



JUDICIAL ETHICS

An Introduction:--

Judicial ethics is part of the larger legal category of legal ethics. Judicial ethics consists of the standards and norms that bear on judges and covers such matters as how to maintain independence, impartiality, and avoid impropriety.

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 8 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.

A Judge is a person bestowed with 'excellence'.

--Shrimad Bhagvad Gita,

While discharging the duties it is imperative on the part of Judicial





Officers to adopt certain "Moral Principles". Moral principles are a set of rules that governs the conduct of human beings.

MEANING:-

Judicial Ethics means "possessing the qualities of good conduct, discipline and morale".

Ethics: Of or relating to moral action, conduct, motive or character; as, ethical emotion; also, treating of moral feeling, duties or conduct; containing precepts of morality; moral. Professionally right or befitting; conforming to professional standards of conduct.

---Black's Law Dictionary (6th Ed.)

According to *The Canadian Law Dictionary*, Ethics means "The basic principles of right action of judges."

Ethics of a Profession" means the general body of rules, written or unwritten relative to the conduct of the members of the profession intended to guide them in maintaining certain basic standards of behavior".

It can also be said that judicial ethics consist of such values as belong to the realm of judiciary without regard to the time or place and are referable to justice dispensation.



'Judiciary is an integrity institution'.

"Integrity according to Oxford dictionary is moral uprightness; honesty. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, honour, reputation, nobility, purity, respectability, genuineness, moral excellence etc. In other words, it depicts sterling





character with firm adherence to a code of moral values. Therefore, Judicial Officers should possess the sterling quality of integrity.

“Integrity is the hallmark of judicial discipline, apart from others. It is high time, the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside.”

Overview

Judicial ethics consists of the standards and norms that bear on judges and covers such matters as how to maintain independence, impartiality, and avoid impropriety.

There is nothing wrong in a Judge having an ambition to achieve something, but if the ambition to achieve is likely to cause a compromise with his divine judicial duty, better not to pursue it, because, if a Judge is too ambitious to achieve something materially, he becomes timid. When he becomes timid there will be a tendency to make a compromise between his divine duty and his personal interest. *There will be a conflict between interest and duty.* Further, Maintenance of discipline in the judicial service is a paramount matter. Acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer.

The confidence of the litigating public gets affected or shaken by lack of integrity and character of Judicial Officer. Judicial officers cannot have two standards, *one in the court and another outside the court.* They must have only one standard of rectitude, honesty and integrity.





They cannot act even remotely unworthy of the office they occupy. It was stated that dishonesty is the stark antithesis of judicial probity, and *"A dishonest judicial personage is an oxymoron"*.

A judge is judged not only by the quality of his judgments, but also by the quality and purity of his character and the measurable standard of that character is impeccable integrity reflected transparently in his personal life as well. *One who corrects corruption should be incorruptible*. That is the high standard, the public has set in such high offices of institutional integrity. Therefore, any departure from the pristine codes and values of discipline and disciplined conduct on the part of the judicial officers will have to be viewed very seriously lest the very foundation of the system would be shaken and, if so, that will be the death knell of democracy and rather 'Honesty' and 'integrity' are the hallmarks of judicial probity and 'Dishonesty' and 'lack of integrity' are the basic elements of misconduct as far as a Judicial Officer is concerned. There is no gainsaying that while it is imperative for the High Court to protect honest and upright judicial officers against motivated and concocted allegations, it is equally necessary for the High Court not to ignore or condone any dishonest deed on the part of any judicial officer. It needs little emphasis that the subordinate judiciary is the kingpin in the hierarchical system of administration of justice. It is the trial judge, who comes in contact with the litigant during the day to day proceedings in the court and, therefore, a heavy responsibility lies on him to build a solemn unpolluted atmosphere in the dispensation of justice which is an essential and inevitable feature in a civilized democratic society.

Judicial service is not merely an employment nor the Judges





merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious".

6 PRINCIPLES

The intention of the Principles is to establish standards of ethical conduct for judges, to provide guidance for individual judges and the judiciary in regulating judicial conduct, and also to assist members of the executive and legislature, lawyers and the public, better to understand and support the judiciary. The principles are stated as SIX "values":

- i. **Judicial independence** is a prerequisite 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.
- ii. **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.
- iii. **Integrity** is essential to the proper discharge of the judicial office.
- iv. **Propriety**, and the appearance of propriety, are essential to the performance of all of the activities of the judge.
- v. Ensuring **equality** of treatment to all before the courts is essential to the due performance of the judicial office.
- vi. **Competence and diligence** are prerequisites to the due performance of judicial office.

I: JUDICIAL INDEPENDENCE





Principle: *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.*

1. A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
2. A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
3. A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
4. In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
5. A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
6. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.





II: IMPARTIALITY:

Principle: *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.*

1. A judge shall perform his or her judicial duties without favour, bias or prejudice.
2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
3. A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
4. A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
5. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
 - a. the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;





b. the judge previously served as a lawyer or was a material witness in the matter in controversy; or

c. the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

III: INTEGRITY :

Principle: *Integrity is essential to the proper discharge of the judicial office.*

1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
2. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

IV: PROPRIETY :

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

1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.





