



CANONS OF JUDICIAL ETHICS

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National
Judicial Academy
Bhopal, India

CANONS OF JUDICIAL ETHICS

**Adapted from First M.C. Setalvad Memorial Lecture
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Occasional Paper Series is the medium through which the National Judicial Academy brings into the personal library of judicial officers throughout the country important articles, lectures and reports which have significant value in judicial education and training.

In February 2004, Hon'ble Justice R.C. Lahoti lectured at the Academy on "Gender Justice and the Judiciary" which was published as Occasional Paper No.3. Now exactly one year later, the Academy is privileged to bring out another lecture from the Hon'ble Chief Justice of India, Sri. R.C. Lahoti on a theme which has assumed critical importance for judiciary at all levels – Judicial Ethics. Indeed they are important for judiciary everywhere and at all times. Today Indian Judiciary is in search of appropriate mechanisms which can enforce the canons of ethics without compromising independence of judiciary.

The original lecture was delivered at Delhi on 22nd February, 2005 as the First M.C. Setalvad Memorial Lecture. As the learned author said in his lecture "...Nothing could have been more appropriate and befitting the memory of Motilal Setalvad, the professional virtues incarnate, than discussing ethics and to do it in the "Year of Excellence in Judiciary – 2005" makes it inevitably topical and relevant." "It is futile to think of excellence in judiciary" added the author, "unless the judges, howsoever highly or howsoever lowly placed, were to follow the canons of judicial ethics."

The Occasional Papers are priced very low to enable every judge to have copies of the entire set. Orders may be placed with the Librarian of NJA. Occasional Papers No.6 and 7 are also in press. They relate to "Appreciation of Evidence" and "Social Context Education for Judges". Comments and suggestions from readers are welcome.

Prof. (Dr.) N.R. Madhava Menon
Director, NJA

March, 2005

CANONS Vs. PRINCIPLES

I wonder why not 'Principles of Judicial Ethics' and why the 'Canons of Judicial Ethics'.

'Principles' are fundamental truth, the axioms, the code of right conduct. Much of these remain confined to theory or hidden in books. Canons are the type or the rules perfected by the principles put to practice. Principles may be a faculty of the mind, a source of action which are a pleasure to preach or read. 'Canons' are principles put into practice so as to be recognized as rules of conduct commanding acceptability akin to religion or firm faith, the departure wherefrom would not be a pardonable mistake but an unpardonable sin. Let us bear this distinction in our mind while embarking upon a voyage into the dreamland called the 'Canons of Judicial Ethics'.

Canons are the first verse of the first chapter of a book whose pages are infinite. The life of a Judge i.e. the judicial living is not an easy thing. Things in judicial life do not always run smoothly. Performing the functions of a judicial office, an occupant at times rises towards the heights and at times all will seem to reverse itself. Living by canons of judicial ethics enables the occupant of judicial office to draw a line of life with an upward trend travelling through the middle of peaks and valleys. In legal circles, people are often inclined to remember the past as glorious and describing the present as full of setbacks and reverses. There are dark periods of trial and fusion. History bears testimony to the fact that there has never been an age that did not applaud the past and lament the present. The thought process shall ever continue. Henry George said – "Generations, succeeding to the gain of their predecessors, gradually elevate the status of mankind as coral polyps, building one generation upon the work of the other, gradually elevate themselves from the bottom of the sea." Progress is the law of

nature. Setbacks and reverses are countered by courage, endurance and resolve. World always corrects itself and the mankind moves ahead again. "Life must be measured by thought and action, not by time" – said Sir John Lubbock.

Observance of Canons of Judicial Ethics enables the judiciary to struggle with confidence; to chasten oneself and be wise and to learn by themselves the true values of judicial life. The discharge of judicial function is an act of divinity. Perfection in performance of judicial functions is not achieved solely by logic or reason. There is a mystic power which drives the Earth and the Sun, every breeze on a flower and every smile on a child and every breath which we take. It is this endurance and consciousness which enables the participation of the infinite forces which command us in our thought and action, which, expressed in simple terms and concisely put, is called the 'Canons of Judicial Ethics'.

JUDICIAL ETHICS *A definition*

Judicial ethics is an expression which defies definition. In the literature, wherever there is a reference to judicial ethics, mostly it is not defined but attempted to be conceptualized. According to Mr. Justice Thomas of the Supreme Court of Queensland, there are two key issues that must be addressed : (i) the identification of standard to which members of the judiciary must be held; and (ii) a mechanism, formal or informal, to ensure that these standards are adhered to. A reference to various dictionaries would enable framing of a definition, if it must be framed. Simply put, it can be said that judicial ethics are the basic principles of right action of the judges. It consists of or relates to moral action, conduct, motive or character of judges; what is right or befitting for them. It can also be said that judicial ethics consist of such values as belong to the realm of judiciary without regard to the time or place and are referable to justice dispensation.

