand Paliwal* (1998) 3 SCC 72, Judges have been described as ‘hermits’, further reminding that, “they have to live and behave like hermits, who have no desire or aspiration, having shed it through penance.
- In *Tarak Singh vs. Jyoti Basu* (2005) 1 SCC 201, the court highlighted that importance of self discipline –

“Judicial discipline is self discipline. The responsibility is self responsibility. Judicial discipline is an inbuilt mechanism inherent in the system itself. Because of the position that the judiciary occupies and the enormous power it wields, no other authority can impose a discipline on it.”

- In *Daya Shankar vs. High Court of Allahabad*, (1987) 3 SCC 1, para 11 the court stated –

“Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity.”

- *High Court of Judicature at Bombay Vs. Shashikant Patel*, (1987) 3 SCC 1,

“Judicial service is not merely an employment nor the judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer “tips the scales of justice, its rippling effect would be disastrous and deleterious. A dishonest judicial personage is an oxymoron.”

Neutrality

- Neutrality refers to the absence of affinity and basing the judgment on objective facts. Without this, judge's decision can be clouded provoking favorable attitude towards a party.
- **Inquisitorial v Adversarial Systems -**
- The ECHR in *De Cubber vs. Belgium* (Application no. 9186/80) held that the investigating judge and trial judge may be one and the same person. This presupposes impartiality in the judicial personnel even though it performs dual roles.
- In contrast, in the adversarial systems, judicial adjudication and investigation are distinct.
- However, in some cases, constitutional courts monitor investigation. This does not compromise neutrality as they do not supervise investigation or direct the investigating agency to act in a particular manner. The Supreme court highlighted the distinction between monitoring and supervision in *M.L. Sharma v Principal Secretary & Anr.* (2014) 2 SCC 532 –

“Monitoring of investigation by court is not equivalent to supervision. Monitoring is intended to endure that proper progress takes place without directing the manner of investigation. The purpose is to eliminate bias, lack of fairness and objectivity.”

Discretion v. Bias

Judicial discretion cannot be arbitrary, capricious, and based on individual predilections. It must be free from biases of all nature.

In *State of West Bengal v. Shivananda Pathak* (1998) 5 SCC 513, the court highlighted a new form of bias, i.e., *judicial obstinacy* –

“All judicial functionaries have necessarily to have an unflinching character to decide a case with an unbiased mind. Judicial proceedings are held in open court to ensure transparency. An essential requirement of judicial adjudication is that the judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case. If he is predisposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting as a judge.”

Ensuring Adherence to Standards

Judicial Misconduct in District Judiciary –Control and Superintendence by High Court- Article 227 and 235 of the Constitution

- In *Registrar General, Patna High Court v. Pandey Ganjendra Prasad* (2012) 6 SCC 357, the court stated -
 - “Article 235 of the Constitution of India not only vests total and absolute control over the subordinate courts in the High Courts but also enjoins a constitutional duty upon them to keep a constant vigil on the day to day functioning of these courts. There is no gainsaying that while it is imperative for the High Court to protect honest and upright judicial officers against motivated and concocted allegations, it is equally necessary for the High Court not to ignore or condone any dishonest deed on the part of any judicial officer.”

Annual Confidential Reports

- Annual Confidential Report is an important document for judging a public servant's ability, initiative, capacity, industry and integrity in discharging duties allotted to him.
- In 2012, the apex court in *Registrar General, Patna High Court vs. Pandey Gajendra Prasad* (2012) 6 SCC 357, had requested the High Courts to make the process of filing ACR more transparent, fair and efficient. It stated, “ACRs play a vital and significant role in the assessment, evaluation and formulation of opinion on the profile of a judicial officer, particularly, in matters relating to disciplinary action against a judicial officer. The ACRs of such an officer hold supreme importance in ascertaining his conduct, and therefore, the same have to be reported carefully with due diligence and caution.”

Constitutional Courts

Impeachment

- Article 124(4) of the Indian Constitution deals with impeachment of judges. Removal of a Supreme Court or High Court judge can take place on two grounds: proved misbehavior or incapacity.
- However the impeachment process is very rigorous and so far, no judge has been impeached in India.

In house Procedure

- In *C. Ravichandran Iyer v. A.M. Bhattacharya* (1995) 5 SCC 457, the court held that mere bad behavior or abrasive conduct is not proven misbehavior within Article 124(4). However, in case of such conduct by a High Court Judge, a complaint may be made to the Chief Justice of the High Court who shall make due verification discrete enquiry into the matter and place all information before the Chief Justice of India. Thereupon the CJI shall take necessary decision which shall be final. This procedure was further amplified by the Supreme Court –
- “In-house procedure” applicable to sitting judges of High Courts is compartmentalized into two stages. Through the first stage, the prima facie veracity of the allegations, contained in the complaint is ascertained. If so, whether a deeper probe is called for. The first stage does not contemplate an in-depth examination of the allegations. All that the Chief Justice of the High Court is required to do, is to determine whether a deeper probe is required. This is to be done, on the basis of a logical assessment made on a consideration of the response of the concerned Judge (with reference to the allegations leveled in the complaint).

It is the second stage of the "in-house procedure", relating to sitting judges of High Courts, which could lead to serious consequences. The second stage is monitored by none other, than the Chief Justice of India. Only if the Chief Justice of India endorses the view expressed by the Chief Justice of the High Court, that a deeper probe is called for, he would constitute a "three-member Committee", and thereby take the investigative process, to the second stage.

This Committee is to comprise of two Chief Justices of High Courts (other than the concerned High Court), besides a Judge of a High Court. The second stage, postulates a deeper probe. Even though the "three-member Committee" is at liberty to devise its own procedure, the inherent requirement provided for is, that the procedure evolved should be in consonance with the rules of natural justice. Herein, for the first time, the authenticity of the allegations, are to be probed, on the basis of an inquiry. The incumbents of the "three-member Committee", would have no nexus, with the concerned judge. Not only would the concerned judge have a fair opportunity to repudiate the allegations levelled against him, even the complainant would have the satisfaction, that the investigation would not be unfair. The "in-house procedure" was devised to ensure exclusion of favouritism, prejudice or bias.

- *Additional District and Sessions Judge 'X' v. High Court of M.P.* (2015) 4 SCC 91

Contempt of Court

- A judge may be liable for contempt if he acts disorderly or contemptuous towards another judge. Where a judge made scurrilous and unfounded allegations against CJI and other judges, he was held to be in contempt of court.