HOW TO BE A GOOD JUDGE — ADVICE TO NEW JUDGES*
by
Justice R.V. Raveendran†

How can you become a good Judge? Is it by serving as a Judge for a long period with a clean record? Is it by promptly and regularly deciding the monthly quota of cases? Is it by writing erudite judgments? Is it by being honest all through your career? Is it by being considerate and courteous to the litigants?

A Judge’s duty is to render justice. Rendering justice, in a larger sense, means giving every person, his or her due. All those entrusted with power—power to govern, power to legislate, power to adjudicate and power to punish or reward—in a sense, render justice. In the context of Judges, rendering justice, means speedy, effective and competent adjudication of disputes and complaints in a fair and impartial manner, in accordance with law, tempered by equity, equality and compassion wherever required and permissible, after due hearing.

A Judge, by his conduct, by his fairness in hearing and by his just and equitable decisions, should earn for himself and the judiciary, the trust and respect of the public and the members of the Bar.

The “Restatement of Values of Judicial Life”¹ and the “Bangalore Principles of Judicial Conduct, 2002”² establish the Standards for Ethical Conduct of Judges and provide guidance for proper conduct of Judges.

Article 14(1) of the “International Covenant on Civil and Political Rights”³ adopted by the UN General Assembly, to which India is a signatory, states: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public

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* Based on several lectures given to newly appointed Judges at National Judicial Academy, Bhopal and State Judicial Academies of Karnataka, Madhya Pradesh, Delhi, Tamil Nadu, Andhra Pradesh, Uttar Pradesh, Chandigarh.
† Former Judge, Supreme Court of India.
1 Code of Conduct adopted in the Chief Justices’ Conference, New Delhi on 3-12-1999 and 4-12-1999.
hearing by a competent, independent and impartial tribunal established by law." (emphasis supplied) Though the said Article is not about the qualities of a Judge, it precisely sets out the qualities of a good Judge: (i) that he should be competent, independent and impartial, (ii) that he should give a fair and public hearing; and (iii) that he should treat all persons equal. To achieve these, a Judge has to develop certain judicial skills, certain administrative skills, and more importantly, scrupulously follow certain judicial ethical standards.

**Judicial skills**

You require five judicial skills to effectively discharge your functions as a Judge — as an adjudicator presiding over a public judicial forum.

**Thorough knowledge of procedures**

You should have a thorough knowledge of the procedural laws, that is, Codes of Civil Procedure and Criminal Procedure, statutes dealing with evidence, limitation, court fees and stamps, and forensic and police procedures. This will enable you to have control over the trial and avoid procedural irregularities. Most of the appeals and revisions against interim orders, relate to errors in procedure. When you have mastery over procedure, cases also get decided quickly and effectively.

**Broad acquaintance with substantive laws**

You should know broadly, all frequently used substantive laws and fundamental constitutional and legal principles. I am using the words "know broadly" and not the words "know thoroughly" as it is not possible to master all laws before becoming a Judge, and in fact even after becoming a Judge. Each provision of law has its own nuances which you will be able to appreciate and understand in the context of specific cases, when issues relating to such laws are argued before you and the lawyers analyse and interpret them in the context of the particular case. If procedural laws help you to control the conduct of the trial, knowledge of substantive laws helps you to render proper and just decisions and prevent injustice.

**Art of giving proper hearing**

You have to develop the skill of giving a due hearing. If you think about it, you will realise that the entire Codes of Civil and Criminal Procedure are about giving a due hearing, giving effect to the first principle of natural justice — audi alteram partem (“hear both sides” or “no one should be condemned unheard”). Due hearing is due opportunity to put forth one’s case. It involves hearing the parties, considering their grievances, complaints, pleas, defences, facts and legal contentions and thereafter reaching a decision, all with an open mind. This is in fact the main function of a Judge. Many Judges, unfortunately, do not cultivate the art of giving a fair and due hearing — they do not follow the case, do not absorb the evidence and do not hear the arguments with an open mind. Instead of controlling the evidence and arguments by effective interventions, or keeping the lawyers on course by steering and guiding them, they either
become impatient and refuse to hear relevant submissions or become disinterested in the proceedings and allow their mind to wander and get distracted. This results in recording of irrelevant evidence and hearing of long arguments and the Judge failing to follow or understand the case. If you have heard the case properly—by reading the pleadings, following the evidence and arguments and making proper notes—reaching a correct decision and writing the judgment becomes easy and simple. In fact, if you record the evidence and hear arguments continuously on day-to-day basis, there would be no need for you to spend much time in reading the files for preparing the judgment.

Some Judges frequently complain that lawyers do not render proper assistance. Over the course of time, such Judges tend to become impatient with lawyers generally. They do not allow lawyers to complete their submissions and cut short the arguments by observing “Yes. Yes. That is all. is it? I have understood the point. Heard. Reserved.” This is wrong. It is not possible for a Judge to fully study all the facts and research on all legal issues in all cases and then write judgments. If a Judge tries to do so, in no time the cases reserved for judgment will pile up. When the Judge ultimately takes up the file for dictating judgments, he is bound to miss on facts or law and will not be able to render justice. The proper course is to persuade, encourage and motivate the lawyers, even mildly scold and cajole them, to read, to research and prepare well, so that they can effectively assist you; and then hear them fully ensuring that they do not beat around the bush or mislead you. This way, you will be giving a proper hearing, you will be able to turn out a good quantity of quality work and at the same time improve the standards of the Bar.

