

Canons of Judicial Ethics
- Speech as part of MC Setalvad Memorial Lectures Series

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M.C. Setalvad Memorial Lecture Series started last year. The first lecture was delivered by Hon'ble Mr. Justice R.C. Lahoti, my worthy predecessor in the office of the Chief Justice of India. The subject of the second lecture remains the same as that of first lecture, viz. "Canons of Judicial Ethics". As my senior brother Justice Lahoti said on 22nd February 2005, "nothing could have been more appropriate and befitting the memory of Setalvad than discussing ethics". M.C. Setalvad was an institution in himself, a professional virtues incarnate. He was the tallest of the tall amongst the luminaries in the legal profession. A very brilliant lawyer whose acute mental faculties, forensic abilities and the astute power of articulation put him on such a high pedestal giving him a stature that would always be difficult to parallel. He commanded respect from courts, members of legal fraternity & public at large, one and all, for sterling qualities of his character; a character so strong that he led by example while holding public offices including that of the Attorney General for India. He has left behind a legacy that everyone in the legal profession must bear in mind.

After attaining independence, the people of India adopted and chose for themselves a democratic form of Government. Like any other modern

democratic polity, the system in our country is also divided into three organs, viz. Legislature, Executive and Judiciary. The Constitution divides the powers amongst these three organs and makes them independent of each other, yet creating a system of checks and balances. The role assigned to the judiciary is of utmost importance. This organ is vested with the duty to uphold the Constitution and guarantee that the rule of law envisaged in our Constitution will always prevail. In order to ensure that the judiciary is able to discharge this onerous responsibility, the concept of independence of the judiciary was planted into the Constitution as one of its basic structures, tinkering with which is taboo.

The concept of independence of Judiciary was the cause of concern of the Supreme Court in the case of **S.P. Gupta Vs. Union of India** [1981 (Suppl.) SCC 87], and the Court observed thus: -

“The concept of independence of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon the judiciary and it is by exercising this power which constitutes one of the most potent weapons in armory of the law, that the judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers.”

The Judges thus are a privileged class and vested with duties of great responsibility, holding offices of public trust. It has been often said that the duty of a Judge is a divine duty. The concept of rule of law is dependent on an independent, fair and competent judiciary since Judges are, to borrow words

from the Preamble of Model Code of Judicial Conduct adopted by American Bar Association in 1990 “arbiters of facts and law for the resolution of disputes and a highly visible symbol of Government under the rule of law”.

When we talk of ethics, we mean moral principles that have evolved to keep us on the path of virtue or, to put it simply, morally correct. When we use the word “canon”, it refers to principles of morality that are regarded as very lofty.

Almost every public servant is governed by certain basic Code of Conduct which includes expectation that he shall maintain absolute integrity; devotion to duty; do nothing which is unbecoming of a public office held by him; render his best judgment in the performance of his official duties; be prompt and courteous; not involve himself in acts of moral turpitude; not take part in party politics; not be associated with activities that are pre-judicial to the interests of the sovereignty and integrity of India or public order; not to engage himself in interviews with media, except with the lawful authority of his superiors; not divulge official information which has been entrusted to him in confidence; not accept pecuniary advantage, in particular, from those with whom he is involved in official duties; not to engage himself in private trade or business while holding public office; not to indulge in alcoholism or gambling; to manage his financial affairs in such a manner that he is always free from indebtedness and not to involve himself in transactions relating to property with persons having official dealings with him.

But then, these are general principles governing the Code of Conduct for all public servants. The office of a Judge requires much more. The Code of Ethics expected of those in the judiciary goes beyond the call of duty of an ordinary public servant.

Much has been said down the ages about the code of ethics for the judiciary. In more recent times, Indian judiciary ratified and adopted a charter called “Re-statement of Values of Judicial Life” in the Chief Justices’ Conference in 1999. At the International level, Principles of Judicial Conduct were approved and adopted in November 2002 in the Round-Table Meeting of the Chief Justices from several law systems held in Peace Palace in Hague, Netherlands. I do not intend this to be a compendium of all rules of ethics for judges. I would be highlighting only those, which to my mind are of prime importance.

