

WEST ZONE-II REGIONAL CONFERENCE
ADDRESS AT SESSION-2 ON “ELEMENTS OF JUDICIAL BEHAVIOUR”
ON 24TH FEBRUARY, 2024 AT JODHPUR

“यतो धर्मस्ततो जयः”

is the slogan of the Supreme Court of India. It means where there is Dharama or righteousness or truth, it alone will prevail i.e. “सत्यमेव जयते” truth alone triumphs.

Man is a social and civilized animal as distinguished from other living beings who normally live in jungles. The law of jungle “Might is Right” cannot be applied to human beings who are ordinarily governed by the rule of law. The concept of law and justice is as old as human civilization. A successful judicial system is the hallmark of any developed society.

It said that “Courts are to dispense justice, not to dispense with justice”. This is possible only if lawyers and judges who comprises the judiciary maintains the highest standards of ethics and judicial behavior.

Today, we have gathered here in this session to dwell into the heart of our legal system to examine essential and often complex subject of judicial behavior.

I begin with the profession of law which according to the great thinker *Cicero* is the most noble profession and the lawyers are the high priests of the shrine of justice. People used to regard lawyers as peace makers. It is said that "if you want peace, work for justice as lawyers do".

The flip side of the coin is that the practice of law has become more of a business and less of a profession because of elements of commerce and immorality creeping into it. Thus, people have started denouncing lawyers. Therefore, it is necessary to focus upon professional ethics or judicial behavior of both the wheels of chariot of justice.

I may remind that a lawyer has a multifacet personality. He is an officer of the court as well as its ambassador outside. He owes duty to his client, to his opponent, to himself, to Court and also to the society. He also owes duty towards the junior members of the Bar. It is the responsibility of the senior lawyer to ensure that the new generation entering into the profession of law turns out to be good lawyers, jurists and great judges. They should provide them with proper training and guidance.

A small but a real story would be beneficial to bring home the point on ethical behavior of lawyers.

An advocate on record of the Supreme Court wrote a letter to the Law Minister of Maharashtra. He apart from other things wrote "You might have got an advocate on record in this Court but I would like to place my services at your disposal if you so wish and agree." This was treated to be unethical. Proceedings for professional misconduct was drawn against him which travelled up to the Supreme Court. The Supreme Court observed that:

"he had mischosen his profession. The letter amounted to soliciting brief and that apparently he was a man of weak moral fibre. If he was ignorant about the elementary rules of professional ethics, he had demonstrated the inadequacy of his training and education befitting a member of the profession of law. If he knew that it was highly improper to solicit brief and then he wrote the post card in question, he was a very unworthy member of the learned profession."

Accordingly, the advocate was punished and was suspended from practice for 5 years. This used to be the standard of ethics expected of the lawyers but now it has all dwindled.

Now let me come to the judicial behavior of the Judges.

The Judges of yester-years used to maintain high standards of impartiality and good behaviour. The principles of judicial behaviour have ancient roots. According to a Sanskrit maxim persons entrusted with judicial duties are supposed to be learned in Vedas and wise in worldly affairs. People trust the courts more than the administration; they look upon the judiciary for the protection of their rights & liberties and for protection against hazards of bureaucracy.

Before I go on to explain the elements of judicial behaviour, we need to understand why appropriate judicial behaviour or conduct is of a paramount consideration for a judge. I would like to quote Justice K. Ramaswamy from his decision in ***C. Ravichandran Iyer v. Justice A.M. Bhattacharjee***¹. He beautifully wrote, and I quote:

“...The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of the judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution.... Bad conduct or bad behaviour of a

¹ Sumeet Malik, *Thus Spake Their Lordships*, (Eastern Book Company, Lucknow, First Edition, 2016).

Judge, therefore, needs correction to prevent erosion of public confidence in the efficacy of judicial process or dignity of the institution or credibility to the judicial office held by the obstinate judge.”²

It can be said that judicial ethics are the basic principles of right action of the judges. It consists of or relates to the moral action, conduct, motive, or character of judges; what is right or befitting for them.

A judge should be austere and restrained, impartial in temperament, steadfast, God-fearing, assiduous in his duties, free from anger, leading a righteous life and be of good family. The conduct of the judges, their neutrality, impartiality, independence and the judicial discipline are all essential components of the good judicial behavior of a judge.

A judge ought to remember that he is not himself an author of his judgments - he is only an actor/ facilitator who has to play his role conforming to the script representing the Will of the Almighty God who is the real story writer.