Need for

In all democratic constitutions, or even those societies which are not necessarily democratic or not governed by any constitution, the need for competent, independent and impartial judiciary as an institution has been recognized and accepted. It will not be an exaggeration to say that in modern times the availability of such judiciary is synonymous with the existence of civilization in society. There are constitutional rights, statutory rights, human rights and natural rights which need to be protected and implemented. Such protection and implementation depends on the proper administration of justice which in its turn depends on the existence and availability of an independent judiciary. Courts of Law are essential to act and assume their role as guardians of the Rule of Law and a means of assuring good governance. Though it can be said that source of judicial power is the law but, in reality, the effective exercise of judicial power originates from two sources. Externally, the source is the public acceptance of the authority of the judiciary. Internally and more importantly, the source is the integrity of the judiciary. 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. Their every action and their every word – spoken or written – must show and reflect correctly that they hold the office as a public trust and they are determined to strive continuously to enhance and maintain the people's confidence in the judicial system.

Alexander Hamilton once said — “The judiciary . . . has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will but merely judgment...”.¹ The greatest strength of the judiciary

¹E.C. GERHART, Quote It, p.300.

is the faith of the people in it. Faith, confidence and acceptability cannot be commanded; they have to be earned. And that can be done only by developing the inner strength of morality and ethics.

ATTEMPTED CODIFICATION OF CANONS OF JUDICIAL ETHICS

People are responsible for their opinions, but providence is responsible for their morals (W.B. Yeats in Christopher Hassall). The Constitution of India provides for an independent judiciary. It is insulated against any influence of any other wing of governance or any other agency or authority. Speaking in the Constituent Assembly of India, its President Dr. Rajendra Prasad emphasized the need for the Indian Judiciary to be independent of the Executive and competent in itself. There was a long discussion as to how the twin objects could be achieved. It has been unanimously accepted in all the civilized countries of the world that an independent judiciary is the backbone of civilized governance. It needs to be constantly guarded against external influences. Over the time, the framers of different constitutions have realized that independence of the judiciary and the protection of its constitutional position is the result of a continuous struggle - an ongoing and dynamic process. The constitutional safeguards provide external protection for independence and strength of the judiciary. At the same time, the judiciary itself and socio-legal forces should believe in the independence of the judiciary. It is of paramount importance, that the judiciary to remain protected must be strong and independent from within, which can be achieved only by inculcating and imbibing canons of judicial ethics inseparably into the personality of the judges. Ethics and morality cannot be founded on authority thrust upon from outside. They are the matters of conscience which sprout from within. *Sukra Neeti* (IV-5-14-15) enumerates five vices which every judge should guard against to be impartial. They are: (i) *raga*

(leaning in favour of a party), (ii) *lobha* (greed), (iii) *bhaye* (fear), (iv) *dvesha* (ill-will against anyone) and (v) *vadinoscha rahashruthi* (the judge meeting and hearing a party to a case secretly, i.e. in the absence of the other party).² Socrates counselled judges to hear courteously, answer wisely, consider soberly and decide impartially. Someone has commented that these four virtues are all aspects of judicial diligence. It is suggested that Socrates' list needs to be supplemented by adding the virtue of acting expeditiously. But diligence is not primarily concerned with expedition. Diligence, in the broad sense, is concerned with carrying out judicial duties with skill, care and attention, as well as with reasonable promptness.

I read a poem (the name of the poet unfortunately I will not be able to quote, as it was not there, where I read it) which describes the qualities of a judge. It reads:

“God give us men, a time like this demands;
 Strong minds, great hearts, true faith and ready hands;
 Men whom the lust of office does not kill;
 Men whom the spoils of office cannot buy;
 Men who possess opinions and a will;
 Men who have honour; men who will not lie;
 Men who can stand before a demagogue
 and damn lies treacherous flatteries without talking;
 Tall men, sun-crowned, who live without the fog;
 In public duty and in private thinking.
 However, they may be trained to strengthen
 those who are weak and wronged.”

² M. Rama Jois, *Trivarga Siddhanta*, p.85.

Late Justice Shiv Dayal during his tenure as Chief Justice of the High Court of Madhya Pradesh brought out Judges' Diary as an official publication of the High Court. It included Judge's Prayer running into three stanzas. Invoking the mercy of the Supreme Lord, he described the Judges as "Thy servants whom Thou sufferest to sit in earthly seats of judgement to administer Thy justice to Thy people". He begs for the infinite mercy of the Supreme Lord, so as "to direct and dispose my heart that I may this day fulfil all my duty in Thy fear and fall into no error of judgment." In the third stanza, he says — "Give me grace to hear patiently, to consider diligently, to understand rightly, and to decide justly! Grant me due sense or humility, that I may not be misled by my willfulness, vanity or egotism". Rightly, the Judges are something special in the democratic form of government governed by a Constitution and, therefore, the most exacting standards can be none too high.³

Speaking of Felix Frankfurter as a judge, New York Times called him great "not because of the results he reached but because of his attitude towards the process of decision. His guiding lights were detachment, rigorous integrity in dealing with the facts of a case, refusal to resort to unworthy means, no matter how noble the end, and dedication to the Court as an institution".⁴ Long back, in 1852, Bacon wrote in one of his essays, "Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue."

The book 'Lives of the Chief Justices of England' (published, in 1858), reproduced the qualities of a Judge written in his own handwriting by Lord Hale which he had laid down for his own conduct as a Judge. He wrote,⁵ —

³ *Nyay Diary*, 1976.

