

BAR AND BENCH RELATIONSHIP



INTRODUCTION

- *UNIVERSAL DECLARATION OF HUMAN RIGHTS* recognizes as the fundamental principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.
- The Bar and Bench are two wheels of a chariot involved in the dispensation of justice. Both are supplementary and complementary to each other.

TEMPLE OF JUSTICE

- Justice has been pictured in Roman mythology as a goddess wearing a blindfold. And holding scales. The scales connote the weighing and balancing of rights and privileges. The judge and the lawyer should remember, first and foremost, that in weighing and balancing rights and privileges they are building together a monument in the Temple of Justice.
- This building is never-ending, for the process of justice is never finished. It reproduces itself generation after generation in ever-changing forms. In this perspective, the lawyer and the judge are, together, fashioning for tomorrow's chronicle yesterday's experiences in the laws; and their daily labors, though seeming at times tedious, uninteresting, and unimportant, will ultimately play a part in the vast reaches of the future of all mankind.

THE BANGLORE PRINCIPLES OF JUDICIAL CONDUCT.

- The following principles are intended to establish standards for ethical conduct of judges.:-
 1. INDEPENDENCE- Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial.
 2. IMPARTIALITY- It applies not only to the decision itself but also to the process by which the decision is made.
 3. INTEGRITY- Integrity is essential to the proper discharge of the judicial office.
 4. PROPRIETY- Propriety, and the appearance of propriety are essential to the performance of all the activities of a judge.
 5. EQUALITY- Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.
 6. COMPETENCE AND DILIGENCE.

EXPECTATION FROM OUR LEGAL SYSTEM

- Public confidence in the legal system can be measured by the answers to the following questions.

Do people believe that the legal system can:

- a) Solve disputes quickly and honestly, **provides speedy justice** and thus maintain law and order in civil society?
- b) **Recognize the voiceless citizen** like the juvenile, prisoner, mentally ill and poor?
- c) facilitate an **enviroment necessary for economic growth**?
- d) **Prevent absolute power and corruption** – be an efficient check and balance in governance?
- e) In order to fulfill the above expectations, we need a good Bar-Bench relationship.

INTER RELATIONSHIP BETWEEN BENCH AND BAR

- 1) “If the independent judiciary is the pillar of democracy, the Bar is the foundation of the independent Judiciary. The Bar is the mother of the Bench and the bright mirror of the Judicial Officers whose image, character and conduct is correctly and visibly reflected therein, and it is for the Bench to nurse and nourish the merits of the Bar.”
- 2) “It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice.
- 3) In the justice delivery system, members of the Bar are as much a party thereby as the justice and it is the closest possible harmony between the Bar and the Bench that can yield the best results in achieving the objectives enshrined in our Constitutional Document.
- 4) The Bar and the Bench are two sides of a coin. In the administration of justice unless harmony prevails between the Bar and the Bench, no desired results to uphold the majesty of the institution could be achieved.

STAKEHOLDER'S PARTICIPATION

Who are stakeholders? :-

Those who participate in the reviews in whatever capacity become stakeholders. Stakeholders may broadly include employees of the Commission, lawmakers, interpreters, enforcers, consumers, beneficiaries, and those adversely affected by the law or any combination of these.

The key objectives in the reform of the civil justice system are:

- a) Improvement of the machinery of justice delivery system,
- b) Procedures,
- c) And court administration with a view to reducing delay, cost and complexity.

PROBLEM-SOLVING ENGAGEMENT:

- A collaborative governance approach would allow participating stakeholders to advocate their interests rather than obscuring them. Judicial and bar interests would sometimes diverge, and , where they did, both institutions would need to faithfully represent their own interests while challenging and checking those of the other. The conflict that would sometimes result would be necessary aspect of healthy engagement, and it would signal that the compromises required by close institutional relationships were not being produced in informal and private settings, where the aligned self interest of bench and bar could take precedence over public's interest. Rather, negotiated compromises would represent the healthy, vigorous and public opposition between the interests and orientation of bench and bar.

DUTIES OF THE BAR

1. It is the duty of the lawyer to maintain towards the court respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamour.
2. A lawyer should be punctual in all courts appearances and, whenever possible, should give prompt notice to the court and to all other counsel in the case, of any circumstances requiring his tardiness or absence.
3. Lawyer should make every reasonable effort to prepare himself fully prior to court appearances.
4. A lawyer should see to it that all depositions and other documents required to filed are filed promptly, should stipulate in advance with opposing counsel to all non-controverted facts, should give the opposing counsel, on reasonable request, an opportunity in advance to inspect all evidence of which the law permits inspection, and in general, should do everything possible to avoid delays and to expedite the trail.

THE JUDGE'S PERSONA

- A common man has faith in the Judicial System of the country. It is the role of both the Bench and the Bar to maintain and strengthen the same by its commitment and conduct.

ROLE OF BENCH TO STRENGTHEN THE BENCH-BAR RELATION:

1. JUDICIAL RESPECT- Just like the Advocates are giving respect to the Judges, the Judges should also give respect to the Advocates and brethren Judges.
2. PATIENT & BRIEF HEARING- Judges should hear the case with open and respective mind without any prejudice or bias.
3. IMPARTIALITY- Judges should act impartially.
4. AVOIDANCE OF INTERRUPTIONS- Interference of a Judge may be limited to the following circumstances:-
 - a) To prevent repetition and waste of time.
 - b) To check the relevancy
 - c) To get clarifications
 - d) To express courts view on a point and
 - e) To promote speedy disposal of the case.
5. JUST AND PROGRESSIVE INTERPRETATION-The object should be of rendering complete justice to the parties.

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6. AVOIDANCE OF UNREASONABLE ADJOURNMENTS- Adjournments are given to afford reasonable opportunity to the parties to present the case.
7. SPEEDY DISPOSAL- 'Justice delayed is justice denied', hence cases should be disposed off quickly as possible.
8. KNOWING IN LAW- Judges should possess deep knowledge in law.
9. INDEPENDENCE- Judges have primary responsibility to protect and preserve the independence of judiciary.
10. INTEGRITY- A judge should be honest and morally upright.
11. INDUSTRIOUSNESS- It means regular and systematic hard work and study.

HUKUMAT RAI V/S THE CROWN, AIR 1943 LAH 14

- A lawyer should always conduct himself properly in a court of law and exert his least at all times to maintain the dignity of the Court but the Court has also a reciprocal duty to perform and should not only be discourteous to a lawyer but also should try to maintain the lawyer's respect in the eyes of his clients and the general public with whom he has to deal in his professional capacity.

SOCIAL ENGINEERING

- What is Social Engineering?

According to Pound, *“Law is social engineering which means a balance between the competing interests in society,” in which applied science are used for resolving individual and social problems.*

- *Both the social interest and individual interest co-exist. Both of them have equal importance. So whenever the dispute and conflict appears while continuing to faithfully discharging commitments and obligations, a conciliatory attitude shall be kept in mind as a ultimate object of the ushering the rule of law.*

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THANK YOU