The people of India look up to the judiciary to administer justice; justice that is fair; justice that is equal & even-handed; and justice that is unpolluted. This expectation is of eternal value. The principles of ethics that is the conduct of an ideal Judge arise out of what is a legitimate well-entrenched right of the people for whom the judicial institution has been created. It is the right of the people of India that the courts will give them their due in the form of justice. The rules of ethics are nothing but a corresponding sacred duty on the part of the Judges to live up to those expectations.

There are certain cardinal principles of judicial ethics that apply to any person holding a judicial office whether at the level of subordinate judiciary or in the highest court of the land. I would broadly categorize these principles into three: one, concerning the acts attributable to his official functions as a Judge; second, concerning his conduct while in public glare; and third, the expectations of him during his private life. Necessarily, most of these principles will overlap the three spheres of life of a Judge.

The oath taken by the Judges at the time of taking over the judicial offices reminds them of their responsibilities and sums up the subject at hand truly, fully and effectually. It obliges them to be **faithful** to the Constitution of India. They undertake that they shall **uphold the sovereignty & integrity** of India and to truly and faithfully perform the duties of their offices **without fear or favour, affection or ill-will** and in doing so shall render judgment to the best of their ability and knowledge. This in a way summarizes the code of ethics for those holding judicial offices.

The oath to uphold and be faithful to the Constitution binds the Judge to the ethos and philosophy enshrined in the Constitution, the supreme law of the land. Since the concept of equality before the law is one of the salient features of the Constitution, it naturally implies that a Judge is expected to always be fair and impartial in his judgment. It is an age-old adage, oft-quoted in legal circles, that "Justice is not only to be done but must be seen to have been done". The obligations arising from the above principle are myriad. The Judge must be **even-handed**. His approach must be **consistent**, irrespective of the fact as to who is before him in the dock. He is to sit with **open mind**. This also means that he cannot act on pre-conceived notions. He may have his own independent views and approach to a given subject. But, in his judgment there can be **no room for personal idiosyncrasies**. He is in the judgment seat in a fiduciary character. He has to apply law as has been established and evolved. He can give a definite direction to the law by adding his views to the debate on a particular issue, keeping himself within the four corners of judicial propriety. His **personal whims** or **caprice** can have **no role** to play in the discharge of his

official duties. It is his duty to apply the law as it exists rather than develop the law anew every time a new person appears before him.

There are certain well-entrenched rules founded on principles of public policy which reflect as to what is expected in the conduct of a Judge. These rules include the following: -

- i) Regard for the public welfare is the highest law (SALUS POPULI EST SUPREMA LEX).
- ii) No man shall be condemned unheard (AUDI ALTERAM PARTEM).
- iii) No man can be judge in his own cause (NEMO DEBET ESSE JUDEX IN PROPRIA SUA CAUSA).
- iv) An act of the Court shall prejudice no man (ACTUS CURIAE NEMINEM GRAVABIT).

These principles are fundamental rules in the administration of justice and are based on rules of good sense and fair play. Some of these are clubbed together to be categorized as rules of natural justice.

A Judge administers justice. In order to do justice, the first and foremost expectation of him is to be **just**. In my view, this expectation itself is the fountain source of all that can be put in the realm of canons of judicial ethics. His life must be one open to **probity**. As a person, in order to be just, has to be **morally right**, a Judge has also to be **fair & impartial** to all concerned. He cannot have any pre-disposed state of mind. It is wrong to say that a person has the power to be a Judge. It is rather his duty to judge and, seen in this light, it is expected that his judgment would not be actuated by concerns of private interests or

considerations. He must hold the scales of justice evenly. He has to be **exact**. He has to be **merciful**. He has to be **decisive**. He has to be **upright** and **resolute**.

The above straight away takes us to the concerns about **consistency**. A fair Judge will always be consistent in his approach to the appreciation of facts and application of law to the facts found proved before him. Inconsistencies in the judgment of an individual bring bad name to the institution. They invite criticisms worded such as “Show me the face and I will show you the law”.

