

JUDICIAL BEHAVIOR AND CONDUCT IN THE PRESENT SCENARIO

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Before writing on behavior and conduct of Judges of District Courts, it will be proper to apprise them of their position mentioned in Constitution of India. Article 261(3) of Indian Constitution provides that final judgments or orders delivered or passed by Civil Courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law. The above provision makes it clear that all the judges while discharging their duties in District Courts enjoy constitutional authority. Their position and authority cannot be compared with the position of other civil servants discharging their duties to maintain peace in the society. That is the reason; I always favour calling them '*judges*' and not the '*judicial officers*'. They are not the officer but judges. This position was reiterated by Hon'ble the Apex Court in All India Judges Association v. Union of India, (1992) 1 SCC 119, holding that judges of district judiciary are exercising sovereign functions of the State. Their status and position cannot be compared with the officers of district administration or the police administration. If there can be any comparison, their position is at par with the political executive because going by nature of duties they are supposed to discharge, they are decision makers and such decisions by way of judgments and orders are binding on all throughout the territory in which they are exercise their jurisdiction. Accordingly, their behaviour, conduct, temperament and tolerance should also be at par with their constitutional position and the same cannot be compared with other officers discharging their duties for implementing the policies in the society. In my view, on the basis of their constitutional position and the nature of duties that they are discharging, their conduct and behavior should be regulated.

The society or the social structure cannot be static. It is changing rapidly as per the changing circumstances. New scientific and technological innovations are coming up day-to-day. The implementation of new scientific innovations is accordingly affecting the social structure. The law also cannot

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manage to be static. It has to be implemented in the changing circumstances without violating its basic structure. Sometimes, it seems to be a debatable question whether the judges can be permitted to modify or change their behavior, conduct, power of tolerance while discharging their duties in the change scenario of the society. In my view, there is no limit of good behaviour, politeness and sweet speaking, cool temperament, tolerance, forgiveness and impartial but firm conduct. The standard of such behavior, temperament, tolerance should be of higher degree in every changing society and it cannot in any way be diluted. Considering the duties and functions of the judges, the judicial conduct and behaviour based on ethical and moral principles requires a standard of highest degree of purity even in changed scenario.

The people of India have certain expectations from the judges of district judiciary. The legitimate expectations can be summarized as speedy adjudication (not mere disposal) and affordable justice, maintaining cordial atmosphere within the court premises and free mindset of the litigants without any fear of adverse action against them. Judicial freedom and judicial independence does not only mean that a judge has to discharge his function independently, freely and without bias. But it also means that judges are legitimately expected and bound to create such an atmosphere in the court, so that the litigants can freely express their grievances to them directly with the hope for its quick and inexpensive redressal. In this regard, judicial officers should be proactive at the time of recording evidence to reach to the truth. Motive of the judges should be justice delivery and not mere disposal of cases.

As there are certain legitimate expectations from the judges, judges are also under an obligation to regulate their judicial conduct regarding legitimate expectations of the people. I can summarize these legitimate expectations as duty to adopt a scientific mechanism while making endeavour for discharging their functions to redress the grievances of litigants, duty to afford the right of personal hearing, duty to create good atmosphere in the court, duty of being a good listener, duty to inform the tentative judicial life of the case, if required, duty to uphold integrity, duty to prefer settlement of cases rather disposal in present scenario etc.

I have mentioned all the legitimate expectations of litigants towards the judges and the judicial conduct with reference to such expectations in

simple term. But the question that arises is how these duties can be easily maintained and discharged by the judges. In my view, it is only possible by way of ethical and moral principles that judges in the district judiciary can afford to maintain the judicial conduct for the purpose of discharging their duties they have towards the litigants. But as said by Justice R.C. Lahoti, the then Chief Justice of India, in *Cannons of Judicial Ethics* that who talks of ethics in these days? And who listen to ethics? Justice Lahoti has mentioned it in a very beautiful way by giving an example as- A patient visited a doctor's clinic and asked the receptionist

“I want to see a specialist of eyes and ears.”

The receptionist said “There are doctors of ears, nose and throat and there are doctors of eyes. There is no specialist who treats both the eyes and ears”. But then why are you in need of such a doctor?”

The patient replied “These days I do not see what I hear and I do not hear what I see”.

