

The Moral of our Judicial Pronouncements

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The vast period of a century of judicial history of our High Court, illuminated by successive judges of great talents and calibre, have tended to evolve a policy reminiscent of their outlook in dispensing justice between man and man. The dawn of political freedom, achieved in 1947, provided a test of the strength and soundness of that policy and also an occasion to judge whether the doctrine of pure natural justice that had held its sway for over three quarters of a century needed any change in its basic foundations or applied in an equal degree to the altered conditions as well.

The policy and standard, pursued by our High Court before the advent of independence, derived their sanction from the highest ideals of judicial morality which the human conscience could approbate. With the advent of independence a new panorama was opened which promised a wider scope for our instincts in the judicial as well as the political and social spheres. The dominant urge then was to enhance and enrich the international prestige of our country for its cult of broad-minded justice as the foundation of its judiciary. No doubt, the judicial structure to be erected in our new-born State for the administration of its laws could be taken as the index of our sense of uprightness and public justice. It was to be a mirror reflecting the honour and applause which the country was destined to earn in the councils of the world. I would every moment be moved by this larger consideration and strive to advance our prestige to achieve the highest peak of judicial perfection and dignity.

Fortunately, there was no difficulty in the wake of our achievement of political freedom in following the standard that had governed our legal role for three quarters of a century before. A review of that standard would, in effect, be a review of the rule and policy adopted in our Courts in the post-independence period also.

That, then, is the standard and policy which have permeated through our judicial administration with surprising uniformity and have remained unaffected by events and forces tending to shake its functional lubricity. It is a synthetic concept born of a highly cultured outlook of generations of judges who have revealed an astounding consistency of faith and conviction in the mastery of the role of human conscience in solving human affairs.

The Judge's outlook, to which I have just referred, is foreshadowed in the brief phraseology of the oath he has to take on ascending the Bench. The terms of that oath are simple and explicit—"shall perform my duties to the best of my knowledge, ability and judgment." On the assumption that, before a person is appointed to the Bench, his knowledge, ability and judgment have already been tested and found to conform to a certain standard, he is required to declare that he would make the best use of them in discharging his work. The very fact of his appointment is a testimony to his being equipped with those qualities, and any suggestion or assertion that he has not acted well is understandable only on the hypothesis that he failed to make a judicious use of them.

It is essential to visualise the real implications of the terms of a judge's oath in the abstract, as also of his promise to act to the best of them, when he has sat on the Bench. They must be conceived both in their individual and also in their collective sense. The word 'knowledge' would refer to the entire information which the declarant has of things generally and of the facts and law relevant to the cause before him. The term 'ability' would refer to the judge's capacity and efficiency, varying with each man's educational and cultural attainments, and the last word 'judgment' to the ultimate result of the relative functioning of the first two qualities involving a co-ordination of ideas into a logical product. Collectively the phrase would, imply a state of perfection achieved by a balanced working of the physical, mental and moral powers of the individual and calculated to adapt him to the technique of a judicial career.

It is in the judge's oath in the above terms that the real symbol of his faith is enclaved. It is there that his moral self comes to play in harmony with his mental make-up. It is there that a ground is furnished both to the outside world as also to that ethereal power and Light, the conscience in him, to pronounce whether he has behaved well or otherwise. His conduct becomes primarily a matter between him and his Maker and is only afterwards a matter between him and anyone else.

But once you make it a matter for the sanction of your, conscience, which is another name for the sanction of the Supreme Being, give Him any name you like, and you have no escape from that, you bring yourself in sight of a vast ethological panorama, before which you stand almost in chains and secluded ruthlessly from all alien thoughts and where you simply reveal in your passion, for the search of truth. Of that truth there are no variations and no adjustments, except in so far as they may be influenced by variations in the degree of different persons' training, culture and experience and their resultant outlooks. The conflict in judicial orders on the same or similar materials has its origin not in any conceivable changes in the essence of that truth but only in the diversity of intellectual equipments which different judges possess. Such conflicts have 'no worries for the judge' who proceeds on his work in complete allegiance to the sovereignty of his oath.

Such a task may seem to be fettered by imaginary handicaps, and it is there that a judge's courage is put on its trial. He would of course be anxious to pass the right judgment, but, not unnaturally, he may also wish that judgment to be welcome to both the parties, without his swerving in the least from the proper track. But the matter before him may be such or the parties before him may be so conservative. About the justness of their claims that it may never be feasible to please them both. With rare exceptions, I found the parties before me equally earnest and assertive, and I failed, as I had to fail, to please both of them. I, however, felt that I had done my part, if I did not provoke such comments as 'hasty', 'impatient',

'discourteous' or 'obstinate', although it was too much to hope being applauded by the losing party, whatever was the reaction of the losing counsel.

But where there is a clash between two ideas, one of acting to the best of one's knowledge, ability and judgment and the other of satisfying both the parties and their helpers—a practical impossibility there is no question before a Judge of making a choice. His faith, his creed and his mission leave him no option, and he turns blindfolded to the only unalterable course open to him of acting to the best of his knowledge, ability and judgment. He then completely detaches himself from his surroundings and resigns himself to that infallible source of wisdom for the judgment and decree that he has to pass. He is wholly indifferent to the opinion of the gallery or the consequences that may follow and has indeed the complacency of obeying the dictates of his conscience alone. He knows these to be inevitable, but he also knows that such reactions only demonstrate the dignity and the sacredness of the promise he made on the first day of his work.

This then is the sublime task, a determined scorn of fear of the entire surrounding and a concentrated appeal to that unheard voice, through which the Almighty Being conveys His message to His human agent as the most natural culmination of the faculties with which He has endowed him. The Judge is inspired to speak out his thoughts in grim detachment from all artificial calculations. His mind works in the open, not behind a screen. He is fearless in his words and explicit in his orders. He has neither the time nor the mind to care for the reactions to his bearing or to his work, and his creed drives him into one appointed channel, leaving him helpless to think otherwise.

There can be only one moral, proclaimed by the verdicts of a Judge moved by the above ideals. As the only source of your light and guidance for dispensing justice in human disputes you have to know of no other authority except that of your own conscience, directing you to choose the form, the scope and the magnitude of your orders and reject fearlessly all other factors likely to influence your mind. All such fears that may arise from your rigid adoption of this rule must be discounted in contempt, and your sole objective must be the approbation of your own instinctive impulse and your sole satisfaction must be the endorsement of your conduct by that God-granted apparatus which you carry in yourself as an unflinching beacon-light throughout your life in this world.