

Qualities in a Judge

Shri Shyamal Gupta
Director,
West Bengal Judicial Academy
Bijan Bhawan, Salt Lake, Kol – 97.

A Judge has to be possessed of excellence not only form 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
- (ii) Probity
- (iii) Promptness
- (iv) Patience

Justice Hideyatullah 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”.

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 forth with and without more ado. Though, the art is difficult and requires great skills but practice can enable perfection. However, not all judgments can be delivered extempore; 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 and confidence of “we the people” in judiciary stands on the bed rock 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 source must be in true 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 these deemed acceptable for others. Therefore, the Judge ill-afford to seek from the fallen standard in the society." [(1995) 5 SCC 457 para 21]

Patience & Tolerance:

The greatest quality of a Judge is to have patience which is sister virtue of calmness. Calmness is an essential as fearlessness and honesty to the exercise of good judgement in times of aroused feeling 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 honest 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 or truth.

The power of patience leads as to self-inspection, to the admission of errors and the capacity for forgiveness. A learned man tells us that misfortune can be turned into future 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 give its fruit in return. Without tolerance, patience is not possible. Tolerance is integral and essential to the realization of patience. (Lessons on Patience & Tolerance- Ezekiel Malekar)

Judicial Ethics

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 forms at the national and international level. The fact remains that such a code is difficult to be formed and certainly cannot be consigned to a straight jacket. Mostly these canons have originated in and have been handed down by generation after generation of judges by tradition and connections. If any reference is required to be made to documents, I would choose to confine myself by referring to three of them:-

1. Restatement of values of Judicial Life adopted by the Chief Justice's Conference of India, 1999.
2. The Bangalore Principles of Judicial Conduct, 2002
3. The Oath of a Judge as contained in the Third schedule of the Constitution of India.

2. The Bangalore Draft Principles

The values of judicial ethics which the Bangalore Principles crystallies are:-

- (i) Independence
- (ii) Impartiality
- (iii) Integrity
- (iv) Propriety
- (v) Equality
- (vi) Competence & Diligence.

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

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.

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.

Integrity is essential to the proper discharge of the judicial office.

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Ensuring **equality** of treatment to all before the courts is essential to the due performance of the judicial office.

Competence and Diligence are pre requisites to the due performance of judicial office.

Implementation:-

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 frame work 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.

3. 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 / High Courts while entering upon the office.

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

That I will bear true faith and allegiance to the Constitution of India as by law established;

That I will uphold the sovereignty and integrity of India;

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

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.