A Judge will always execute the duties of his office **diligently & faithfully**. This broad proposition can be further divided into several sub-mores.

The notions of fairness and impartiality give rise to certain special norms for Judges. These norms are designed so that he remains independent and **uninfluenced**. His job is to hear the parties in the **open court**. It is thus taboo for him to give a private audience to the litigants or their lawyers. He has to **shun social interactions** with such category of persons at all costs. The concept of courts functioning under the public glare generally called “open court” is not an idle one. It is based on the principle of **transparency** because that reinforces faith and confidence of the public in the system. It is, therefore, a sacred duty of every Judge to **function in the open** in discharge of his official duties.

The judicial procedure and practice are regulated by pre-set rules and norms. It is true that procedural law is hand-maid of justice. But, at the same time, it is also true that procedural law has been evolved on the basis of experience of last several centuries. Each step of the procedure prescribed by

the law has a definite purpose and philosophy behind it. In order to do complete justice, sometimes the Judge may have to shed the straitjacket of the procedure but this cannot become a norm. **Compliance with the procedure** established by law ensures that the litigants remain aware of the progress of the case in the Court and would not be taken by surprise at any step of the way.

The judicial system in India faces the challenge of huge arrears. The figures of pendency at all levels are staggering. It may sound clichéd to say that “delayed justice” is “denied justice”. But, every litigant legitimately expects quick justice. With the courts crushed under the weight of sheer numbers, it is not easy to render quick justice. Need to expedite the wheels of justice in each case continues to be of great relevance and importance. In order to meet the lawful expectations of the people at large, it is imperative that each Judge must be in **full control & command** of his court. This brings us to another area of judicial ethics.

A Judge cannot be in command of his court unless he is **fully committed** to the task assigned to him. It is expected from him that he would not adopt the mentality of a menial clerk who works for certain fixed hours of the day to earn his living. The office of Judge is not a service or employment in the ordinary sense of the term. It is an office of public service. A Judge remains a Judge 24 hours a day, 7 days a week and 365 days a year. He thinks about the cases on board even while he is asleep.

In order to show such **commitment**, a Judge must first **cherish** the **solemn duty** he has undertaken. It naturally flows from the above that the Judge must be **studious, thorough, prepared** and **well conversant** with the

factual or legal nuances of the litigation he is handling. This requires preparation before the hearing so that the hearing is properly controlled. This also requires **calm & dispassionate disposition & study** after the hearing. A Judge who is alive to the contours of the case before him would **never permit unending cross-examination** or **infinite arguments**. He would always be in charge and full command of the proceedings in the Court and keep the counsel on either side focused on the issues to be addressed.

This achieves several positive results. A Judge answering to these traits will have a Cause List that **utilizes** his **judicial time** to the **optimum**. Such a Judge would not like to sit idle and, therefore, shall ensure that he has requisite number of cases lined up before him so as to remain pre-occupied throughout the normal working hours. Speaking in the context of trial Judges, a conscious Judge would always ensure that only relevant and crucial witnesses in such number are called on each working day before him as can be examined and thereafter discharged without being burdened with the obligation to be called again and again. He would **studiously protect harassment of the litigants** in general and **witnesses** in particular, by unscrupulous elements. His proceedings will always ensure that the procedure is strictly followed and each case makes the requisite progress, at least to the extent of the step for which it was listed on any given date. All this care & caution shown by a **vigilant** Judge would not only underscore that he is a **resolute** man **firmly in control**, earning him good respect and reputation in the public and the Bar but also **facilitate expeditious disposal** of cases in his Court.

It naturally flows from the above that a Judge can **never be unjustifiably absent** from duty. He has to be **available & accessible** to the people at large who are expected to invoke his jurisdiction for redressal of their grievances. In nutshell, a Judge has to be **punctual & regular** in adhering to the court hours. The need for punctuality and regularity is not only to have full control over the work but also to have a moral authority to **check indiscipline** amongst those who are expected to play a role in the functioning of the Court, including the court staff, members of the Bar, the litigants, witnesses etc. Conversely put, and as a natural corollary, he would **not abdicate** his duties or unconscionably refuse to use his jurisdiction to do justice.

