

# **ELEMENTS OF JUDICIAL BEHAVIOUR**

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# **ELEMENT OF JUDICIAL BEHAVIOUR**

- **ETHICAL CONUNDRUMS IN JUDICIAL SPHERE**

- Ethical Conundrums in judicial sphere are complex and often involve questions that judges, lawyers and jurists face when trying to balance principles of Justice, Fairness and the Rule of Law.
- The Judiciary has rightfully intervened to uphold Rule of Law and the spirit of Justice to set governance back on the right path through, for instance, public interest litigations. From the point of view of a citizen, overall governance has gained. However, the ripple effects of consequential collateral conflicts within and among Constitutional authorities are rarely perceived.

# **Typical Ethical Conundrums**

- 1. CONFLICT OF INTEREST**
- 2. JUDICIAL ACTIVISM Vs RESTRAINT**
- 3. PUBLIC PRESUMPTION**
- 3. SENTENCING DISPARITIES**
- 4. ACCESS TO JUSTICE**
- 5. TECHNOLOGY AND PRIVACY**
- 6. LIMELIGHT SYNDROME**

# **Ethics of Advocacy**

- a) Duty to Client.**
- b) Duty to Court.**
- c) Duty to Public.**
- d) Duty to Fellow Advocates.**
- e) Duty to Conscience.**

**J.S. Jadhav v. Mustafa Haji Mohamad Yusuf**

**AIR 1993 SC 1535**

Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and the earnestness of endeavor are the two wings that will hold aloft the advocate to the tower of success. Given these virtues, other qualifications will follow of their own account. This is the reason why the legal profession is regarded as a noble one.

## JUDICIAL NEUTRALITY

## INTEGRITY & IMPARTIALITY

**Integrity and Impartiality are two essential Qualities that every judge must possess to ensure judicial neutrality and to maintain the dignity and sanctity of the Legal System. They inspire public confidence in the system**

# **INTEGRITY**

1. HONESTY AND TRUTHFULNESS
2. MORAL AND ETHICAL STANDARDS
3. TRANSPARENCY
4. AVOIDING CONFLICTS OF INTEREST

# **IMPARTIALITY**

1. FAIRNESS
2. ABSENCE OF PREJUDICE
3. EQUAL APPLICATION OF LAW
4. INDEPENDENCE



**TARAK SINGH Vs JYOTHI BASU**

**(2005) 1 SCC 201**

“Integrity is the hallmark of Judicial Discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the Judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm inside.”

“There is nothing wrong in a judge having an ambition to achieve something, but if the ambition to achieve is likely to cause a compromise with his divine judicial duty, better not to pursue it. Because, if a judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will a tendency to make a compromise between his divine duty and his personal interest. There will be conflict between the interest and duty.”

**HIGH COURT OF JUDICATURE AT BOMBAY VS UDAY SINGH**

**(1997) 5 SCC 129**

“Maintenance of discipline in the Judicial service is a paramount matter. Acceptability of the judgement depends upon the credibility of the conduct, honesty, integrity and character of the officer. The confidence of the litigating public gets affected or shaken by lack of integrity and character of Judicial Officer”

**DAYA SHANKAR Vs HIGH COURT OF ALLAHABAD**

**(1987) 3 SCC 1**

“Judicial Officers cannot have 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 for Rajasthan vs. Ramesh Chand Paliwal**

**(1998) 2 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. Their mission is to supply light and not heat.”

**High Court of Judicature at Bombay vs. Shashikant S. Patil**

**(2000) 1 SCC 416**

“Dishonesty is the stark antithesis of judicial probity. Any instance of a High Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to erosion of the judicial foundation. Every hour we must remind ourselves that the judiciary floats only over the confidence of the people in its probity. Such confidence is the foundation on which the pillars of the judiciary are built.”

# **The Three Commandments of Judicial Ethics**

- **Restatement of Values of Judicial Life, (adopted by the Full Court of the Supreme Court on 7<sup>th</sup> May 1997).**
- **Bangalore Principle of Judicial Conduct, 2002.**
- **The Oath of a Judge, (as contained in the Third Schedule of the Constitution of India).**

# **RESTATEMENT OF VALUES OF JUDICIAL LIFE (AS ADOPTED BY THE FULL COURT MEETING OF SUPREME COURT ON 7<sup>TH</sup> MAY 1997)**

- 1. 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 practice 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.
- 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, 2002**

- Value 1 : **Independence**
- Value 2 : **Impartiality**
- Value 3 : **Integrity**
- Value 4 : **Propriety**
- Value 5 : **Equality**
- Value 6 : **Competence and Diligence**

# **The Oath**

## **Third Schedule of the Constitution of India**

- Once a Judge is sworn to uphold the Constitution of India and the laws, he/she has to discharge his duties by guarding Constitutional Values. Every Judge invests in certain sacrosanct principles :
- (i) that he/she will bear true faith and allegiance to the Constitution of India as by law established;
- (ii) that he/she will uphold the sovereignty and integrity of India;
- (iii) that he/she will truly and faithfully, and to the best of his/her ability, knowledge and judgment perform the duties of office without fear or favor, affection or ill-will; and
- (iv) that he/she will uphold the Constitution and the laws.

# Judicial Norms

Norms guide us on what, how, when, why and what not to do. Values imply the moral principles to be upheld.

- **Judicial independence in decision making**
- **Institutionalizing Judicial restraint**
- **Impartiality**
- **Balancing autonomy and interdependence**

# **Conduct of Judge**

- **Full commitment to uphold dignity of Judicial Office.**
- **Should not adopt mentality of a clerk who works for fixed hours in a day.**
- **Judicial Office is not a service or employment.**
- **Judge trying a case is himself on trial.**
- **No judge can be judge in his own cause.**
- **Judges must not fear to administer justice**
- **Too much of activity and participation in social functions be avoided.**
- **Media Publicity be avoided.**

**State of Uttar Pradesh v Mohammad Nizam**  
**AIR 1964 SC 703.**

- In the matter of making disparaging remarks against a person or authority whose conduct comes into consideration before a court of law, a Judge should consider:
  - (a) whether the concerned party or authority is before the court or has an opportunity of explaining or defending himself;
  - (b) whether there is evidence on record bearing on their conduct justifying the remarks; and
  - (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct

**Charan Lal Sahu v Union of India**

**AIR 1990 SC 1480 : (1990) 1 SCC 613**

- The Supreme Court stated : “No man’s right should be affected without an opportunity to ventilate his views.”

**R. Viswanathan v Abdul Wahjid**

**AIR 1963 SC 1**

- A Judge is therefore, expected to be serene and even-handed, even though his patience may be sorely tried thereby and the time of the court appear to be wasted.

Thank You!!!