⁴ E.C. GERHART, *Quote It*, p.289.

⁵ E.C. GERHART, *Quote It*, pp 297-298.

"Things necessary to be continually had in remembrance.

- "1. That in the administration of justice I am intrusted for God, the King, and country; and therefore,
- "2. That it be done, 1. uprightly; 2. deliberately; 3. resolutely.
- "3. That I rest not upon my own understanding or strength, but implore and rest upon the direction and strength of God.
- "4. That in the execution of justice I carefully lay aside my own passions, and not give way to them, however provoked.
- "5. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions. "And, while on the Bench, not writing letters or reading newspapers."
- "6. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties be heard.
- "7. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.
- "8. That in business capital, though my nature prompt me to pity, yet to consider there is a pity also due to the country.
- "9. That I be not too rigid in matters purely conscientious, where all the harm is diversity of judgment.
- "10. (Not reproduced)
- "11. That popular or court applause or distaste have no influence in anything I do, in point of distribution of justice.
- "12. Not to be solicitous what men will say or think, so long as I keep myself exactly according to the rule of justice.

- "13. (Not reproduced)
- "14. (Not reproduced)
- "15. (Not reproduced)
- "16. To abhor all private solicitations, of what kind so ever, and by whomsoever, in matters depending.
- "17. (Not reproduced)
- "18. To be short and sparing at meals, that I may be the fitter for business."

THE CONCEPT OF JUDGESHIP IN GITA

According to Shrimad Bhagvad Gita, a Judge is a person bestowed with 'excellence'. This concept, I am inclined to mention in the context of the year 2005 being an 'Year of Excellence in Judiciary'. A judge ought to be bestowed with the sense of complete detachment and humility. He ought to remember that he is not himself an author of his deeds. He is only an actor who has to play his role conforming to the script which represents the Will of the Author-playwright and thus surrendering himself to the will of God. According to Islam, such surrender is the supreme act of religion. While the essence of Christian daily prayer is – "Thy will be done, O Lord!", a judge, according to religious concepts whether of Hinduism, Islam or Christianity, would never be heard claiming with egotism that a particular judgment was written by him or a particular sentence or decree was pronounced by him. He would always feel and proclaim that all that he had done or he does is to carry out the will of God. His every action he would surrender to the God and thereby be a totally detached and humble person. The seriousness of the function performed by him would never disturb or overtake him in his deeper mental state, just as an actor on the stage may fight, kill or love but he is the least affected one, as he never

forgets it is a play after all. This detachment is an equilibrium born of knowledge. The Lord says - "He who is the same to foe and friend and also in honour and dishonour, who is the same in cold and heat, in pleasure and pain, who is free from attachment, to whom censure and praise are equal, who is silent – uncomplaining – content with anything, homeless, steady-minded, full of devotion – that man is dear to me."⁶

"The essence of the teaching of the *Gita* is to transform karma into karma yoga: to be active in body but detached in mind."⁷

Hindu philosophy beautifully compares a judge with a flower which would never wither and remains ever fresh. An anecdote very appropriately explains this concept – "A religious discussion was to take place between Adi Shankaracharya and Mandan Mishra. Sharda or Saraswati was judge. Both were offered similar *asanas* to sit on. Having plucked fresh flowers, Sharda strung two identical garlands. She put them round the necks of the two scholars and said, "During the discussion, the garlands will decide the winner and the loser. The wearer of the garland whose flowers fade first will be considered to have lost...." Sharda maintained that he who possessed intellectual clarity, power of thinking and self-confidence will be calm and peaceful. His voice will be like the cool spring. Therefore, the flowers will remain fresh for a longer time. On the other hand, one who does not have a clear intellect or a strong sense of logic or whose self-confidence staggers, will be frustrated. His voice will become harsh, the circulation of blood in his veins will become rapid and his breath will become hot. Hence the flowers around his neck will wither sooner."⁸ The fragrance and freshness of flowers become a part of the personality of a judge if what he

⁶ *Gita*, XII.18-19.

⁷ K.S. Ram, *The World is a Stage: Were Mere Players, The Speaking Tree, The Times of India*.

⁸ Amrita Pritam, *Fifty Fragments of Innerself*, quoted in *Sacred Space, The Times of India*.

thinks and what he does are all based on such values as are the canons of judicial ethics.

THREE DOCUMENTS

Canons of judicial ethics have been attempted, time and again, to be drafted as a Code. Several documents of authority and authenticity are available as drafted or crafted by several fora at the national and international level. The fact remains that such a code is difficult to be framed and certainly cannot be consigned to a straitjacket. Mostly these canons have originated in and have been handed down by generation after generation of judges by tradition and conventions. If any reference is required to be made to documents, I would choose to confine myself by referring to three of them : -

- i. Restatement of Values of Judicial Life adopted by the Chief Justices' Conference of India, 1999;
- ii. The Bangalore Principles of Judicial Conduct, 2002;
- iii. The Oath of a Judge as contained in the Third Schedule of the Constitution of India.

