

Judicial Ethics

I am happy and glad that the Judicial Academy has organized this training programme on the judicial ethics and professional duties and responsibilities of advocates. It is very apt in these days of falling value to impart training on ethics and values. I applaud all connected with the judicial academy for their endeavour.

The concept of law and justice is as old as human civilization. In applying law and in dispensing justice, the lawyers and judges play the most important role.

It is said that “courts are to dispense justice and not to dispense with justice”. This is only possible if Lawyers and Judges whocomprise the Judiciary maintain the highest standards of ethics and judicial behaviour.

A great thinker Cisro called law a noble profession and lawyers as the high priests of the shrine of justice.

Such great is the profession of law that people regard lawyers as peacemakers and as persons who help to build the World. It issaid that if you want peace, work for justice as lawyers do.

The other side of the coin is that practice of law has become more of a business and less of a profession because of elements of immorality creeping into it. Thus, people have started denouncing the lawyers.

Therefore “professional ethics” is of paramount importance.

Justice is not only about law, equity or principles of natural justice but it is about ethics also.

A lawyer has a multiple personality. He owes duty to his client, to the court, to his opponent, to himself and also to the society. He is an officer of the

court inside and its ambassador outside.

A small but a real story would be beneficial to bring home the point on ethical behaviour 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.*"

On the allegation of professional misconduct the matter travelled upto 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 years¹.

You can well imagine the standard of ethics which was expected of the lawyers in the recent past.

A good lawyer also owes some duty towards the juniors in the profession. A beginner of today, who is at the base may later reach the summit of the profession. It is therefore, essential that such a new entrant should be well equipped to shoulder the responsibility as a member of the legal profession. Thus, it becomes the responsibility of the well established seniors at the bar to

¹ In the matter of 'A' an advocate –AIR 1962 SC 1337

ensure that the new generation entering the profession of law turns out to be good lawyers, jurist and great judges. The seniors have to provide an atmosphere where these young lawyers may excel. They should provide proper training and guidance to them.

Professional behaviour is of utmost importance in the administration of justice. The proved professional lapses which shake the confidence of the litigants requires to be punished. This professional misconduct may be of infinite variety.

In re A Solicitor, Ex parte the Law Society² it was observed:-

“If it is shown that an advocate in the pursuit of his profession has done some thing with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct.

Now coming to the judicial behaviour of the judges.

According to a Sanskrit maxim persons entrusted with judicial duties are supposed to be learned in Vedas and wise in worldly affairs.

It is for this reason 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.

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

² (1912) 1 KB 302

behaviour of a judge. The Judges of yester-years used to maintain high standards of impartiality and good behaviour.

A striking example of free and independent, Judiciary shouldering full responsibility was well narrated by Justice Vivian

Bose, a retired Judge of the Supreme Court in an Article *“The need for an Independent Judiciary”* Journal Section of 1973 (2) Supreme Court Weekly Reporter which is reproduced below:

“Lord X, I will not disclose his name, is one of the ablest and most brilliant English Judges. But, though one of the world's best Judges, he is one of worst drivers. He was driving in London and committed a bad traffic offence which, but for the presence of mind and good driving of the other side, may have resulted in a serious accident. The police constable on duty stopped him and examined his driving licence. When he saw who Lord X was, he said he was sorry, but he would have to challan him all the same. Now, that raised a ticklish question. The summons would have to be issued by a Magistrate who was judicially subordinate to Lord X. Could that be done? Should that be done? The matter was referred to the Lord Chancellor who in turn spoke to Lord X. Both were quite clear that the law was no respecter of persons, and whoever the offender and whatever his status, the law must take the normal course. Lord X said that though he might be the last word on the law of the land when sitting in the House of Lords, he was no more than an ordinary citizen when behind the wheel of the car and driving it, and must be treated as such. The summons was duly issued.

That raised another problem; this time a personal one. A man summoned for a traffic offence need not appear in court in person, he can be represented by counsel. Would it be right for one of the highest Judges in the land to stand in

the dock before a humble Magistrate who was judicially subordinate to him? Again, Lord X had no hesitation. He said the higher the man's status, the greater were his duties and responsibilities. A poor man who could not afford a lawyer would have to appear in person. It would be wrong for him to place himself above the resources of such a man just because he could afford to do so. So, he appeared in person, stood in the dock, or whatever the place is for traffic offenders in Magistrates' courts, and was treated like anybody else – no special chair, no privileged seat. He pleaded guilty and was fined £ 50 and costs (some Rs.800 or 900). He politely bowed to the Magistrate, paid the fine and left the Court.”

Commenting on the case Justice Vivian Bose adds that the following two things are note-worthy:

- “(1) Every one did his duty right from the police constable at the bottom, through the Magistrate up to Lord Chancellor at the top and a Judge of the House of Lords. After all, there was no accident. The matter could have been ignored or Lord X would have been let off with a warning. But the law ran its full and normal course.
- (2) At no stage was there any thought of rights and privileges or prestige and position. From start to finish the emphasis was on duties, responsibilities and obligations. A warning or a small fine of £ 2 or £ 3 was not thought to be enough. The Magistrate imposed a really heavy fine of 50 and costs.”

The case illustrates “the immense respect the British people have for the laws of their land and confidence in the way they are administered – impartially, objectively and with no favour to great or small.”

In this very context, 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 behaviour, 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.”

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 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 businessventure 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. Therefore, neutrality and impartiality goes hand in hand and is very basic to theadministration of justice and is one of the elementary rule of natural justice.

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 Executive Authority.

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 jealously Judges upheld their dignity and judicial independence vis-a-vis the Executive.

The incidents narrated above clearly demonstrate the importance of professional ethics and the judicial behaviour that has to be followed by the lawyers and the judges both as they are the two wheels of the same chariot in the matter dispensation of justice.

I hope and trust that today's training programme would be a grand success and will go a long way in establishing and promoting ethical values amongst the young lawyers and the judicial officers. I am thankful to the senior members of the Bar Shri U.K. Jalali and Shri Rahul Bharti who have spared their valuable time to come here as resource persons to share their experience at the Bar so as to shape the careers of the younger generation.