

INDEPENDENCE OF JUDICIARY

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India is one of the largest democratic countries in the World. In this set up, there are three wings functioning independently. The first is the Legislative wing, the second is the Executive wing, and the third - the most important is the Judiciary. The Constitution of India has given a considerable importance to this wing, and has provided the Supreme Court of India at the top. The essence of fair and fearless administration of justice is a *sine-qua non* of a successful democratic Government. And, to achieve this we must have bold, fearless, independent, efficient and impartial judiciary. It is on the rock of judiciary that the democracy can stand firmly, and whenever it is shaken, the democracy is bound to crumble.

I. RESPECT FOR THE RULE OF LAW

Respect for the rule of law, both by the society and the State is, therefore, a vital and essential ingredient for the good health of democracy in the country. And at the same time, the judiciary also should not come under the pressure from any quarter, particularly the politicians in power. The judges must always be conscious of the oath taken by them before adorning this august office. It is the faith and confidence of the people in this great institution, that matters the most. The day the administration of justice, and the rule of law are tampered with extraneous considerations and the political colour, it will shake the democratic set up of the country.

In order to achieve respect for the rule of law and administration of justice, the Bar and the Bench must work in harmony with each other. The Bar and Bench are but two sides of a page in a book, any prick from each side is bound to cause a hole and thus affect not one, but both the sides. In that event, not only both loose peace of mind, but that mars or affects the function of both having a common purpose in the administration of justice to the cause before the court.

II. OVERALL DENIGRATION

It is a matter of serious concern and great anxiety that this institution has started crumbling under its own weight. There is a consistent denigra-

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tion from all quarters; the Bar and the Bench, which are two pillars of administration of justice, are distancing day by day from each other. The Judges, by and large, keep them busy, after court hours in public relation work, meeting high functionaries in the Government, attending seminars, enjoying parties, ventilating their personal views publicly to catch the eye of the ruling party for their future prospects after they demit office, and coming very close to a selected group of lawyers for mutual gains. The bitter truth now is that there is an unrefutable impression among the litigants and the general public all over the country that, it is the face law, and not the case law that works. In the Supreme Court itself, there are about one dozen senior advocates, who have captured the maximum litigation work. Majority of the advocates practising in the Supreme Court are hardly able to make both ends meet. It is the selected few advocates, who enjoy the privilege to have the pleasant and comfortable audience as against the majority of the advocates who are in no way less competent. The same may be the case in the High Courts as also in the subordinate courts. The way the senior advocates are designated by the High Courts and the Supreme Court, needs a thorough probe in the matter. There is unfortunately no transparent method by which the courts designate the senior advocates, with the result that a good number of most competent advocates are never designated as senior advocates. Either the courts should stream-line the selection of senior advocates, or the institution of senior advocates, be abolished altogether.

III. CODE OF ETHICS FOR JUDGES

In order to reaffirm peoples faith in the justice administration system a sixteen point code of conduct was formulated and unanimously adopted by Five Judge Committee, comprising three Supreme Court Judges, Justice A.S. Anand, Justice S.P. Bharucha, Justice, K.S. Paripoornan and two High Court Judges-Justice D.P. Mahapatra, and Justice M. Srinivasan. On 6 December 1999, 15- point code of ethics was adopted by the annual conference of the Chief Justices chaired by Chief Justice A.S. Anand which is as follows¹ :

- (i) a judge should not contest election to any office of a club, society or other association;
- (ii) he should not hold such elective office except in a society or association connected with the law;
- (iii) close association of a judge with individual members of the bar, particularly those who practise in the same court, must be eschewed;

1. THE TIMES OF INDIA, December 7, 1999.

- (iv) a judge should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if he or she is a member of the bar, to appear before him or even be associated in any manner with a case to be dealt by him;
- (v) a member of a judge's family, if he or she is a member of the bar, should not be permitted to use the residence in which the judge actually resides;
- (vi) a judge should practise a degree of aloofness consistent with the dignity of his office;
- (vii) a judge should not hear and decide a matter in which a member of his family, a close relative or a friend is concerned;
- (viii) a judge must not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination;
- (ix) a judge is expected to let his judgments speak for themselves and will not give interviews to the media;
- (x) a judge will not accept gift or hospitality except from his family, close relatives and friends;
- (xi) a judge will not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing the matter is raised;
- (xii) a judge must not speculate in shares, stocks or the like;
- (xiii) a judge should not engage directly or indirectly in trade or business either by himself or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby will not be construed as trade or business);
- (xiv) a judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund;
- (xv) every judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of his office.