(i) Restatement of Values of Judicial Life (1999)

On May 7, 1997, the Supreme Court of India in its Full Court unanimously adopted a Charter called the **Restatement of Values of Judicial Life** to serve as a guide to be observed by Judges, essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice. This Resolution was preceded by a draft statement circulated to all the High Courts of the country and suitably redrafted in the light of the suggestions received. It has been described as the '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. It reads as under:

- “(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 a 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 should 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 or on 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 interviews 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 which 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 should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business).
- (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 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.

These are only the "Restatement of the Values of Judicial

Life” and are not meant to be exhaustive but illustrative of what is expected of a Judge.”

The above “restatement” was ratified and adopted by Indian Judiciary in the Chief Justices’ Conference 1999. All the High Courts in the country have also adopted the same in their respective Full Court Meetings.

(ii) The Bangalore Draft Principles

The values of judicial ethics which the Bangalore Principles crystallises are : (i) independence (ii) impartiality , (iii) integrity, (iv) propriety (v) equality and (vi) competence & diligence.

The above values have been further developed in the Bangalore Principles as under:-

- i. Judicial **independence** is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.
- ii. **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.
- iii. **Integrity** is essential to the proper discharge of the judicial office.
- iv. **Propriety**, and the appearance of propriety, are essential to the performance of all the activities of a judge.
- v. Ensuring **equality** of treatment to all before the courts is essential to the due performance of the judicial office.

- vi. **Competence and diligence** are prerequisites to the due performance of judicial office.
- vii. **Implementation** By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles, if such mechanisms are not already in existence in their jurisdictions.

The Preamble to the Bangalore Principles of Judicial Conduct states *inter alia* that the principles are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge. There are a few interesting facts relating to the Bangalore Principles. The first meeting to prepare the Draft Principles was held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with several other institutions concerned with justice administration. In preparing the draft Code of Judicial Conduct, the core considerations which recur in such codes were kept in view. Several existing codes and international instruments, more than three in number including the Restatement of Values of Judicial Life adopted by the Indian judiciary in 1999, were taken into consideration. At the second meeting held in Bangalore in February 2001, the draft was given a shape developed by judges drawn principally from Common Law countries. It was thought

essential that it will be scrutinized by judges of all other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct. The Bangalore Draft was widely disseminated amongst judges of both common law and civil law systems and discussed at several judicial conferences. The draft underwent a few revisions and was finally approved by a Round-Table Meeting of Chief Justices (or their representatives) from several law systems, held in Peace Palace in The Hague, Netherlands, in November 2002. 'Accountability' as one of the principles which were included in the original draft was dropped in the final draft. It is apparently for two reasons. Firstly, it was thought that the principles enshrined in the Bangalore Principles presuppose the 'accountability' on the part of the judges and are inherent in those principles. Secondly, the mechanism and methodology of 'accountability' may differ from country to country and therefore left to be taken care of individually by the participating jurisdictions.

(iii) The oath or affirmation by Judge

The Constitution of India obligates the Indian Judiciary to reach the goal of securing to all its citizens – Justice, Liberty, Equality and Fraternity. How this goal is to be achieved is beautifully summed up in the form of oath or affirmation to be made by the Judges of the Supreme Court and High Courts while entering upon the office.

Swearing in the name of God or making a solemn affirmation a Judge ordains himself:-

- i. that I will bear true faith and allegiance to the Constitution of India as by law established;
- ii. that I will uphold the sovereignty and integrity of India;
- iii. that I will truly and faithfully

and to the best of my ability, knowledge and judgment
perform the duties of office

without fear or favour, affection or ill-will; and

iv. that I will uphold the Constitution and the laws.

In my humble opinion, the oath of a Judge is a complete Code of Conduct and incorporates therein all the canons of judicial ethics.

The judiciary has been trusted and hence entrusted with the task of upholding the Constitution and zealously and watchfully guarding the constitutional values. The oath administered to a judge ordains him to uphold the Office as a citadel of public justice and public security to fulfil the constitutional role assigned to the Judiciary.

"The concept of independence of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon the judiciary and it is by exercising this power which constitutes one of the most potent weapons in armoury of the law, that the judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers."⁹ This is the principle of independence of judiciary which judges must keep in mind while upholding the Constitution and administering the laws.

⁹ *S.P. Gupta v. Union of India*, 1981 Supp. SCC 87, para 27.

Oath of a Judge – analysed

Every word and expression employed in the oath of a judge is potent with a message. The message has to be demystified by reading between the lines and looking beyond what meets the eyes.

An option to swear in the name of God or to make a solemn affirmation is suggestive of secular character of the oath.

A judge must bear not only faith but 'true faith' and 'allegiance' to the Constitution of India. The oath demands of a judge not only belief in constitutional principles but a loyalty and devotion akin to complete surrender to the constitutional beliefs. Why?

