

(Extract of the talk of Justice Pankaj Mithal in the 3rd Session of the North Zone Regional Conference on Enhancing Excellence of the Judicial Institution at Lucknow on 26.11.2017)

Elements of Judicial behaviour : Ethics, neutrality and professionalism

Man is a social and civilised animal as distinguished from others that live in jungles. The law of jungle “might is right” is not applicable or cannot be applied to man who is rather governed by Rule of Law. Thus, the concept of law and justice is as old as human civilization.

The natural and moral laws or the rules in common law kept on increasing and became complicated with the development of civilization. Therefore, they were codified slowly.

Manu Smriti in India, is regarded as a great land mark, codifying laws which deal with Dharmshastra, Rajdharm etc.

The progress & development of civilization and the codification of laws and such other factors necessitated services of persons trained in law.

The judicial system in ancient India was highly developed. Yet it is difficult to trace out when a class of persons similar to that of present day lawyers came into existence.

During the Muslim Rule in India, we find references to pleaders and a body of persons called “Vakils” meaning agents representing the litigants, who were paid a percentage of amount of the suit as fees for their services.

The origin of such body of persons representing the litigants may be as lawyers can be best explained on the basis of a scene in an old Hindi film “Pukar” based upon the life of Mughal Emperor, “Jahangeer the just”.

The story goes like this. An arrow from the royal palace killed a

washer-man, who was washing clothes at the bank of a river at night. His widow started veiling and crying. She had no courage to demand justice as she was conscious that the fatal wound was inflicted upon her husband by none else than someone from the Royal family. At this stage, one of the courtiers of emperor Jahangir enters the scene. He listens to the entire story, assesses the situation and decides to take up the cause of the widow. He encourages the widow to demand justice. It was late in the night. He leads the widow to the palace gate followed by members of the washerman community. He asked the widow to pull the rope of the bell of justice, which was hung outside the palace. It was well known that Emperor Jahangir would not shy to administer justice even in the odd hours. The bell was very heavy and the rope was stout. The veiling widow could not pull the rope with enough force to make the bell toll. The courtier keeps encouraging her but she was unable to ring the bell. He waited for some time with patience and then came forward to support the weeping widow. He helped her with one of his hands in pulling the rope. Ultimately, the bell tolled. Emperor Jahangir walks in on the balcony of the palace. He listens to the grievance of the lady washerman and assures her of justice the next day.

The courtier had not used both his hands to pull the rope. He deliberately refrained in applying both his hands as it was not his personal cause. He in fact was adorning the robes of a lawyer and had confined his role to that of assisting the sufferer in demanding justice. This in fact is the true and correct role of a lawyer. An ethical lawyer should never identify himself with the cause of the litigant but perform his duty to the extend necessary.

The profession of law has been sullied. Lawyers have started identifying themselves with the cause of the litigants and instead of helping the litigant or assisting the court have started looking for personal gain at the cost of professional ethics.

The English law was first made applicable to the soil of India

by the *firman* of Jahangir granted to Thomas Roe, Ambassador of King James-I which permitted East India Company to use the English law upon the Englishmen living inside the factory premises of the company. Thus, the present legal profession in India shaped out of the English model of the profession of law as in England.

It is said that “courts are to dispense justice, not to dispense with justice”. This is only possible if Lawyers and Judges who comprise the Judiciary maintains 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 is said 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.

In this context “professional ethics” have come to play an important role.

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 as well as 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 years.¹

This used to be 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 ensure that the new generation entering the profession of law turns out to 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.

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

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.

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.

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 behaviour of a judge.

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 respector 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 any body 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 illustrate "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."

The first principle of judicial propriety is based upon the famous maxim of jurisprudence *audi alteram partem* meaning 'hear the other side'. It provides that the opportunity must be given to the

parties to be heard and the opportunity of hearing must be reasonable and not illusory. There is an old saying “he who decides the case without hearing the other side, though he decides justly, cannot be considered just”

The another sacred maxim of such judicial propriety is that “no man is to be a judge in his own case”.

Then comes the oft quoted dictum evolved from the English case of Rex Vs. Sussex Justices³ that “Justice should not only be done, but should be seen to be done.”

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.”

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

³ (1924) 1 KB 256

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.”

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 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. Therefore, 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."*⁴

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.

In the older days, not only the executive but even the king was not supposed to interfere with the judiciary. On the contrary, it was the duty of the Judge to interfere in the wrong judicial decisions of the king. The striking example of free judiciary can be well illustrated with reference to an old incident.

Within seven years of its establishment (1866) in the year 1873, the Allahabad High Court was involved in a controversy with the Government which related to the Lieutenant-Governor's interference with the judicial functions of a subordinate court.

One Girdhari Lal was plaintiff in a civil suit which was dismissed with costs to be paid to the defendant. Having failed to pay the same he was put in civil prison, Dehradun. During an inspection tour, Sir William Muir, the Lieutenant-Governor, being moved by the prisoner's distress asked the Subordinate Judge to initiate proceedings under the Insolvency Act and, if it was found that Girdhari Lal had no means to pay the decreed costs, to consider

⁴ Per Justice Mirza Hameedullah Beg in Smt. Indira Nehru Gandhi Vs. Raj Narain, 1975 SCC Supp 1.

the question of his release.

The matter came to the notice of the High Court presided over by Chief Justice Sir Robert Stuart. The Chief Justice sent a protest to the Lieutenant-Governor stating that his action amounted to an unwarranted interference in judicial administration. As Sir William Muir failed to appreciate the High Court's view, the question had to be referred to the Government of India. In the end the Court's objection was upheld by the Governor-General-in-Council (March 1874); the independence of the Judiciary was vindicated.

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 jealously 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.

In 1937, on the elevation of Sir Shah Mohammad Sulaiman to the Federal Court, Sir John Gibb Thom became the Chief Justice. He was a great champion of the independence of the Judiciary. During his time (1937 – 1941 as C.J.) the Chief Secretary of the Uttar Pradesh Government made the mistake of sending a circular letter to all the District and Sessions Judges in the State commenting upon the adverse effect on the administration of justice by the liberal grant of bail applications. One of the Sessions Judges, being in a fix, forwarded the letter to the High Court for advice. The matter was taken up by Sir John Gibb Thom who communicated his objection to the State Government in strong terms. At the same time he asked for the withdrawal of the circular and for an apology from the Chief Secretary within a week. It was added that if this was not done, the Chief Secretary would be answerable for contempt of the

Court. As expected, the Chief Secretary immediately withdrew the circular and tendered an apology.

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.

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