A Judge cannot create discipline in his Court unless he leads by example. In this view, **restraint** and **discipline** are most important attributes of an ideal Judge. Such a Judge would maintain **dignity** and **decorum** in his Court; would not indulge in loose talk; would refrain from unnecessary utterances and would keep his **temper in check**. Since he would not himself indulge in intemperate language, he would not allow anyone else to do so. It naturally inheres in this trait that such a Judge would always be **polite & considerate** and imbued with a sense of **humility**. He would not disturb the submissions of the lawyers midway only to project a “know-all” image for himself. This also means that he would be sitting with an open mind, eager to be advised by the counsel of the parties.

Any power in absence of **accountability** would turn into a tyranny. It is the cardinal pre-requisite of democracy and rule of law that power is accompanied by accountability. Judges can be accountable only by demonstrating exemplary conduct and behaviour and showing a cultured image.

Some critics have accused judges to be prone to developing “a God complex”. George Mikes in his article “Professional Deformities” writes as under :

“It was not that Judges were, or are, Sadists. Very few of them are. But sooner or later most of them develop a ‘God complex.’ When everyone keeps kowtowing to you; when people laugh at your silliest jokes and listen to your most, trivial utterances though they were the Sermons on the Mount; when the outcome of quarrels and arguments, and often the fates of men, and women and their children rest in your hands; when you cannot be sacked from your job, however, incompetent or senile you become when, in other words you are treated like God, then it is difficult not to believe in your own divinity. You are addressed as “My Lord”, almost like Him, so naturally you are inclined to believe. He is your colleague. ”

It is a matter of saving grace that he ends by observing:

I should point out, however, that this rule, like all rules, lacks universal validity. I have known cunning geese. I have met naïve foxes. And I have known modest and almost human Judges.

Some time back I came across a quote which goes something like this: “Never become so intelligent; never become so high; never become so wise; that some day no one may be able to see the human in you”. It is necessary, and it is my firm view, that judges must remain **humane** and **considerate**. They have been vested with divine duties but they would never attain divinity. They are mere agents of the superior power that controls us to do justice between man and man. They have to bear in mind the maxim “Do not do unto others what you

would not have others do unto you”. A humane Judge will always be just and merciful. He would always remember that “mercy seasons justice”.

A just and humane Judge will always be **non-partisan**. He would be **above narrow considerations** and not prone to external influences. His judgment would be **dispassionate**. He would not identify with the cause of a particular section of society. It naturally follows from this that a Judge would always be **aboveboard** and demonstrate absolute **integrity** not only in his Court but also in his private life outside the Court. He would refrain from socializing unnecessarily not only with the persons having official work in his Court but also generally with the society at large, since there is no guarantee as to who could have a case coming in his Court in the future. If his commitment to the job is sincere, he would virtually be left with no time for social life beyond a point.

A Judge need not be unsocial as his personal life would involve his near and dear ones. Yet, he is expected to be asocial, since his movement in any particular section of the society might give rise to reasonable apprehensions in the minds of the litigants about his independence.

I now come to a touchy subject. The tendency to invite judges for different seminars has increased over the last few years. If the intentions were purely academic, this should be a welcome trend. But, unfortunately the tribe of certain sections organizing seminars only to create a pretext to invite certain judges for a small session of lectures or discussions, followed by lavish hospitality, gives rise to anxiety as to whether the motives were holy or otherwise. Personally speaking, I have nothing against judges participating in academic seminars, workshops etc. But this cannot become a regular routine. Judges cannot afford

to make themselves so accessible that they lose the aura of authority around them. The position in the office of a Judge puts him on a high pedestal in the temple of justice. Too much familiarity with those who frequently visit their courts on official business slackens the authority and has the possibility of breeding contempt.

Further, speaking from public platforms, may be on legal issues, generates the possibility that the judges might end up publicly discussing cases pending before them. This would not be healthy. This would create an impression in the mind of the litigants involved in such a case that the Judge is sitting with a pre-disposed mind.