"Under our constitutional scheme, the judiciary has been assigned the onerous task of safeguarding the fundamental rights of our citizens and of upholding the rule of law. Since the Courts are entrusted the duty to uphold the Constitution and the laws, it very often comes in conflict with the State when it tries to enforce its orders by exacting obedience from recalcitrant or indifferent State agencies. Therefore, the need for an independent and impartial judiciary manned by persons of sterling quality and character, undaunting courage and determination and resolute impartiality and independence who would dispense justice without fear or favour, ill-will or affection. Justice without fear or favour, ill-will or affection, is the cardinal creed of our Constitution and a solemn assurance of every Judge to the people of this great country an independent and impartial judiciary is the most essential characteristic of a free society."¹⁰ The arch of the Constitution of India, pregnant from its Preamble, Chapter III (Fundamental Rights) and Chapter IV (Directive Principles), is to establish an egalitarian social order guaranteeing fundamental freedoms and to secure justice – social, economic and political – to every citizen through rule of law. Existing

¹⁰ *S.C. Advocates-on-Record Association & Ors. v. Union of India*, (1993) 4 SCC 441, para 273, per Ahmadi, J.

social inequalities need to be removed and equality in fact is accorded to all people irrespective of caste, creed, sex, religion or region subject to protective discrimination only through rule of law. The Judge cannot retain his earlier passive judicial role when he administers the law under the Constitution to give effect to the constitutional ideals. The extraordinary complexity of modern litigation requires him not merely to declare the rights to citizens but also to mould the relief warranted under given facts and circumstances and often command the executive and other agencies to enforce and give effect to the order, writ or direction or prohibit them to do unconstitutional acts. In this ongoing complex of adjudicatory process, the role of the Judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality.¹¹

The sovereignty and integrity of India has to be upheld. Constitution itself would cease to exist, if, God forbid, the sovereignty and integrity of India were lost.

The duties associated with the Office of a judge are too sacrosanct and hence demand the judicial functioning with 'the best of ability, knowledge and judgment' of the judges. It is not enough to be a law graduate or to have put in a number of years of practice or to have gained experience by serving as a judicial officer for a specified number of years. Their ability and knowledge associated with the clarity of purpose and methods which the judges display enables the judicial system to perform to its optimum efficiency. The role of the judge obligates him to continue to invest in updating his knowledge of law and skills of justice dispensation. The holder of the Office if not able and knowledgeable would not

¹¹ *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee & Ors.*, (1995) 5 SCC 457, para 41, per K. Ramaswamy, J.

have the confidence to function, much less with independence. It is said :

Strange, how much you've got to know;

Before you know, how little you know.¹²

Independence and Impartiality

'Independence' and 'impartiality' are most crucial concepts. The two concepts are separate and distinct. 'Impartiality' refers to a state of mind and attitude of the court or tribunal in relation to the issues and the parties in a particular case, while 'independence' refers not only to the state of mind or attitude, but also to a status or relationship to others — particularly to the executive branch of Government — that rests on objective conditions or guarantees.¹³

According to Chief Justice Lamer : "The overall objective of guaranteeing judicial independence is to ensure a reasonable perception of impartiality; judicial independence is but a "means" to an end. If judges could be perceived as "impartial" without judicial "independence", the requirement of independence would be unnecessary. However, judicial independence is critical to the public's perception of impartiality. Independence is the cornerstone, a necessary prerequisite for judicial impartiality."

The concept of judicial independence has been described in golden letters in one of the judgments of the Supreme Court of India. "To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which

¹² Anonymous.

¹³ *University of New Brunswick Law Journal*, Vol. 45, 1999, p.81.

may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or of any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office-holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.”¹⁴ Unless the judges function without fear and favour, the question of their being impartial or independent does not arise. “Judges owe their appointment to the Constitution and hold a position of privilege under it. They are required to ‘uphold the Constitution and the laws’, ‘without fear’ that is without fear of the executive; and ‘without favour’ that is without expecting a favour from the executive. There is thus a fundamental distinction between the master and servant relationship between the government and the Judges of High Courts and the Supreme Court.”¹⁵

Independence and impartiality and objectivity would be tall claims hollow from within, unless the judges are honest — honest to their Office, honest to the society and honest to themselves. “...the society’s demand for honesty in a judge is exacting and absolute. The standards of judicial behaviour, both on and off the Bench, are normally extremely high. For a judge, to deviate from such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal. From the standpoint of justice, the size of the bribe or scope of corruption cannot be the scale for measuring a Judge’s dishonour. A single dishonest Judge not only dishonours himself

¹⁴ *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee & Ors.*, (1995) 5 SCC 457, para 23, per K. Ramaswamy, J.

¹⁵ *Union of India v. S.H. Sheth*, (1977) 4 SCC 193, quoted in *K. Veeraswami v. Union of India & Ors.*, (1991) 3 SCC 655, para 31.

and disgraces his office but jeopardizes the integrity of the entire judicial system. A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. 'A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion; to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.'¹⁶

To perform the duties of judicial office without fear or favour, affection or ill-will is the same thing as performing the duties with independence, impartiality and objectivity. In order to achieve this a certain degree of aloofness is required to be maintained by the judges. According to Justice P.B. Gajendragadkar – "Judges ordinarily must observe certain rules of decorum in their social behaviour. A little isolation and aloofness are the price which one has to pay for being a judge, because a judge can never know which case will come before him and who may be concerned in it. No hard and fast rule can be laid down in this matter, but some discretion must be exercised."¹⁷ The concept is best demonstrated in a real life anecdote which I would like to reproduce in the words of Justice Gajendragadkar himself. He records –

"Another feature which I did not very much appreciate was that judges used to accept invitations for dinners from lawyers far too frequently. I consistently refused to join such dinners. When S.R. Das was due to retire, there were a number of dinners and S.K. Das found that I was not accepting any one of these invitations. He came to me and said: "Brother, accept at least one so that the Chief may not misunderstand you." So I did accept one and, when

¹⁶ *K. Veeraswami v. Union of India & Ors.*, (1991) 3 SCC 655, para 79, 80, per Sharma, J.

