

Being a Judge in Democracy: Professionalism

A Presentation By:

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Profession, Professional & Professionalism

‘Profession’ is a disciplined group of individuals who adhere to ethical standards and who hold themselves out as, and are accepted by the public as possessing special knowledge and skills in a widely recognised body of learning derived from research, education and training at a high level, and who are prepared to apply this knowledge and exercise these skills in the interest of others .(

<https://www.professions.org.au/what-is-a-professional>)

Professionalism -Definition

- **‘Professionalism’** is commonly understood as an individual’s adherence to a set of standards, code of conduct or collection of qualities that characterize accepted practice within a particular area of activity.” *Universities UK et al.2004*
- Whether or not the job of the Judge should be considered a profession, it’s certain that *professionalism* among judges is necessary for quality administration of justice .

Judicial Office –A Public Trust

“The very existence of justice delivery system depends on the judges who, for the time being, constitute the system. The judges have to honour the judicial office which they hold as a public trust.”

**-Justice R.C. Lahoti Former CJI Ist M.C.
Setalvad Memorial Lecture delivered at
New Delhi Feb, 2005**

Professionalism Among Judges :

The Five Essential Attributes

- 1. The Professional Competence.**
- 2. The Sprit and Attitude of Serviceability.**
- 3. Respecting Human Dignity and Timeliness .**
- 4. The Judicial Temperament.**
- 5. Humility & Courage.**

Professional Competence: The 5 Aspects

- **Knowledge** of the law and ability to carry out research including the ability to use I.T. tools.
- **Skill** to Marshall the facts and appreciate the evidence.
- **The ability** to perceive, comprehend, and understand new concepts and ideas.
- **The ability** to reason their opinions and decisions as per relevant law and to communicate.
- **The ability** to hold court hearings: structuring the proceedings.

The Sprit and Attitude of Serviceability

An ancient Jewish text reminds judges:

"Do you imagine that I offer you ruler-ship?
It is servitude that I give you."

**(From: The Judge in a Democracy - Page 104
by Aharon Barak)**

The Judicial Temperament

- It is the ability to communicate with counsel, witnesses and parties;
- the willingness to listen to and consider what is said on all sides of a debatable proposition.
- Judicial temperament includes patience, open-mindedness , sensitivity, courtesy, firmness, understanding, forbearance under provocation and the ability to deal with others without giving offense.

The Judicial Humility

- “ It is but natural thatsome Judges start thinking that they are the personification of wisdom, knowledge, and intelligence; their word is law and their wish, a command.” **Justice R.V. Raveendran , Former Judge S.C. of India**
- **Justice Felix 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 reason, that which is detached and aloof, that quests for truth and that puts passion behind its judgment and not in front of it.”

Courage

- For a judge “Courage” is “the willingness to do what the law mandates the judge to do even though the course the judge must follow is not the popular one.
- Example Justice H.R. Khanna’s dissent in the famous case of **A.D.M. Jabalpur vs Shivakant Shukla, AIR 1976 SC 1207**

The Judicial Ethics

- Judicial ethics consist of such values as belong to the realm of the judiciary without regard to the time or place and are referable to justice dispensation. (**Justice R.C. Lahoti Former CJI**)
- Judicial ethics is part of the larger legal category of legal ethics. Judicial ethics consists of the standards and norms that bear on judges and covers such matters as how to maintain impartiality, and avoid impropriety. (**See: LLI's American Legal Ethics Library**)

Judicial Ethics: The Bangalore Principles of Judicial Conduct, 2002

- The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at The Hague on November 25 /26, 2002 is known as **‘The Bangalore Principles Of Judicial Conduct 2002’**.
- The Bangalore Principles of Judicial Conduct, 2002 was prepared by a group of Jurists / Judges from various jurisdictions of the world after examining about 32 Codes of Conduct. It consists of the highest traditions relating to the judicial function as visualized in various systems.

The Bangalore Principles , 2002: Six Values and the Underlying Principles

Value	Principle
1.Independence	A judge shall uphold and exemplify judicial independence in both its individual and institutional aspects.
2.Impartiality	Impartiality is essential to the proper discharge of the judicial office. 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.

The Bangalore Principles , 2002: Six Values and the Underlying Principles

Value	Principle
4. Propriety	Propriety, and the appearance of propriety, are essential to the performance of all of 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 & Diligence	Competence and diligence are prerequisites to the due performance of judicial office.

1. The Judicial Independence

- **Judicial Independence: The two aspects : Institutional & Individual**

- **Institutional Aspect :**

Independence within the system: Judicial independence of the district judiciary which is cardinal to the integrity of the entire system is the independence of each and every judge - The independence of an individual Judge, that is, decisional independence. (**The Supreme Court of India in Somesh Chaurasia vs State Of M.P. -Criminal Appeal Nos 590 of 2021**)

The Judicial Independence: Individual Aspect

- Individual Aspect : Independence from within-
“A Judge should be independent of himself. A Judge is a human being who is a bundle of passions and prejudices, likes and dislikes, affection and ill-will, hatred and contempt and fear and recklessness. In order to be a successful Judge these elements should be curbed and kept under restraint...” **S.P. Gupta vs President Of India And Ors. ,AIR 1982 SC 149.**

2. Impartiality

- Impartiality applies not only to the decision itself but also to the decision making process.
- A judge is expected to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- the judge should avoid any comment that might reasonably be expected to affect the outcome of proceeding or impair the fairness of the process.

3. Integrity

- Integrity according to Oxford dictionary is moral uprightness.
- It takes within its sweep honesty, probity, sincerity, trustfulness and moral excellence etc.
- “Integrity” includes the quality of not being influenced by the identity, race, gender, political status, wealth or relationship of the party or lawyer before the judge.

4. Propriety

- Propriety and the appearance of propriety, both professional and personal, are essential elements of a judge's life.
- What matters is more not what a judge does or does not do, but what others think the judge has done or might do.
- For example, a judge who speaks privately and at length with a litigant in a pending case will appear to be giving that party an advantage, even if in fact the conversation is completely unrelated to the case.

5. Equality

- A judge must always keep in mind Article 14, paragraph 1, of the International Covenant on Civil and Political Rights (ICCPR), which guarantees that “All persons are equal before the courts”; and
- Article 2, paragraph 1 which recognizes the right of every individual to a fair trial without any distinction whatsoever with regard to **race, colour, sex, language, religion, political or other conviction, national or social origin, means, status or other circumstances.**

6. Competence & Diligence

- Competence and diligence are prerequisites to the due performance of judicial office.
- Diligence includes striving for even-handed application of the law and the prevention of the abuse of court processes.
- Performance of judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

Judging :A Way of Life

1. The Austrian legal scholar, **Eugene Ehrlich**, described the great public challenge which accompanies the life of a judge when he pointed out that : **“there is no guarantee of justice except the personality of the judge....”**

“I view my office as a mission. Judging is not a job. It is a way of life. Whenever I enter the courtroom, I do so with the deep sense that, as I sit at trial, I stand on trial” (**Ahron Barak , Former Chief Justice S.C. Of Israel)**

THANKS