*Marshalling facts and writing good judgments*

You have to learn the skill of marshalling facts and arriving at proper findings, applying the law to those factual findings to arrive at the decision, and putting the facts, reasons and conclusions in a lucid, logical, precise and coherent manner, in the form of an order/judgment. The litigants, the lawyers and the appellate/revisional courts should be in a position to follow what you have decided. You should have clarity in about what you intend to say. Every judgment need not showcase your erudition. That takes a long time.

*Handling interim prayers and requests for adjournments*

You have to acquire the skills of considering and disposing of interim prayers, interlocutory applications and requests for adjournments, effectively and firmly. The notorious “delays” associated with Indian judicial system is, to a large extent, on account of ineffective and inefficient handling of these matters. You should keep under check, any unwarranted sympathy while considering requests for adjournments and prayers for interim relief. You should also keep in check the temptation to be a populist Judge. You should be adept at clearing all obstructions, diversions, deviations and camouflages adopted by some litigants and lawyers to delay the progress of cases. You
should focus your attention upon deciding the main case. I am not saying that you should not entertain or decide interlocutory applications. Some may be relevant and urgent. All that I am saying is that you should not allow them to bog down the main case. I am not saying that you should deny all requests for adjournments and interim prayers. I am saying that you should be strict in handling them.

The shorter the pendency of a case, lesser the number of interlocutory applications. The stricter you are in granting adjournments, the lesser will be the requests for adjournments. Statistics show that out of the total judicial time spent on each case from beginning till the end, on an average about one-third of the time is spent on preliminaries, adjournment motions and interlocutory matters. If you can curtail the same to the minimum, your disposals will increase, the period of pendency will be reduced and the proverbial delay could be effectively tackled.

If you acquire a thorough knowledge of the procedural laws and a broad knowledge of legal principles and substantive laws, and develop the skills of giving a proper hearing, marshalling facts and writing cogent judgments/orders, and disposing interlocutory applications and controlling adjournments, you can be said to have acquired necessary judicial skills.

**Administrative skills**

Side by side with the five judicial skills, you have to develop five administrative skills. Let me describe them briefly.

**Time management**

You have about 250 working days (that is about 1250 court hours) in a year. This may, of course, vary from State to State. You should plan and allot the judicial time at your disposal, for preliminary work, for recording evidence, for hearing interlocutory applications and for hearing final arguments. You must visualise the entire day, as different units, to manage your time. This will help you to plan, the number of cases you can hear and decide and then gradually increase your output.

For every five to six hours of work in court, you have to spend a couple of hours in chambers on administrative work and four to five hours at home for reading files and writing/dictating/correcting orders and judgments. Please do not forget to provide time slots for your physical and mental well-being (exercise, yoga, meditation) and time for your family.

**Board management**

On an average, each of you may have anything between 1000 to 3000 cases pending on your board. You should know how to manage your board. If you post a large number of cases every day, then most of the judicial time will be spent in non-productive preliminary hearing. You should assess the number of evidence cases and the number of argument cases that you can realistically handle (providing some margin for the fact that some cases would get adjourned) and standardise your board. You should not list too many cases for evidence and arguments. There is no point in listing, say
twenty cases for evidence or twenty cases for arguments. You should apply
case management and case-flow management tools effectively. You should
also persuade parties to have recourse to alternative dispute resolution
processes. The board management and time management go hand in and will
together reduce the pendency and improve efficiency.

Whenever a case is listed for evidence, the litigant is expected to be
present and be ready to lead evidence. Imagine the time and energy wasted
by a litigant in repeatedly getting ready and attending court for evidence.
Same is the position regarding listing too many cases for arguments. Each
time a case is listed for arguments, the advocate is required to read the file
and get ready. If a case gets adjourned repeatedly, parties and lawyers will
stop getting ready on the assumption that the case is not likely to be taken
up. When ultimately the case is taken up, many a time, the parties and
advocates are unprepared, and the result is a request for adjournment or an
ineffective or defective presentation of the case, requiring subsequent
“repair” by either recalling witnesses or rehearing arguments. Lesser the
number of hearings in a case, speedier will be the disposal of the case and
lesser the hassles and harassment for the litigant.

Registry management

You have to exercise control and supervision over your court officers,
stenographers, typists, clerical and attendant staff, to ensure that they do
their work properly and assist you effectively. Particular attention should be
bestowed upon bailiffs/process servers (to ensure prompt service of notices,
summons, effecting attachments/sales, etc.), Record Room staff (for proper
maintenance of records), and the Materials Room staff (to ensure that
material objects and evidence are properly catalogued and stored safe and
secure). You should also ensure that the court staff are public-friendly and
show patience and courtesy to lawyers and litigants. Please remember that if
the staff are not efficient, or lack in integrity or courtesy, that will reflect
upon the functioning of the court.