IV. DEEP ROOTED FAITH IN JUDICIARY

Over the decades, the general public have come to repose absolute faith in the judiciary. In fact it occupies an exalted position in the minds of the people as the saviour of democracy. In this context, Justice Fazal Ali's

Postulation of propositions on Proper Judicial Conduct in *Union of India v. Gopal Chandra Mishra*² is very much relevant:

The High Court Judges are the repository of the confidence of the people and the protectors of their right and liberties. Therefore, having regard to the onerous duties and sacrosanct functions which a judge has to discharge, he has to act and conduct himself in a manner which enhances the confidence of the people in judiciary.... Having regard to these circumstances, therefore, once a judge decides to accept a high post of a High Court he has to abide by certain fixed principles, and norms, and also certain self-imposed restrictions in order to maintain the dignity of the High Office he holds so as to enhance the image of the court of which he is a member and to see that the great confidence which the people have in the court is not lost.

Justice Ali further observed:

The depth of respect for judges in Indian society is second only to the respect of saints and sages. One of the factors which highlight this reverence for judges is that whenever it held necessary to order a probe into a matter of public and national importance, there is a clamour of judicial investigation as distinguished from administrative investigation. This means that people have a deep rooted faith in the impartiality of judges and in their character. Therefore, a great responsibility rests on the members of the higher judiciary to sustain this respect which has been gained by a long line of distinguished judges.

V. POST RETIREMENT VOCATION BY JUDGES

It appears that the Code of Conduct framed by the judges for themselves is silent on their post-retirement vocation or activities. It is unfortunate that some over-ambitious judges, after their retirement, or even some time before their retirement start looking for their future clients or beneficiaries. In that over-enthusiasm, sometimes they do falter in delivering impartial judgments in the hope of getting some lucrative assignments after their retirement. In some cases it has been seen that the judges start engaging themselves in political activities immediately after they demit this august office.

The judges who join legal profession immediately after their retirement, do not bring any laurels to the dignity and status which they had held while at the bench. How ridiculous does it look when they are seen visiting

2. AIR 1978 SC 694.

the lawyers chambers, looking for briefs, and appearing before a bench, consisting of judges, with whom they had shared the bench, while in office?

Former Chief Justice of India, Mr. M. Hidayatullah, in his book has said.³

I was never in the mood of Lord Macaulay, who said, I shall retire early, I am very tired: I know that life meant that one must continue to occupy his time with work. In our apartment we furnished one room as a study, because I was going to embark on literary pursuits.... I had already written two slim books... and edited Mulla's *Mohammaden Law*.... I delivered lectures. During my spare time I advised such parties as consulted me and heard a number of arbitrations.

In private as also in post retirement life, the judges have to conduct themselves in conformity with certain time-honoured standards of a restraining nature. While some judges take the long awaited and well earned rest from the hectic life and fade away, others like Justice V.R. Krishna Iyar remain in the lime light championing laudable causes of the society at large.

In *M/s Chetak Construction Ltd. v. Om Parkash and Ors.*⁴ Dr. A.S. Anand and Venkataswamy J.J. rightly observed that judges must always ensure that they do not allow the credibility of the institution be eroded. Justice must not only be done but it must also be seen to be done.