² C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, (1995) 5 SCC 457, paras 25 and 26.

It is for this reason that a judge is rarely heard claiming 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. It is rightly said that Judicial Officers discharge divine functions though they are not divine themselves. In discharge of their divine duties they have to live like a hermit and work like a horse.

Socrates correctly described the essential qualities belonging to a good judge: "To hear courteously; to answer wisely; to consider soberly; and to decide impartially."³

The following words of **Dr. K.N. Katju** are very relevant and important words of wisdom:

"Of course, the ideal judge would, by his method and behavior, ensure that every litigant left his court with a feeling that he had a fair hearing and that he or his counsel had not in any way been hustled. There are many ways in which this feeling can be created without permitting undue procrastination of argument or the hearing. I have seen several judges do it to perfection."

³ David P. Sterba, (a retired Illinois appellate justice and a former presiding judge and trial judge) "Good judicial temperament the hallmark of a good judge", Chicago Daily Law Bulletin Available at <https://www.chicagolawbulletin.com/law-day/2015/david-sterba-forum-ld2015.aspx>

At the same time, a judge should not sit with any pre- conceived notions but with open judicial mind. Justice demands that the judges should not approach a cause with any pre-conceived notions.

In his memoirs, Kanhyia Lal Munshi referred "judicial mindedness" as a component of the broader expression "judicial propriety". He writes:-

"By judicial mindedness I mean the quality in a judge of not being influenced by the papers read before the case is opened; of being ready to listen to counsel till the end with an open mind; for having scrupulous regard for relevancy and yet neither too talkative nor too silent nor dogmatic; of weighing the pros and cons of relevant points with unbiased mind, and writing the judgment in which all the points are dealt with in proper perspective."

"Judicial Officers cannot have different standards, one in the court and another outside the court. They must have only one standard i.e. rectitude, honesty and integrity."⁴

The judicial propriety or behaviour does not end in the court room. It is equally to be observed in private life by the Judge. He is to

⁴ Daya Shankar v. High Court of Allahabad (1987) 3 SCC 1, para 11.

conduct himself in conformity with certain time-honoured standards such as to avoid familiarity with public personalities and invitation from persons likely to have court cases before him. He or his family members should not make any investment in any business venture which may likely to embarrass him in discharge of his duty. In short, the private conduct of a Judge must also be virtuous.

A judge is supposed to be neutral and has to act like an umpire in any game. In other words, he has to be impartial. Neutrality and impartiality goes hand in hand and is very basic to the administration of justice and is one of the elementary rule of natural justice.

I quote former Chief Justice Hamidulla Beg from one of his Judgements-

"Judges must, no doubt, be impartial and independent. They cannot, in a period of intensified socio-economic conflicts, either become tools of any vested interests or function from the Bench as zealous reformers propagating a particular course. Nevertheless, they cannot be expected to have no notions whatsoever of their own, or to have completely blank minds on important questions indicated above which, though related to law, really fall outside the realm of law. They cannot dwell in ivory towers or confine their processes of thinking in

some hermetically sealed chambers of purely legal logic artificially cut off from the needs of life around which law must respond. Their differing individual philosophies, outlooks and attitudes on vital questions resulting from differences in life, will often determine their honest choices between two or more reasonably possible interpretations of such words as 'amendments' or constitutional power' in the Constitution."

The Supreme Court in its judgment in ***Tarak Singh vs. Jyoti Basu*** explained the concept in the following manner: "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 the 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 outside." ⁵

Civility in a judge is his ornaments and independence his divine virtue. The independence of judiciary means, no interference in the judicial functions of the judges either by the Government or the

⁵ Tarak Singh vs. Jyoti Basu, (2005)1 SCC 201, para 22.

Executive Authority. In the older days, not only the executive but even the king was not supposed to interfere with the judiciary.

Very often we talk of committed judiciary. Justice Vivian Bose, denounced it and said "I am dead against a 'committed judiciary'.....'dead against robot judges.'" He further went on to say "I stand for an independent, dedicated, not committed judiciary, for honest and upright judges who have the courage to decide according to their experience, conscience and convictions.

The following incident is good enough to demonstrate how fearless and independent the judiciary of this country used to be.