Bar management

Lawyers are officers of the court. Unless you have their cooperation, you
cannot expeditiously or effectively dispose of cases. You should show
uniform courtesy to the members of the Bar and litigants. You should at the
same time be firm and diplomatic in dealing with them. You should earn
their respect by your commitment, conduct and behaviour. You should be
able to carry the Bar with you and extract work from them, without making
them hostile. You should not be overly rigid. Genuine requests for
adjournments should be accommodated. Frivolous and casual requests for
adjournments and dilatory tactics should be firmly dealt with. If you grant
adjournments merely for the asking, you cannot expect the lawyers and the
litigants to be ready. You should dispose of applications for interim relief
and bail expeditiously. Nor should you try to be a populist by granting
interim relief merely for the asking. You should build a reputation of being a
“no-nonsense Judge” — a Judge who will not permit unnecessary evidence,
lengthy arguments, frivolous submissions, misrepresentations, or dilatory tactics.

**Self-management**

This refers to the need for self-discipline, punctuality, commitment, positive attitude and hard work. This refers to maintaining good health and good habits. This refers to being properly and neatly attired.

You should hold court on time. If you are late to court, you cannot expect the lawyers and staff to be punctual. You should be on the seat for the entire court working hours. If you retire to chambers frequently during court hours, you cannot expect the lawyers and litigants to be in court when the cases are taken up. You should be prompt in delivering judgments and orders. You should avoid taking unnecessary leave, as for example, taking leave at the end of the year merely because there is some unutilised casual leave.

You should have good health. Unless you have good health, you cannot function effectively. Having regard to the nature of your work, you are glued to a chair for more than 12 hours each day. Such chair-bound but stressful lifestyle, is an invitation to blood-pressure, diabetes, lower back ache, spondylitis, varicose veins and other ailments. It also makes you tired and irritable in court. Physical exercise, yoga, proper diet are therefore absolutely necessary, if you want to maintain good health and work effectively and efficiently.

You should be comfortable with technology. You should have a working knowledge of computers and information technology. It will help you write and correct orders/judgments, research on case law and articles, maintain statistics and prepare reports. It will broaden your general knowledge and also update you in regard to areas like human rights, forensic science, ADR mechanisms and court management techniques. The days of paperless e-courts, and presentation of evidence and arguments through video conferencing are not far away. Get ready to manage and cope up with technology.

The aforesaid administrative skills will make you efficient. The following guidelines under the caption “competence and diligence” in the “Bangalore Principles of Judicial Conduct (2002)” underlie the importance of developing judicial and administrative skills side by side:

6.1. The judicial duties of a Judge take precedence over all other activities.

6.2. 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.

6.3. 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.

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6.5. A Judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6. 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.

6.7. A Judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Judicial ethics

Let us assume that you are competent having necessary judicial and administrative skills. Will that make you a good Judge? This question brings us to your conduct as a Judge. This brings us to judicial ethics. What are the ethical standards to be followed and practised by a Judge? How should he behave? What should be his demeanour? What do people expect of him?

To be a good Judge, you have to cultivate and maintain five ethical principles — honesty and integrity, judicial aloofness and detachment, judicial independence, judicial temperament and humility, and impartiality. All of you, as Judges, are aware of these standards of judicial conduct. The difficulty is in scrupulously and constantly following them. Let us discuss the principles.

Integrity and honesty

When anyone compliments a Judge as a man of integrity, I feel amused and irritated. In a Judge, honesty and integrity are neither special qualities, nor achievements to be appreciated. They are the fundamental prerequisites for a Judge. They are the non-negotiable eligibility criteria. A Judge is required to be upright and expected to be a man of integrity. If a Judge is not honest or lacks integrity, he has no business to be a Judge. There cannot be a strong and vibrant judiciary unless the Judges are known for their integrity.

We have around fifteen thousand Judges in the country. Even if there are only a few aberrations among them, the public and media tend to tar the entire judiciary as corrupt. When a Judge does something improper, it is not only the erring Judge, but the entire judiciary that will be seen in a bad light. Every improper act and every misbehaviour of a Judge is likely to be magnified and distorted, thereby reducing the faith and trust of the common man in the judiciary. Having regard to the nature and functions of their office, Judges command a very high respect when compared to servants of other wings of the Government. Correspondingly, public also expect very
high standards of probity and integrity from Judges. Judges should therefore be doubly careful in their conduct and behaviour, so as to maintain the high reputation of the judiciary.

Many accused are rich, powerful and resourceful. Many civil litigants indulge in litigation out of ego, greed and jealousy. These litigants—both criminal and civil—would go to any length to succeed, which unfortunately would include attempts to influence the Judges. No other profession or calling requires higher standards of honesty and integrity or provide greater temptations and opportunities to become corrupt. You should be forever on guard against such temptations. You are the last bastion in the fight against corruption and you should not become a fence that eats the crop.

John Marshall said: “The power of judiciary lies, not in deciding cases, nor in imposing sentences, nor in punishing for contempt, but in the trust, faith and confidence of the common man.” 5 If judiciary loses the trust, faith and confidence of the common man, that will be the end of the Rule of Law and democracy.