¹⁷ P.B. Gajendragadkar, *To The Best of My Memory*, p.138.

we met to dine in a hotel, I was amazed to see that we were not dining in an exclusive room but in the general hotel itself, which was otherwise crowded by other diners and it was a lawyer who was entertaining us as a host to the large number of visitors present in the hotel. With my Bombay background, I did not relish this prospect at all; and not feeling happy about such dinners I conveyed my views to S.R. Das. With his characteristic tact, he said, "Yes, I see your point."¹⁸

However, it is interesting to note that R.A. Jahagirdar (who has contributed a beautiful preface to the autobiography and, in fact, he is the one who was successful in persuading Justice Gajendragadkar to write his memoirs) has put an asterisk on the words 'Bombay background' and inserted a footnote which reads – "The Bombay background has considerably changed. Cases of judges being entertained in luxury hotels are not infrequent and have been discussed in the Press".

Justice Gajendragadkar goes on to record –

"The undesirable and perhaps intended motivation for such invitation for dinners became patent in another case. That was a dinner arranged ostensibly by a lawyer who was a *benamidar* of the proprietor of a hotel chain. So far as I know, I and K.C. Das Gupta did not attend. Most of others did. The dinner was held on a Saturday at a hotel. On Monday next, before the Bench over which B.P. Sinha presided and I and K.C. Das Gupta were his colleagues, we found that there was a matter pending admission between the management of the hotel chain and its workmen. I turned to Sinha and said: "Sinha, how can we take this case? The whole lot of supervisors and workmen in the hotel is sitting in front and they know that we have been fed in the hotel ostensibly by the lawyer but in truth at the cost of the hotel, because the very lawyer who

¹⁸ *ibid* p.137.

invited the judges to the dinner is arguing in the hotel's appeal." Sinha, the great gentleman that he was, immediately saw the point and said: "This case would go before another Bench."¹⁹

A sad incident is quoted by Justice V.R. Krishna Iyer while describing how he refused to budge an inch though tremendous pressure was sought to be built upon him, by none else than the then Law Minister Late Shri. Gokhale who himself has had a brief stint as a judge in Bombay, to pass an absolute order of stay on the judgment of Allahabad High Court in the case of **Indira Gandhi vs. Raj Narain**. The narrated incident has a lesson to learn. I may quote –

"By way of a distressing deviation, I may mention an anecdote of a few years ago. A vacation judge was telephoned by an advocate from a five star hotel in Delhi. He mentioned that he was the son of the then Chief Justice and wished to call on the vacation judge. Naturally, since the caller was an advocate, and on top of it, the son of the Chief Justice, the vacation judge allowed him to call on him. The 'gentleman' turned up with another person and unblushingly told the vacation judge that his companion had a case that day on the list of the vacation judge. He wanted a 'small' favour of an 'Interim stay'. The judge was stunned and politely told the two men to leave the house. Later, when the Chief justice came back to Delhi after the vacation, the victim judge reported to him about the visit of his son with a client and his 'prayer' for a stay in a pending case made at the home of the Judge. The Chief Justice was not disturbed but dismissed the matter as of little consequence. 'After all, he only wanted an interim stay', said the Chief justice, 'and not a final decision'. This incident reveals the grave dangers of personal visits to judges' residences under innocent pretexts. This is the way functional felony creeps into the judiciary. A swallow

¹⁹ *ibid* pp.137-138.

does not make a summer may be, but deviances once condoned become inundations resulting in credibility collapse of the institution.”²⁰

He says – “Judgeship has diamond-hard parameters”.

A complete seclusion from society might result in judges becoming too removed from society and the realities of social life. Common knowledge of events and robust commonsense need knowledge of human behaviour but for which the judge may be incapacitated from doing complete justice or exercising discretion in the given facts of a case before him. An isolated judge runs the risk of viewing facts in a vacuum which in its turn may lead to an unjust decision.

To strike an equitable balance between the need for maintaining certain degree of aloofness and the necessity for moving in society to understand it so as to be a practical judge, he shall have to conscientiously keep a vigil of his own movements and decide thoughtfully where to go and where not to go. Experience and caution would be the best guide of a judge in this regard. He ought to remember that what he thinks of himself is not so material as how people would perceive and interpret his movements and presence at a given place.

RANDOM THOUGHTS

Four Qualities in a Judge

A judge has to be possessed of excellence not only from within but he should also visibly display the functional excellence which is necessary to fulfil the constitutional promise of justice by the judiciary as a whole. Four qualities are needed in a judge which are symptomatic of functional excellence. They are: (i) Punctuality

²⁰ V.R. Krishna Iyer, *A Living Legend*, p.130.