On one occasion Lord Curzon, the Viceroy and Governor- General (1899-1905) broke his journey at Allahabad while returning from Shimla to Calcutta and decided to visit the High Court. The Chief Justice, Sir John Stanley, sitting with Sir Villiam Burkitt, was hearing arguments of one of the English Barristers. On arrival at the High Court Lord and Lady Curzon were welcomed by the Registrar who then ushered them to the Chief Justice's Court. The Viceroy and Vicerene sat behind the Judges who neither stood up to greet them nor turned to look back. The Counsel continued his arguments as if nothing had happened. The proceedings were not stopped, not even disturbed.

After a little while the distinguished visitors left as they had come, without any formal ceremony/felicitation.

In the evening at an 'AT Home' to the Viceroy at Mayo Hall Sir John Stanley met Lord Curzon. He explained to the Viceroy the courts conduct during his visit. He said "Your Excellency" you will appreciate, we represented the Crown at the moment, and it would have been a disrespect to the Crown if we had allowed the work of the Court to have been disturbed." The Viceroy gracefully replied, "I quite appreciate it."

This occurrence shows, amongst other things, how zealously Judges upheld their dignity and judicial independence vis-a-vis the Executive.

In the end, a caution is also sounded that a Judge should refrain to comment on the conduct of any party on the basis of his personal knowledge and to follow the judicial discipline in discharge of their official duties.

As a judge, it is our duty to prevent lawyers and all the stakeholders of the Court including the administrative staff of the court from engaging in sexist or other inappropriate conduct within the court precincts. Since our court staff are generally the first point of contact, it

is the duty of every judge presiding over a Court to ensure that his personnel staff also conform to the prescribed norms of conduct.

All judges and even their court staff should refrain from using abusive or gender-insensitive language, any misbehaviour or any kind of inappropriate conduct. It is the duty of a judge to ensure that whosoever is present in his court including administrative staff, lawyers, litigants, or even interns for that matter are protected from differential treatment based on caste, race, gender, religion, etc. Everyone shall be treated with respect and dignity.

Further any statement made by a judge in a court shall be tempered with care and courtesy. Any derogatory remarks or personal comments passed by a judge against any person inside the courtroom, even unintentionally, might not only damage his own reputation but also distort the portrait of an impartial judicial system in the minds of a common man.

Five qualities are needed in a judge which are the symbol of wisdom and I am sure that all of you who are present here must have heard it somewhere in your judicial career but nonetheless, I would like to share it once again at the cost of repetition. The first is patience, the second is listening, the third is understanding, the fourth is pondering

and the fifth is practice.⁶ As Judges we must be careful about how we engage with our colleagues and lawyers in court and even outside the court, especially during these modern times when our judicial behaviour is subject to regular public scrutiny. Circulation of heated courtroom exchanges amongst judges or between a judge and a lawyer during a video conference or live proceedings can be seen on social media.

Therefore, with the rapid use of technology in courtrooms and greater public scrutiny, courtesy demands that a judge should be all the more vigilant and refrain from passing scanting or insulting judicial remarks against a co-judge, lawyers, or any party involved in the proceedings as it tends to reduce the judicial confidence. After all, there is a saying that "He who is slow to anger is better and more honourable than the mighty, And he who rules and controls his own spirit, than he who captures a city."⁷

Judicial behaviour also includes learning and unlearning, adapting to new and emerging scenarios. As Justice K. Ramaswamy, in his judgment, ***Krishna Swami v. Union of India***⁸ mildly puts that "...The Judge is the living oracle working in the dry light of realism pouring life and force into dry bones of law to articulate the felt necessities of the time..."⁹ These words of Justice Ramaswamy reinforce

⁶ Justice R..C. Lahoti, *Canons of Judicial Ethics*, pg. 44, Universal Law Publication, New Delhi, 2005

⁷ Justice R..C. Lahoti, *Canons of Judicial Ethics*, pg. 45, Universal Law Publication, New Delhi, 2005

⁸ *Krishna Swami v. Union of India*, (1992) 4 SCC 605, para 39.

⁹ *Ibid.*

that we as judges not only bring life to the law but also change, adapt, and readopt as per the gravity of the situation.

In the end, I wish to say that as a court of first instance, it is the judges of the district judiciary who interact with people first, therefore public trust in the judiciary is the reflection of the behaviour of the judges of the district courts.

I would urge my brothers and sisters from the district judiciary that it is your shoulder on which the faith of justice delivery is entrusted with, sheds the hierarchy of colonialism, caste, class, and gender, and march ahead with civility and dignity.

ईश्वरः मम न्यायादाता।

God is my judge.