Some Judges tend to relate corruption to taking a bribe or illegal gratification to decide a case. They assume that taking a favour from a lawyer or politician or businessman, if unrelated to any case pending before them, is not objectionable and will not affect their integrity. But integrity, or corruption which is its antithesis, has several facets. For example, let us assume that a Judge borrows a lawyer’s luxury car/SUV for going on a vacation tour; or accepts costly gifts from lawyers, during a family function like marriages, birthday celebrations, etc. Neither of the above two benefits taken by a Judge has anything to do with any case to be decided or judgment to be rendered by him. But any conduct which is likely to affect the Judge’s integrity in future or which is likely to affect the credibility of the judiciary in general or the Judge in particular, is objectionable behaviour, even though there may be no specific quid pro quo for the benefit received by the Judge. Receiving any discretionary benefit by a Judge, which is not offered or extended generally to all other Judges, is an objectionable behaviour. Please remember, favours normally come with strings attached. Whenever a concession or favour is shown to a Judge, the person showing it will consider it as an investment for the future and would, when the occasion arises, demand, or at least expect, a return of the favour in some form or the other. The best way to maintain your integrity is not to accept any favour, gift or benefit which may “reasonably be perceived as intended to influence the Judge in the performance of his judicial duties”.

You should not only be honest, but seen to be honest. You have to be careful how you deal with others in your private life. You would be wrong to assume: “I am honest. My conscience is clear. Therefore I can freely mix with anyone.” You may be honest. But, unfortunately, the litigants and the public do not assume that you are honest. A cynical world, which has seen

dishonesty and corruption everywhere, would not hesitate to assume corrupt motives, if your conduct give room for it, even though you may be honest. If they see you in the company of any lawyer or a litigant in a club or a restaurant, they will always assume that some “deal” is going on. They will never think that you are having dinner with friends. If you want to ensure that improper motives are not attributed to you, and to ensure that your good name and the good name of judiciary are not sullied, keep a distance.

The following guidelines in the “Bangalore Principles of Judicial Conduct (2002)” are relevant:

3.1. A Judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2. 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.

4.14. 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.

4.15. 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.

4.16. 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.

Judicial aloofness and detachment

Judicial aloofness is conditioning your mind to be aloof, maintaining detachment from the arena of contest and rendering justice unmindful of the consequences. You have to dispassionately decide who is right and who is wrong in accordance with law. Lord Birkett explained a facet of aloofness thus:

The duty of the Judge to keep complete control of the proceedings before him is an essential part of the administration of justice in all our courts. He has a duty to intervene by way of question or otherwise at any time that he deems it necessary to do so. He may wish to make obscurities in the evidence clear and intelligible; he may wish to probe a little further into matters that he deems important; and in a score of ways his interventions may be both desirable and beneficial. But it is safe to say that all his interventions must be governed by the supreme duty to see that a fair trial is

enjoyed by the parties. His interventions must be interventions and not a complete usurpation of the functions of the counsel. But the Judge best serves the administration of justice by preserving the judicial calm and the judicial demeanour, aloof and detached from the arena of contention.7

(emphasis supplied)

Of course, there are cases (public interest litigation, for example) where a Judge pursuing judicial activism, will have to be mindful of the consequences of his orders and actions. This exception is dealt with in my article “Rendering Judgements — Some Basics”8.

Judicial aloofness is not living in ivory towers. It does not mean that you should not be alive to the problems of the society or that you can ignore the day-to-day realities of life. Judges should be able to understand the needs of the society and “connect” to the problems and difficulties of the weaker sections and provide access to justice to the poor and downtrodden. The rich, the powerful, the unscrupulous and the crooked can protest loudly about violation of their fundamental rights, human rights or property rights and are capable of protecting their rights by engaging competent lawyers. But for every “capable” who can protect their rights, there are hundreds of “incapable” belonging to weaker sections who cannot protest against injustices, nor engage lawyers and protect their rights. You are the protector of all those who cannot protect themselves. You have special responsibilities when dealing with the rights of not only minors, mentally challenged, religious and charitable institutions, but also women, aged, infirm, poor and downtrodden. When you are in the protection mode, aloofness and detachment can take the back seat for a while.

Judicial aloofness not only refers to a state of mind, but also refers to maintaining a physical “distance”. “Restatement of Values of Judicial Life”9, states: “A Judge should practice a degree of aloofness consistent with the dignity of his office; close association with individual members of the Bar, particularly those who practise in the same court, shall be eschewed”. You should avoid mixing with members of the Bar, politicians or litigant public, except at public functions or at open private events like marriages and deaths. Your smile at a lawyer or a litigant inside a court, your chat with a lawyer or litigant outside the court, your sharing a joke with a politician at a public function, are all likely to be misunderstood and misinterpreted by the public or even members of the Bar. If you meet or mix with them in private, either in your house or their house or places like hotels, restaurants, clubs, you are inviting trouble. Tongues will wag. Unfortunately, we live in a world full of suspicion. More so, in the case of Judges. Therefore, the need for maintaining distance. Let us hope that when Judges and judiciary get an unshakable reputation for integrity and impartiality, the need to keep a distance will disappear.

7 Harford Montgomery Hyde, Norman Birkett (Reprint Society Ltd., London 1965) 547.
Whenever I give this advice about maintaining physical "distance", I invariably evoke the following response from an audience of Judges:

You ask us to maintain "distance". But the State Legal Services Authorities require us to hold legal awareness programmes where we have to mix with the public, including lawyers and litigants. We have to seek the cooperation of the district administration, police officers, elected representatives and members of the Bar for organising these functions. How can you expect us to maintain distance and independence?