(ii) Probity (iii) Promptness; and (iv) Patience.

Justice Hidayatullah has placed observance by judges of the punctuality of time on a very high pedestal. According to him a judge who does not observe punctuality of time does not believe in rule of law.

Probity is uprightness; moral integrity; honesty.

According to Justice V.R. Krishna Iyer the judges who do not pronounce judgment in time commit turpitude. He notes with a sense of sorrow –

“It has become these days, for the highest to the lowest courts’ judges, after the arguments are closed, take months and years to pronounce judgments even in interlocutory matters – a sin which cannot be forgiven, a practice which must be forbidden, a wrong which calls for censure or worse.”²¹

Lord Denning puts it mildly by way of tendering good advice for a new judge. He says that when judgment was clear and obvious it was for the benefit of the parties and the judge himself that judgment should be delivered forthwith and without more *ado*. Though, the art is difficult and requires great skills but practice can enable perfection.²² However, not all judgments can be delivered *ex tempore*; there are cases in which doubts are to be cleared, law has to be settled and conflicts are to be resolved either by performing the difficult task of reconciling or the unpleasant task of overruling. Such judgments need calm and cool thinking and deep deliberations. Such judgments must be reserved but not for an unreasonable length of time.

Conduct of Judge in private

When a judge sits on trial, he himself is on trial. The trust

²¹ *ibid* p.138.

²² Edmund Heward, *Lord Denning, A Biography*, 2nd Edn., pp.35-36.

and confidence of 'we the people' in judiciary stands on the bedrock of its ability to dispense fearless and impartial justice. Any action which may shake that foundation is just not permitted. Once having assumed the judicial office, the judge is a judge for 24 hours. It is a mistaken assumption for any holder of judicial office to say that I am a judge from 10 to 5 and from 5 to 10 it is my private life. A judge is constantly under public gaze. "Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society." ²³

Patience and Tolerance

The greatest quality of a Judge is to have patience which is

²³ *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee & Ors.*, (1995) 5 SCC 457, para 21, per K. Ramaswamy, J.

sister virtue of calmness. Calmness is as essential as fearlessness and honesty to the exercise of good judgment in times of aroused feelings and excited passion.

Patience implies the quietness or self-possession of one's own spirit under sufferance and provocation. Since it has a tranquillising effect, patience is the best remedy for every affliction. The Bible says that if patience or silence be good for the wise, how much the better for others – unwise or not so wise. Sometimes we turn our anger upon the person responsible for hurting us; we are also likely to blame someone for any kind of mishap. By learning to be patient, one can cultivate the art of reigning in bad temper and hasty decision-making. Patience yields many good things. It is also a necessary ingredient of genius. Patience can solve problems, avert wars and disasters, and lead us to the path of truth.

The power of patience leads us to self-inspection, to the admission of errors and the capacity for forgiveness. A learned man tells us that misfortune can be turned into fortune through wisdom. The acquisition of wisdom needs five steps. The first is patience, the second is listening, the third is understanding, the fourth is pondering and the fifth is practice – all qualities needed in a judge. To be patient one has to be humble. To cultivate patience, anger management plays a crucial role. "He who is slow to anger is better than the mighty and he that rules his spirit than he who takes a city." The world exists only because of self-restraint exercised by the mighty. Power coupled with impatience can be very dangerous. Leaders and Judges who are impulsive are greatly feared and are considered impractical. Anger begets violence and cannot be easily repressed. At times anger is provoked by misunderstanding and may actually have no basis in reason. Anger can be subverted with forgiveness.

One of the ways to be patient is through tolerance. Tolerance

recognizes individuality and diversity; it removes divisiveness and diffuses tension created by ignorance. Tolerance is an inner strength, which enables the individual to face and overcome misunderstandings and difficulties. A tolerant person is like a tree with an abundance of fruits; even when pelted with sticks and stones, the tree gives its fruit in return. Without tolerance, patience is not possible. Tolerance is integral and essential to the realization of patience.²⁴

Rational Utilisation of Time

On the day I was sworn in as a Judge of the High Court, Chief Justice (Retd.) G.G. Sohani, an illustrious Judge of the High Court of Madhya Pradesh, later the Chief Justice of Patna High Court very affectionately told me a few do's and don'ts for any judge. Amongst other things, he told me that working hours of the court are meant for discharging only judicial work. No part of judicial working hours should be diverted to administrative work. Full Court and Administrative Committee meetings should be invariably held on non-working days or, before or after court sitting hours. The judges are not supposed to proceed on leave unless and until the absence is unavoidable. The judges are also not supposed to participate in ceremonial functions like inaugurations or delivering lectures by abstaining themselves from the court. All this does not tantamount to saying that a judge should neither relax nor rejuvenate himself. Vacations are meant for rejuvenating the health of the judges so that they feel fit and also for reading so as to update their knowledge of law. They must also spend a fixed time every day and on weekends with their family members so as to concentrate on judicial work during working hours. I would treat this as a part of

²⁴ Ezekiel Malekar, *Lessons on Patience and Tolerance, The Speaking Tree, The Times of India*.

judicial ethics.