3. A judge shall, in his or her personal relations with individual members of the legal profession who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.
4. A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
5. A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
6. A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
7. A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
8. A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
9. A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position





improperly to influence the judge in the performance of judicial duties.

10. Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
11. Subject to the proper performance of judicial duties, a judge may:
 - a. write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - b. appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - c. serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
 - d. engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
12. A judge shall not practice law whilst the holder of judicial office.
13. A judge may form or join associations of judges or participate in other organizations representing the interests of judges.
14. A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.





15. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
16. Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

V: EQUALITY :

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

1. A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
2. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
3. A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.





4. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
5. A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

VI: COMPETENCE AND DILIGENCE :

Principle: *Competence and diligence are prerequisites to the due performance of judicial office.*

1. The judicial duties of a judge take precedence over all other activities.
2. A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
3. A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
4. A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
5. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.





6. A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
7. A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

CONDUCT AND KNOWLEDGE:-

The office of a judge and the respect for his judgments is protected and gains prestige based on the way a judge conducts himself in his public and private life. Following the highest standards of judicial ethics bears importance in today's world as though a judge may have the best ethical fiber he may inadvertently draw himself into disrepute or controversy for the lack of knowledge of judicial ethics. The failure of such a professional obligation could often even pose a threat to the reputation of the judiciary in general. Apart from dealing with his case load a judge is expected to be well versed with the law and procedures, as well as be up to date with the latest legal developments. The time of a judge is also often consumed by administrative responsibilities. However, inadvertence or ignorance of the norms whatever the pressures of time on a judge can never be cited as an excuse.

Therefore, a judge needs to update himself with not only the changes in the law but also constantly keep abreast with judicial ethics. A judge must appreciate that it is a process of continuous education and must periodically remind himself of the high ethical standards that he is





expected to maintain. While following the established practices is always a well-accepted path, attending seminars and panels on judicial ethics and sharing ideas with fellow judges at various forums about such practices could also provide a valuable opportunity for sharing of experiences and learning from each other.

Apart from providing encouragement to judges to follow such ideals it can also act as a deterrent from unethical conduct. Just as justice must not only be deemed to have been done but also appear to have been done ethics values must also be appeared to have been practiced. Avoiding impropriety and even a semblance of impropriety and being impartial and diligent in his conduct is a duty that a judge owes to the institution of the judiciary itself as he must be aware that the any slackness on his part could have an impact on the public perception of the integrity of the judiciary and in turn affect the independence of the judiciary.

Although it goes without saying that a judge should maintain the highest standards of personal ethics, a judge should not let his standards of personal righteousness, (however high and commendable they may be) come in the way of practicing the required codes of ethical judicial conduct.

New situations and changes in society require us to constantly re-examine and re-affirm our own values. Therefore, judges must constantly discuss and evaluate their role and conduct in the light of such challenges and protect themselves from ethical entrapment. They must take on the challenge and establish for themselves a code of ethics that is always ahead of their times thus setting the benchmark for even other organs of the polity to follow.





Furthermore, unless a judge has a firm grounding in judicial ethics and is religious in its practice, he may fail to anticipate the ethical issues and challenges at the right point in time. And thus if a judge is not conscientious he may be unexpectedly confronted with ethical questions at a later point of time causing unnecessary embarrassment that could easily have been avoided. Thus, *a judge must train himself to recognize and anticipate the ethical challenges and confront them and evaluate their own conduct even when no criticism may be raised by litigants, the Bar, or the media.*

The time is ripe for an open discussion on ethical challenges faced by judges amongst themselves not only to bring clarity to ourselves but also to further raise the standards of ethical judicial conduct for ourselves and place the Indian judiciary beyond any possible reproach. This would be in keeping with the highest traditions of judicial ethics that the Indian judiciary is known and respected for by our people in comparison to any other branch of the polity. And a judiciary equipped with a strong ethical tradition can never lose its moral strength or stature to dispense justice and is protected from attack from all quarters. ***Judges should create an internal forum for themselves where they can come together and discuss new ethical developments and problems.*** Apart from sharing of their experiences and thus refining their own understanding such a forum would also be suitably placed to set the agenda on ethics to be followed by not just by the judiciary but by other branches as well. It need not be emphasized that a judiciary that enjoys the confidence of its people can be a great source of stability in a vibrant democracy such as ours and continue to play a pivotal role in the maintenance of rule of law.

In the current Indian polity the judiciary is called upon to control





and regulate new areas of law every day and is thus under constant scrutiny. Therefore preserving the highest standards of judicial ethics is critical to the judiciary's continued legitimacy and public acceptance. In the above context, it must be stated that "*respect for the judiciary cannot be blindly demanded or enforced. True respect can only come through the proper conduct and dispensation of justice by judiciary itself*".

CONCLUSION :-

The greatest strength of the judiciary is the faith of the people in it. Faith, confidence and acceptability cannot be commanded; they have to be earned and that can be done only by developing the inner strength of morality and ethics.

Accordingly, the conduct of every judge should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public glamour, regardless of public praise and indifferent to private, political or partition influences; he should administer justice according to law, and deal with his appointment as a public trust, he should not allow other affairs of his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambition or increasing his popularity. Hence, the judicial officers concerned should follow certain ethics in writing judgment.

That which should be done is virtue;

That which should be avoided is vice.....