The issue is no doubt rather delicate. You have two distinct roles. One is that of a Judge, where you are not supposed to mix with lawyers, litigants or take favours from any one. Your other role is that of an authority implementing the provisions of the Legal Services Authorities Act, 1987, where you are required to interact with lawyers/litigants/officials/elected representatives. If you are seen talking to someone at a public function relating to a legal awareness programme, no one is going to question your integrity or independence. But if someone sees you with a lawyer or with a litigant in a private discussion, it will give room for adverse comments. If you keep in mind the distinction between your judicial role and your legal service role, you will be able to avoid embarrassing situations.

I agree that Judges should under no circumstances be put in a position where they feel obliged to lawyers or police officers or officers of the district administration or for that matter, anyone else, whether it is a connection with legal service functions, or visits of any dignitary, or otherwise. If Judges have to seek and get favours for conducting such functions, the next stage would be for them to return the favours in some manner, which means compromising judicial detachment and independence, which in some cases may even lead to losing integrity. My advice therefore is to avoid big and ostentatious functions. Judges are not expected to conduct political size meetings or functions. Small gatherings, select target audiences, and meaningful dialogues are what is needed to spread legal awareness. Please have the courage to organise legal service and other court related functions in a simple and Spartan manner within the sanctioned budgets.

I may take this opportunity to give an unsolicited word of advice to the Chairpersons of the Legal Services Authorities. Please ensure that in requiring Judges to organise or conduct legal services programmes, their independence is not compromised. In fact it would be better if the legal services activities (other than ADR programmes) are organised by the employees of the Legal Services Authorities, who are not judicial officers and Judges attend such functions only as guests or speakers. Personally, I am of the view that spreading legal awareness and providing access to justice are executive function. I learn that in no other country, spreading legal awareness and extending legal aid are the functions of the judiciary. But, if our Parliament, in its wisdom, has chosen the judiciary to take this burden, Judges have to discharge it sincerely.
The following guidelines given under the caption “propriety” in the “Bangalore Principles of Judicial Conduct (2002)”\(^{10}\) are relevant:

4.1. A Judge shall avoid impropriety and the appearance of impropriety in all of the Judge’s activities.

4.2. 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.

4.3. A Judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the Judge’s court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

**Judicial independence**

Judicial independence refers to the independence of judiciary as an institution as also the independence of individual Judge in performing his judicial functions. We are concerned here with the independence of individual Judges, which refers to the freedom from any influence or pressure and freedom from any interference from the executive or legislature in the judicial process. You have the right to decide cases in the manner which you consider to be in accordance with law. You have absolute immunity against any actions or reprisals or personal criticism, in respect of your judicial actions and decisions. You have such immunity even when you act without jurisdiction or decide wrongly (that is, when your decision is held to be wrong by a higher forum), provided you have acted in good faith.

When the Constitution of India uses the expression “subordinate judiciary” to describe the Judges other than those belonging to the Supreme Court or the High Courts, it is not with the intention of putting any fetters on their judicial independence. The word “subordinate” literally means someone in a lower position than someone else. The Constitution uses the expression merely to describe Judges who hold a lower position than the Judges of the High Court, in the judicial hierarchy. But of late, the word “subordinate” unfortunately is understood by some Judges, as referring to someone who is subservient. Let us be clear. The higher courts have power to correct you after you render your judgment, but none can direct you as to how you should decide in the first instance or what you should decide. Your independence to decide in accordance with law is not subject to any restrictions or control (except on an appeal or revision, after you decide by a judicial order). In the exercise of your judicial functions you are independent and not subordinate to anyone. The difference between the members of the subordinate judiciary and members of the higher judiciary is only in jurisdiction.

Judicial independence is not freedom to do what you like or what you consider as just and equitable. Judicial independence does not mean you can exercise your discretion as per your whims and fancies. Even when you are exercising “discretion”, for which there are no statutory guidelines or precedents, you are required to act justly and fairly and not arbitrarily. You are required to render justice in accordance with law, and not justice as per your convictions or what you consider as just. Justice Cardozo warned:

... The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of fairness and justice. He has to draw his inspiration from well-consecrated principles. He is not to yield to spasmodic sentiments, to vague and unregulated benevolence. He is to exercise discretion informed by tradition, methodised by analogy, disciplined by system, and subordinated in the primordial necessity of order in social life. Wide enough in all conscience is the field of discretion that remains.11

Judicial independence, it is said, is not a privilege enjoyed by Judges, but is the reflection of the privilege of the people to the Rule of Law in a democracy. It is a safeguard for the protection of the people against the vagaries of the legislature and the executive. It comes with the responsibility to be sincere and conscientious in performing your duties. In Union of India v. Madras Bar Assn.12, the Supreme Court observed:

46. ... Independence is not the freedom of Judges to do what they like. It is the independence of judicial thought. It is the freedom from interference and pressures which provides the judicial atmosphere where he can work with absolute commitment to the cause of justice and constitutional values. It is also the discipline in life, habits and outlook that enables a Judge to be impartial.13

The “Bangalore Principles of Judicial Conduct (2002)”14 clarifies that judicial independence is a prerequisite to the Rule of Law and a fundamental guarantee of a fair trial, and that a Judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects. The following guidelines are given in application of the principle:

1.1. 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.

1.2. 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.