Justice Narayana Kurup, in *Nixon v. Union of India*,⁵ made the following observations:

However, there are some judges who evince keen interest in taking up another career on retirement from the Bench... the post retirement aspiration of the judge for personal career advancement may not be in consonance with or in the best interest of an independent judiciary. Recently a former Chief Justice of India entered the Rajya Sabha on a party ticket. And a former Chief Justice of this Court contested a Lok Sabha seat, the moment he demitted the office, again on a party ticket.... The public cannot be faulted if they consider a person coloured and presumptuous if he joins a political bandwagon soon after he demits the judicial office. The element of accountability

3. M. Hidayatullah, *MY OWN BOSWELL* at 268.

4. JT 1998(3) SC 269.

5. 1998(2) KLT 717.

arises from the very nature of judicial functions of a judge. As Justice Jackson said, "we are not final because, we are infallible, but we are infallible because we are final." Mr. Ray Mark in his book- "The lawyer, the Public and Professional Responsibilities" observed that the Bar is not private guild, like that of barbers, butchers, and candle-stick makers, but by bold contrast a public institution committed to public justice. This observation applies with equal force to the members of the judiciary too....

VI. OFFICE OF THE ATTORNEY GENERAL OF INDIA

The recent controversy on the opinion given to one private party, Chhabrias whose conduct was under investigation by SEBI has brought this august office in news. Soli J. Sorabjee, the Attorney General has filed a law suit against "Asian Age" in the Delhi High Court, claiming damages to the tune of rupees one crore, for carrying a news in the paper to this effect. The propriety of this office demanded that Mr. Sorabjee should have avoided entering into a personal litigation, being the highest law officer of the Government of India.

With all the powers conferred on this august office, there are some restrictions, as mentioned under Section 8(b) of the Law Officers (Conditions of Service) Rules, 1987, which provides:

A law officer shall not advise any party against the Government or in a case in which he is likely to be called upon to advise, or appear for the Government of India.

The Attorney General of India in his own right is leader of the Bar, and is also an ex-officio member of the Bar Council of India. Similarly, the Attorney General of the Queen is the Chief Prosecutor of his country as also the guardian of the traditions and honour of the English Bar. After assuming the office of the Attorney General and Solicitor General, the law officers of the Crown would not engage them in private practice. According to the memorandum declared by Lord Halsbury, the Law Officers of the Crown were merely political officials. To quote:

It makes the law officers merely political officials, it puts them under an arrangement the acceptance of which with any other client than the Crown would be punished by their having disbarred."

With this clear understanding Sir Richard Webster agreed to forgo the right to engage in private practice, and accepted appointment as Attorney General. Alluding in a public meeting shortly afterwards to his acceptance

of office under the new conditions, Webster said that his constituents would have thought very little of him had he preferred few more thousands a year from private practice to the responsible position of legal advisor to the Majesty's Government.

VII. ETHICAL DIMENSIONS

Speaking on Ethical Dimension's S.Sahay, a veteran journalist, in his latest article stated:

After all, the office of Attorney General has received wrongful publicity which even legal victory cannot wholly erase. Mud leaves its stain howsoever faint. Soli Sorabjee has the support of past law officers, but it may be pertinent to point out that M.C., Setalvad, then Attorney General was approached by the princely States to appear before the Executive to argue this case, and the fee offered was over Rs. 1 lakh but he point blank refused to do so. In passing one must sympathise with Sorabjee's lot. Here is a person who has all alone and legally fought for the freedom of the press and by a strange quirk of fate he has been reduced to suing a newspaper for defamation.⁶

Independence of judiciary demands that high standard of principles of courage of conviction, dedication, devotion, aloofness, and impartiality must be adhered to in letter and spirit, both by the Bar and the Bench to ensure the true and practical administration of justice. A fearless and independent judiciary is the very basic foundation of our constitutional edifice. Democracy cannot exist without justice and justice cannot exist without an independent judiciary.

The Law students are the future teachers, lawyers and judges of our country. To educate and enlighten them, of the desirability to maintain certain norms, values and ethics in their career, is the dire need of the hour. The services of the distinguished jurists, academicians and the retired judges can be availed of for teaching of law as well as providing training to fresh law graduates and judicial officers. These steps are very essential to keep rule of law and independence of judiciary in good health.

6. PIONEER, December 24, 1998.