

ELEMENTS OF JUDICIAL BEHAVIOR:
ETHICS, NEUTRALITY, AND
PROFESSIONALISM

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ETHICAL STANDARDS AND NORMS VIS-À-VIS CONDUCT OF JUDGES

- The heart and soul of judging is to be fair and judges must strictly adhere to the values laid down by the Constitution, and not be guided by prejudice. Since one of the pillars of Democracy is Justice and one of the fundamental principles of the justice delivery system is that justice should not only be done but should be seen to be done, judges are obliged to decide the cases before them with impartiality, integrity and by ensuring the equality of treatment and in doing so judges are upholding the rule of law.
- The principles of natural justice are the guiding factors for administration of justice and the judicial authorities are required to keep in mind ethical standards while conducting themselves in courts.
- Hon'ble Supreme Court in various decisions has made observations on the conduct that judicial authorities are required to follow:
 - *Amar Pal Singh vs. State of Uttar Pradesh, (2012) 6 SCC 491*: Judges are required to maintain decorum and sanctity, which are inherent in judicial discipline and restraint. A judge functioning at any level has

dignity in the eyes of public and credibility of the entire system is dependent on the use of dignified language and sustained restraint, moderation and sobriety.

- ***Shrirang Yadavrao Waghmare vs. State of Maharashtra, (2019) 9 SCC 144***: Judges are not merely employees but hold high public office. Standard of conduct expected of a judge is much higher than that of an ordinary person. Since the foundation of judiciary is based on honesty and integrity, it is necessary that judicial officers should possess sterling quality of integrity.
- Gratification does not only mean monetary gratification but can also include gratification for lust, power, etc.
- ***High Court of Judicature at Bombay vs. Uday Singh, (1997) 5 SCC 129***: Acceptability of the judgment 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.
- ***High Court of Judicature at Bombay vs. Shashikant S. Patil, (2000) 1 SCC 416***: Any departure from the pristine codes and values of discipline and disciplined conduct on the part of the judicial officers

will have to be viewed very seriously lest the very foundation of the system would be shaken and, if so, that will be the death knell of democracy.

- ***Daya Shankar vs. High Court of Allahabad, (1987) 3 SCC 1***: 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. They cannot act even remotely unworthy of the office they occupy.
- ***C. Ravichandran Iyer vs. Justice A.M. Bhattacharjee & Ors., (1995) 5 SCC 457***: The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the judges belong.

OBJECTIVITY IN DECISION MAKING

- 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 put up before him.
- Every judge is bound by the same principles of law and justice, and is required to apply them impartially and fairly, irrespective of any preconceived notions which the parties or the counsels may hold about them.
- There is however a distinction between prejudging of facts specifically relating to a party, as against preconceptions or predispositions about general questions of law, policy or discretion. While the latter is unavoidable to some extent, care is required to be taken by the judicial officer to not let these preconceptions come in the way of rational thinking and reasoning.
- The test for determining the likelihood of bias was laid down by the Hon'ble Supreme Court in *Ranjit Thakur vs Union of India*, (1987) 4 SCC 611, wherein it was held that it is the reasonableness of the apprehension of bias in the mind of the party that is relevant and required to be looked at.

ADDRESSING BIAS & STEREOTYPES IN ADJUDICATION

As per *State of West Bengal v S Pathak*, (1998) 5 SCC 513, judicial bias has been defined as:

"Bias may be defined as a pre-conceived opinion or a pre-disposition or pre-determination to decide a case or an issue in a particular manner, so much so that such pre-disposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the Judge unable to exercise impartiality in a particular case".

Cognitive Bias are systematic tendencies in one's thought processes such as unconscious racial, gender, and ethnic biases, stereotypes, prejudices, discriminatory attitudes, and other preconceived notions.

a) Ideology and Identity

- Ideology and identity of a judicial authority are also two possible ways in which judicial attitudes could influence decision making. One's

religion, gender, caste, social upbringing, lived experiences and political ideology could impact one's approach to adjudication of different matters. Age and class are also potential factors that could play a role in judicial decision making.

- Such bias can also take the form of affinity bias i.e. favoring people with similar backgrounds and characteristics such as sharing the same last name or a regional affinity.
- There are several kinds of identity and ideology bases biases that can manifest themselves in judicial treatment of different cases. One illustration would be the case of a Karnataka High Court Judge and his sexist comments to a woman lawyer on two separate judicial proceedings. On a previous occasion, the Karnataka High Court judge had referred to a Muslim-dominated locality in west Bengaluru as 'Pakistan'.

b) Personal Bias and Pecuniary Bias

- One of the principles of natural justice is that *prima facie* no one should be a judge in one's own cause. The decision-maker should have no

interest by way of gain or detriment in the outcome of a proceeding. There should be no conflict between interest and judicial duty.

- Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one. It could also arise when a decision-maker or a relative stand to gain a financial benefit, no matter how small, from the outcome of the case.

c) **Pre-conceived Notion Bias:**

- Pre-conceived notion bias is when a judge or decision-maker already holds a pre-existing opinion or idea about a case before it is heard, potentially influencing their judgment. One example of this kind of bias could be that the judge had earlier presided over a matter where a certain policy or question of law had been interpreted and decided in a particular way, leading to apprehensions that the judge would be inclined towards the same preconceived notion of the issue and not hear a matter with a fresh mind.

d) **Judicial Obstinacy:**

- Judicial obstinacy is another form in which bias can be pervade into the judicial system. If a judgment is overruled by the higher court, the judicial discipline requires that the Judge whose judgment is overruled must submit to that judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, re-write the overruled judgment. That Judge may have his occasion to reiterate his dogmatic views on a particular question of common law or constitutional law in some other case but not in the same case. If it is done, it would be exhibitivive of his bias in his own favour.

e) **Hindsight Bias**

- Hindsight bias takes place when judges overestimate the predictability of past events or assign higher probabilities to the outcome of events that have occurred as though they knew it all along or could have foreseen it.
- Some ways this kind of bias manifests in the courtrooms are related to negligence, liability and medical practice cases. Herein, the judge is required to assess how foreseeable an outcome was and to evaluate whether the party's behaviour took this risk into consideration. For example, in a case of medical negligence, the judge evaluates outcomes

after the fact and in hindsight, while the medical professional makes decisions based on the conditions apparent at that time.

f) **Confirmation Bias**

- Confirmation bias is the selective gathering and interpretation of evidence consistent with current beliefs and the neglect of evidence that contradicts them. It is based on the natural tendency of people to see what they expect to see.
- In such cases, a judge provides a biased interpretation of information because he or she is convinced about the truth of their hypothesis and would not consider alternative information that proves otherwise. Such approach is also referred to as tunnel vision.
- Judges hear and evaluate the evidence presented before the court by forensic experts, police officers/investigators and lawyers etc but they can be biased and selectively confirm their pre-existing beliefs on the guilt of the accused without considering contrary evidence that may challenge their findings and seek to exonerate the accused.

g) **Anchoring Bias**

- Anchoring bias is closely related to confirmation bias and comes into play when interpreting evidence. It refers to the practice of prioritizing information and data that support their initial impressions, even when first impressions are wrong.
- It is based on people's tendency to rely too heavily on the first piece of information they receive on a topic. Regardless of the accuracy of that information, people use it as a reference point, or anchor, to make subsequent judgments.
- It often manifests when the first piece of information given to a judge is relied upon too heavily when making decisions. The quantum of compensation sought by a party systematically influences the compensation awarded by the judge.

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