13 Ibid., 35, para 46.
1.3. 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.

1.4. In performing judicial duties, a Judge shall be independent of judicial colleagues in respect of decisions which the Judge is obliged to make independently.

1.5. 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.

1.6. 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.

Judicial temperament and humility

Everyday, everyone, inside and outside the court, address Judges as “My Lord” or “Your Honour”. Everyone bows, greets and salutes them and shows them respect and deference. Day after day, they decide the fate of litigants, by granting and rejecting submissions, arguments, complaints, requests and prayers. They can send people to jail. They can declare people to be paupers. They can decide who is right and who is wrong. They have captive audiences in their courts, who give appreciative nods and approving smiles at every witticism and remark. It is but natural that after some time, some Judges start thinking that they are the personification of wisdom, knowledge, and intelligence; and more importantly, their word is law and their wish a command. Humility gradually fades from their mind and demeanour. Harold R. Medina therefore warned:

A Judge is surrounded by his subordinates, lawyers and litigants who keep telling him what a noble, wonderful, wise and knowledgeable person he is. The moment he starts believing them, he becomes a lost soul, ending up the opposite of all that a Judge should be.

Humility is the quality which makes a Judge realise, that he is neither infallible nor omnipotent, that he should hear the lawyers who have studied the facts and researched on the law, and that he should decide all issues by keeping an open mind. Without humility, a Judge becomes arrogant and opinionated, perverse with a closed mind, and starts believing that the lawyers do not know much, that he knows better and that his decisions are always just and right. He tends to showcase his cleverness, knowledge and erudition in his judgments and orders, relegating justice to the back seat. In short, he ceases to be a “Judge” in the true sense.

You should be more concerned about rendering justice rather than trying to exhibit your erudition, intelligence or power, which inevitably leads to injustice. Justice Frankfurter described “Judicial humility” as having a mind that respects law, that can change its thinking, that can accept that another view is possible, that can be persuaded by reason, that which is detached and aloof, that quests for truth and that puts passion behind its judgment and not in front of it.
You should avoid the temptation of jumping to conclusions or taking a "view" and then refusing to budge from it. If you first decide what should be the result without hearing or without hearing fully and properly, and want to stubbornly stick to it, then you will be searching for the law and facts to fit your decision, rather than basing your decision on the facts and law. You will also try to ignore or overlook the law and the facts that are inconvenient or contrary to your view. Choosing the facts and law to support a predetermined view, and ignoring other relevant facts and law is judicial perversity. It is said that many successful and brilliant lawyers fail to transform themselves into good Judges, if they are obsessed with showcasing their intelligence and knowledge in every decision, rather than rendering justice.

You should be careful and balanced in what you say inside and outside the court. The "Bangalore Principles of Judicial Conduct (2002)" gives you the following advice:

4.6. 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.

You should not try to force a compromise or settlement. You should not become peeved or upset when your suggestions for settlement, which you may consider to be reasonable, are not accepted by one of the parties. In fact, without knowing the full facts, you should not even suggest a compromise. Let me clarify. You can always suggest that the parties should settle. In fact, Section 89 CPC requires Judges to encourage settlements. What you should not try to do is to impose your views as to what the terms of settlement should be, at a premature stage. When you suggest a compromise and also the terms which you consider to be fair, in many cases, the party whose case is weak will be eager to agree, while the party with a strong case or a just cause may be reluctant to agree. Having suggested the compromise, you may feel irritated with the party who is not agreeing with your suggestion. When you thereafter hear the matter, your resentment against the party who refused to compromise may make you hostile to the party who did not listen to your suggestions, and emotions may blur your judicial vision. Of course, that is not likely to happen when you develop judicial maturity and experience. A Judge who genuinely feels that a settlement is appropriate in a case and pursues his suggestions with the parties, should recuse himself from hearing it, if the settlement does not materialise.

You should not be perturbed or worried about the comments of the media or adverse reactions of any particular group, in regard to your decisions. Neither your judgment nor your actions should be populist. You are not running for a public office. You are not seeking publicity. If Judges

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should decide in a manner which will please the majority, no justice can be rendered to the minority. If Judges should go by the views of the rich and powerful, justice cannot be rendered to the poor and downtrodden. If Judges should go by the views of the vociferous groups, justice cannot be rendered to the voiceless majority. The decisions should be based on the merits of the case and not on your emotions and preferences.

A common complaint against Judges is that they live in ivory towers and that they do not understand the ground realities. Do not be worried by such remarks. Judges deal with the problems, concerns and difficulties of the common man everyday. They read newspapers and magazines and watch television. They have access to internet. They have their feet firmly on the ground. In fact, many a times, the worry is that their decisions, particularly in sensational criminal cases, may be influenced by the opinion of the media and the pressure of public opinion.

Another frequent complaint is that some court orders are impractical. The complaint is meaningless. Judges do not make the laws, but only decide in accordance with law. The legislature makes the laws. The grant of relief is circumscribed by the provisions of law, the prayers made and the case made out. Only where the issue is not covered by the provisions of law or precedents of higher courts, a Judge can think of invoking principles of equity to mould the relief. If there is any rigidity or impracticality in any judgment, it is the requirement of law.