Thus, the last lines of above message, that I do not see what I hear and I do not hear what I see, really are the guidelines for every judge. His conduct, behavior and approach should be such, which is suave and soothing to eyes and ear. It also gives me an opportunity to discuss about the judicial ethics and morals. According to Justice Thomas of the Supreme Court of Queensland “while we discuss judicial ethics, there are two issues to address namely-The identification of standard to which the members of judiciary must be held; and (ii) a mechanism, formal or informal, to ensure that these standards are adhere to”.

In simple words we can say that judicial ethics, morals and judicial behavior are the basic principles of right action for the judges to ensure fair trial. They consist of or relate to moral action, conduct, motive or character of judges, what is right or befitting for them. It can also be said that judicial ethics consists of such values as belong to the system of judiciary without regard to the time or place and are preferred for justice dispensation. As Alexander Hamilton has rightly said

“The judiciary... has no influence 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- a speaking impartial judgment.*

(Cannons of Judicial Ethics Universal Law Publication page no. 14 words in italic mine)

Under the Constitution of India, the concept of rule of law came to be accepted and developed. Article 50 prescribed the guidelines of separating the judiciary from the executive in the public services of the State. This position is the outcome of recognition of the fact that the judiciary is a class separate from the executive. This also recognizes constitutional duties of the judges to uphold the rule of law in any circumstances and under any condition. I can also mention that the district judiciary also requires institutional support for upholding this standard to maintain the rule of law. Maintaining the rule of law certainly requires some standard of conduct different from that of the ordinary people including the members of executive class. A passage from writings of Sir Winston Churchill generally quoted by Law Commission of India in several reports and recommendations holds a lot of relevance in this regard. I am mentioning the passage of Winston Churchill because it is very much relevant for judicial ethics and judicial conduct

“A form of life and conduct for more severe and restricted than that of ordinary people is required from judges and though unwritten has been most strictly observed. They are at once privileged and restrictive; they have to present a continuous aspect of dignity and conduct”.

The said passage shows that judges have to lead a restricted life. Austerity is a quality to be practiced by every judge- personally as also in the public functioning.

This necessarily gives rise to a situation where the judge must have passion, perseverance and pains-taking habits.

Accordingly, the conduct of every judge should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public glamour, regardless of public praise and indifferent to private, political or partition influences; he should administer justice according to law, and deal with his appointment as a public trust, he should not allow other affairs of his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambition or increasing his popularity.

Judicial Behavior and Conduct in the Present Scenario

I have mentioned the qualities of judges which they must have while discharging their functions in letter and spirit. The above passage of Edmond Burk inspires us all how these standard can be maintained. I am saying it in a very simple language that this standard and judicial conduct of the judges can only be maintained by surrendering all our acts and deeds to the authority of God Almighty. Ultimately, it is Almighty God who has blessed judges with such incomparable work and function to discharge. There is no space for judges just to do work. They must enjoy work. There is a difference between doing the work and enjoying work. The difference is ethical in the sense that when any act is done while surrendering everything by the doer to the authority of God Almighty, he will do it in true spirit without bothering above its consequences. He will do it fairly, independently and impartially because in the dictionary of God Almighty there is no space for other words. The path is slightly difficult but not impossible.

I am also mentioning the way in which a person can surrender to the authority of Almighty God. For the guidelines of the judges working in district judiciary, I can say that by observance of law of nature one can surrender to the authority of God Almighty. The life of the judges should be regulated as per the principle of natural justice. May be their eating habits, lifestyle, time management etc. everything should be governed strictly by the law of nature. If it is done, every judge will be very much cautious about his health, physical and mental, quintessential for discharging his judicial function efficiently.

Judges are more mortals but they are asked to perform a function that is utterly divine. The above lines of Professor Pa nick show that judges do not have an easy job. They repeatedly, regularly and in day to day business do what the normal man of prudence seek to avoid i.e. making decisions.

District judiciary is the final face of judiciary for almost 80 percent of the people in India. Therefore, judges should be sensitive enough for the cause of justice delivery because no government or any other forum can survive without justice and liberty. As rightly said by Robert Ingersoll

“A government founded on anything except liberty and justice cannot stand. All the wrecks on either side of the stream

of time, all the wrecks of the great cities, and all the nations that have passed away-all are a warning that no nation founded upon injustice can stand. From the saint enshrouded Egypt, from the marvel wilderness of Athens, and from every fallen or crumbling stone of the once mighty wrong, comes a way as it were, the cry that no nation founded on injustice can permanently stand.

I found it very true regarding the justice delivery by judges of the district judiciary. I am hopeful that they will understand their responsibilities to be discharged under municipal law as well as under law of God Almighty.

May God Bless All

Thanking You.