Even further, the issues of law that are generally debated in the workshops, seminars or conferences are closely interlinked with the political issues of the day. A Judge, in order to be impartial, has to be apolitical. In his personal life, he may have certain leanings towards a particular political philosophy. But those leanings cannot reflect in his official exertion. A Judge must never get himself bracketed with a particular political philosophy.

I think Marla N. Greenstein in her article on “Judicial Ethics” as published in Judges’ Journal (Vol.42 of Winter 2003) brought out by American Bar Association put the precept in a more balanced manner. The views to be expressed by a Judge in public debate do not necessarily, or always, mean that he would sit with closed mind if same issue comes up before him. Yet, Judges enjoy high public respect. Words from a Judge in a public forum carry more power than those of a mere citizen. So the right to speak from public platform is “not a right to be exercised flippantly”.

The concept of “due application of mind” involves a mental disposition where the Judge is not only open to listen, comprehend and weigh in balance the arguments advanced before him but is also **open to correction**. Judges are also human beings, prone to frailties as any other human would be. They also sometimes err. It is their bounden duty to be always eager to review, if allowed in law, so that they could undo injustice, if any, done at their hand or at least revise their view so that same mistake would not recur; this, because repetition of error would be suspect as intentional or motivated and therefore, unpardonable.

I talked of external influences. Every Judge in the course of his career is subjected to tests by external influences. They could be in the form of pressure tactics, threats, allurements etc. It is the times when such external influences come into play that the true strength of the character of the Judge comes to the fore. The duties of the Judge render him a person in public service. He is thus a **public property**. There cannot, therefore, be anything about his life which should remain hidden from public glare. His life must be an **open book**. It flows from this that the **assets and liabilities** of the Judge are known to one and all. His **financial or property transactions** should have **no nexus** with his **official dealings**. He must declare the same scrupulously and at no cost should engage himself with anyone connected with his official duties.

Judges also deal with **public money** in the management of the Court. All transactions involving public money by the Judges must necessarily be strictly adhering to the financial rules so that he can be accountable. Any deviation from

the norms invites criticism putting a question mark on his credibility and integrity which a Judge, in the larger interest of the public confidence, can ill-afford.

Coming to the allurements, a Judge must train himself in the beginning of his judicial career not to fall prey to offers of valuable gifts in cash, kind or service from members of the general public. Hon'ble Mr. Justice Krishna Iyer in his book "Law and the People" went to the extent of observing thus:

"It must be said that the independence of judiciary which plays the useful role in democratic societies in checking a class biased Government is being undermined in our country, by such devices as making judges, after retirement or on the eve of retirement, governors, ambassadors, vice chancellors etc. These plums have a seductive influence on superannuating gentlemen and should be avoided, if we are purists regarding the independence of the judiciary."

A judge cannot afford to be accused of acts of moral turpitude. He cannot indulge, in or outside his court, in such behavior as can create doubts about the credibility of his character. His **behavior** has to be a **model** one. Only then he would be able to command respect. Like it has been said: "Caesar's wife has also to be above suspicion". The duty to remain within the bounds of morality is not restricted to the Judge himself. He is to see to it that members of his family, at least those who live with him also subscribe to this philosophy. A scandalous behavior on the part of a Judge, even in his private affairs, is bound to affect his image and prestige in the office of the Judge. This is why the general precept for judges that any member of family practicing in the same Court should not be allowed to do his professional work from the official residence of the Judge.

Much has been said about the need for a Code of Ethics for the judiciary at various points of time. Question arises as to what is the necessity of reiterating the principles which are known to all of us. I would answer it this way. The principles may be known to us. But with all democratic institutions facing the crisis of credibility in the fast changing socio-economic norms, there is always a need to keep reminding ourselves of the Code of Conduct the judiciary is expected to follow. These principles, if reiterated time and again, would hopefully get ingrained in the minds of young judges so that what is expected of them becomes their second nature. The reiteration is also required so that the public at large, in general, and the legal fraternity, in particular, are also wary and do not allow, or lead, those on the Bench into going astray.