Impartiality (freedom from prejudice and bias)

We now come to the most crucial and special among the qualities of a Judge — impartiality. In fact, to achieve impartiality, you should have all the other four qualities mentioned above—honesty and integrity, judicial aloofness, independence, humility—and something more, that is freedom from bias and prejudice. You may have honesty and integrity, but may still suffer from bias and prejudice. Bias and prejudice in a Judge may be of two kinds — external and internal.

External bias and prejudice

When a lawyer of your caste or community appears, the case should not swing in his favour by reason of his caste. If there is a dispute between persons belonging to your caste/community and a person belonging to a rival caste, you should not lean towards the litigant belonging to your caste/community. That will be bias. When a lawyer or litigant appearing before you, belongs to a caste/community which is known to be a traditional rival of your caste/community, you should not, by reason of his caste/community, be harsh or overly strict or hostile. Judges should guard themselves against any prejudice and bias based on caste/community.

Sometimes, a friend or distant relative or even a mentor (or a person who is a leader or member of the political party of which you may be an admirer or follower) may appear before you, as a lawyer or litigant. When that happens, you should curb any inclination or tendency to decide in their
favour or to exercise judicial discretion in their favour. If you exercise your discretion in their favour, by granting ex parte interim orders, on the specious justification that when the other side enters appearance, you will modify the orders, you would clearly be guilty of nepotism.

Some Judges think that they should encourage junior members of the Bar and the proper way of doing it is by granting interim orders sought by them. This is on a total misconception of what constitutes encouragement. You “encourage” juniors by giving them a patient hearing, by not being harsh with them, by allowing them to get over their inhibitions, stutters and stumbles, and by permitting them to prepare and argue on another day. In short you “encourage” them by putting them at ease and giving them some latitude. Giving interim orders in undeserving cases, merely because juniors appeared and sought interim relief, is not encouragement of juniors, but abuse of judicial power which causes prejudice to the other party. It is clearly unwarranted bias.

Let me refer to some other instances of bias and prejudice. There are lawyers who are very respectful towards the court, who are always very courteous, who always bow to the Judge when they enter and when they leave a court hall. They sit in the front row and smile appreciatively at all jokes and witticisms of the Judge, howsoever foolish or pedestrian they are, and nod approvingly when the Judge expounds some legal principle, even if it is erroneous or absurd. When this happens, the Judge starts thinking: “Oh, this lawyer is intelligent and good” and starts having “positive vibes” towards such lawyer. On the other hand, there are some lawyers who always sit in the court with a dour face. Whenever the Judge makes a “witty” remark or enunciates some legal principle, they look away disinterestedly or wear an expression of boredom implying that they consider the Judge to be shallow or ignorant. The Judge therefore thinks: “This lawyer cannot appreciate or understand my wit, knowledge or wisdom” and starts developing “negative or hostile vibes” towards such lawyers. After sometime, there is every likelihood of the “pleasant” lawyers having a better chance of winning a march over the “dour” lawyers, in getting discretionary interim orders. This kind of bias and prejudice in action, should be avoided.

There is another version of “good” and “bad” lawyers. Some lawyers are very reasonable in their submissions. They are precise, respectful and brief. Some others are “cantankerous”, who will beat around the bush, refuse to come to the point, disagree with the Judge and go on arguing and arguing, testing the patience of the Judge. After some time, whenever the “reasonable” lawyer appears, the Judge will mentally lean forward and whenever the “cantankerous” lawyer appears, he will mentally lean backwards. As a result, when the reasonable lawyer has a bad case, and the cantankerous lawyer has a good case, there is a very good chance of the “good” lawyer with a bad case getting some relief and the “bad” lawyer with a good case not getting adequate relief. Such emotional reactions on the part of the Judge, are nothing but bias and prejudice in action. You should always
guard against it. You should neither lean forward nor backward, but always be “upright” and “straight”.

Your dislikes and likes for any lawyer or litigant, or your feelings towards or against any particular caste, community, religion, race or region, your kinships, friendships, loyalties to any person or persons, should not have any bearing on your decision or the decision-making process. Every one of these external factors/considerations should be kept away. A case should be decided on its merit, and not on the merit or reputation or status or attitude of the lawyer or the litigant.

**Internal bias and prejudice**

Let me next refer to “internal bias and prejudice”. Every Judge has his own perception about what is right and what is wrong, what is just and what is unjust, and what is fair and unfair, which will have a bearing on his decision. It is said that such perceptions of a Judge, could be based on his personal philosophies developed upon traditional customs and beliefs, acquired convictions and prejudices, deeply rooted in his psyche moulded by what he heard, what he read, what he felt and what he experienced (including childhood experiences and mental scars). Over a period of time, these perceptions lead Judges to become typecast in their decision making.

For example, the experiences of a Judge may make him view all police action with suspicion and consequently lead him to believe that most of the accused are framed or falsely accused of offences, and that third-degree methods would have been employed to get tailored false confessions, and that therefore there is a need to give the benefit of doubt to the accused in most cases. He therefore tends to acquit in most of the cases and is therefore identified as an “acquitting Judge”. Another Judge may feel that when the police investigate and file a charge-sheet and place evidence supporting the charge, they should not be disbelieved and that the discrepancies in the evidence of the witnesses should be ignored as they are usually due to human “error” and defective memory. He therefore tends to convict and is identified as a “convicting Judge”. Every defence lawyer would avoid hearing of his case by a “convicting Judge”. The very same defence lawyer will always be ready to conduct their cases before an “acquitting Judge”.