I am reminded of a Chief Justice, who speaking at a farewell function, marking the occasion of his demitting the office, made a witty remark — “After my retirement, I would like to interview the wives of the Judges and collect information from them as to what prevented them for not divorcing their husbands so far”. Justice Devitt wrote in ‘Ten Commandments for the New Judge’ — “The greatest deterrent to a judge’s taking himself too seriously in any respect is a wise and observing wife who periodically will remark, ‘Darling! Don’t be so Judgey’ ”.²⁵

EPILOGUE

An eminent jurist, Justice G.P. Singh, former Chief Justice and later Lokayukt of Madhya Pradesh, needs a mention here. He believes that canons of ethics cannot be learnt simply by listening or be taught only by being told. One must live by values to preach and emulating is the best way to learn. His life as lived is full of examples and he has never delivered any precepts. His brevity, lucidity and clarity in judgments is comparable with Privy Council decisions. He has always believed in simple living and high thinking. His principles of statutory interpretation (Nine Editions, published) and Law of Torts both of international standards, speak aloud of the height of his learning.

Great persons live great lives and leave behind indelible imprints on the sand of time. The imprints are not faded though several foot-steps have crossed them. A very inspiring anecdote has been narrated by Fali S. Nariman, Senior Advocate.²⁶

A Chief Justice of the New York State Court of Appeals on

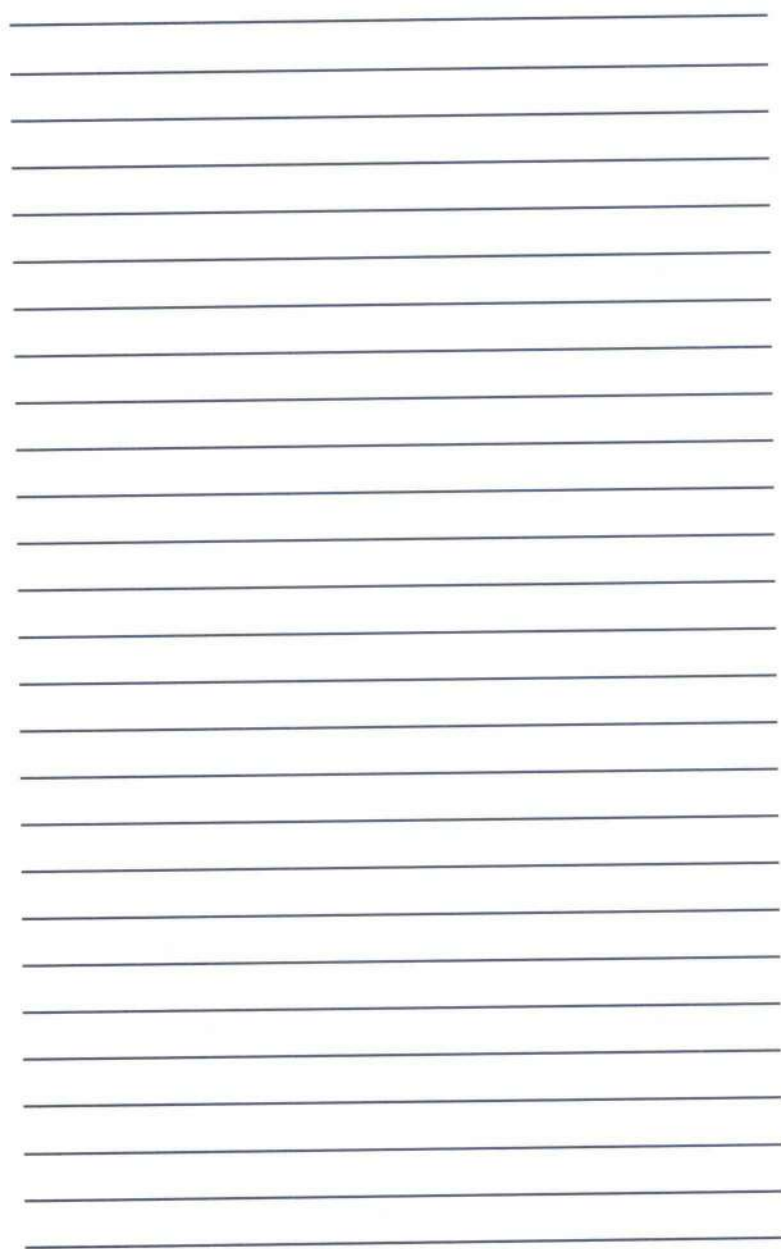
²⁵ E.C. GERHART, *Quote It*, p.290.

²⁶ *First Nani A. Palkhivala Memorial Lecture*, 16th January, 2004.

his first appointment as Chief Judge proudly showed his wife the chair in the court-room of his illustrious predecessor-in-office of nearly half a century ago Chief Justice Benjamin Cardozo (a legend amongst Judges of the United States). And he said to his wife in a reverential whisper - "See – this is Cardozo's chair and this is where I will sit". His wife responded not very reverentially: "Yes – and after fifty years and five more Chief Justices it will still be Cardozo's chair"!

NOTES :

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. There is no handwriting or other markings on the page.



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