You should be careful to be a neutral Judge deciding cases purely on merit, without being branded as either an acquitting Judge or a convicting Judge.

Let me give another example. Let us say that there are two similar claims for compensation pending before two different Claims Tribunals, where the age, income and number of dependants of the deceased are the same. One Tribunal awards Rs 4 lakhs as compensation, while the other Tribunal awards Rs 6 lakhs. Both the Tribunals may be presided by honest men with utmost integrity. Nevertheless, their personal philosophies enter into their judgments, leading to award of different quantum on similar or same facts. This results in the former being referred to as a “tight-fisted Judge” and the latter being referred to as a “liberal Judge”. Another example: before a particular Judge, 90% of eviction cases may succeed, while before another Judge, 90% of eviction cases may fail. The former will
be branded as a “landlord Judge” and the latter as a “tenant Judge”. Similarly, in regard to labour cases, some Judges will be called as “pro-management Judges” and some as “pro-labour Judges”, depending upon their philosophical preferences.

We cannot afford to have one Judge deciding one way and another Judge deciding another way and a third Judge a third way, on the basis of their personal philosophies. It is true that Judges are not robots or computers to give identical judgments and so long as Judges are human, their personal philosophies will, to a certain extent, mould their decisions. But a litigant, adversely affected by a judgment, will be perplexed as to why he should be the sufferer on account of his case coming up before a particular Judge, when in another identical case which came up before another Judge relief was granted. It is to avoid the ill-effects of personal philosophies and prejudices and to ensure uniformity and consistency in decisions, the Indian courts follow the “precedent” doctrine. I will not elaborate upon precedents now, as it is a subject which requires a separate article.

You should be careful to ensure that your personal philosophy does not gain upper hand when precedents are available. The litigants are not bothered about the length of the judgment or about the erudition of the Judge. He is concerned only with the result — the relief which the Judge grants or does not grant. Therefore, there should be an effort to achieve consistency and uniformity in decision making. I am not saying that you should give up your judicial independence. Nor can I say that your personal convictions and views cannot at all play a part in the decision making. All that I say is that when there are precedents, you are bound to follow them.

You may be from any background, from any religion, from any caste or community. You may have any political conviction. You may be a friend or kin of many and you may be obliged to many — your teachers, mentors and seniors. Whatever may be your background or antecedents, whatever may be your personal philosophies, beliefs or convictions, when you become a Judge, your allegiance should only be to law and justice, and not to your friends and relatives who might have helped you, or the teachers and mentors who moulded you, or the Judges who selected you, or the leaders of the political party whose ideologies have impressed you. Friendship, loyalty, gratitude are great qualities by themselves, but they should always yield to your allegiance to integrity, impartiality and justice. You shall truly and faithfully perform the duties of your office without fear or favour, affection or ill-will. Thomas Fuller said:

When a Judge puts on his judicial robes, he puts off his relationships and friendships, and becomes a person without a relative, without a friend, without an acquaintance. In short, he becomes impartial.

The “Bangalore Principles of Judicial Conduct (2002)”\textsuperscript{16} states that the quality of impartiality is essential to the proper discharge of the judicial

office, and that it applies not only to the decisions, but also to the process by which the decision is made. They enumerate the standards to achieve impartiality thus:

2.1. A Judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2. 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.

2.3. 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.

2.4. 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.

2.5. 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—

2.5.1. the Judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2. the Judge previously served as a lawyer or was a material witness in the matter of controversy; or

2.5.3. the Judge, or a member of the Judge’s family, has an economic interest in the outcome of the matter in controversy:

* * *

5.1. 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”).

5.2. 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.

5.3. 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.

Conclusion

You are not legislators; you are not administrators; and you are not experts in fields other than law. You do not make laws. You do not govern the country. But you are the interpreters of law. You are the seekers of truth. You are the renderers of justice. You are the guardians of the Rule of Law.
You are the protectors and providers of level playing fields for the downtrodden and the weaker sections. You have to remind yourself everyday about the onerous nature of your powers and the limitations on your powers. You should remember that every case that comes up before you will decide the fate of a person relating to his right to livelihood, his right to life, his right to liberty or his right of property. You should remember that every time you fail to do justice, people will perceive it as an injustice. Pray Almighty everyday to give you the courage and conviction to do justice with humility, wisdom and compassion.

Knowing the principles of judicial ethics is not sufficient. Practice the ethical principles constantly and vigilantly. Take inspiration from the writings and simple and humble lifestyles of great Judges and leaders. Be good Judges and bring glory and credibility for your great institution.

Dear young Judges, I wish you all a meaningful and fruitful judicial career with courage, commitment, hard work and ethical behaviour. I also wish you peace, happiness, and contentment in life.

[Note.—Many of you may have different views as to how to practise and maintain judicial ethical standards. Some of you may feel that some parts of my advice regarding ethical standards are homilies which are impractical, unrealistic and ignore ground realities; or that some of my apprehensions are exaggerated. May be. May be not. Recurring aberrations in the judiciary underline the need for strong ethical standards. Let there be no compromise in regard to the adherence to the fundamentals of judicial ethics.]