

NOTION OF JUDICIAL ETHICS – A COMPARATIVE STUDY

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INTRODUCTION

Judiciary nevertheless retained its image as one of the few institutions of the country, which is still above the deterioration, that prevails in most organs of the State. But, the whispered accusations on the judiciary have sown the seeds of doubt even in the minds of the most enthusiastic believers in the integrity of judiciary, including senior members of the bar, former members of the bench, and the parliamentarians as also the common man on the streets. The consequent demand for accountability from all seniors has given rise to a furious debate between supporters of the judicial self-discipline on one hand and operational autonomy on the other. This study aims to analyse the meaning and need and to discuss the approaches followed by various jurisdictions towards judicial ethics.

CANONS –Vs– PRINCIPLES

As far as concerned, Principles are the fundamental truth, the axioms, and the code of right conduct, which are confined to the theory or hidden in the books but, Canons are the type or the rules perfected by the principles put to practice. Principles may be a faculty of mind, a source of action which are pleasure to preach or read. ‘canons’ are principles put into practice so as to be recognized as rules of conduct commanding acceptability akin to religion or firm faith, the departure wherefrom would not be a pardonable mistake but an unpardonable sin.

Observance of the canons of judicial ethics enables the judiciary to struggle with confidence; to chasten oneself and be wise and to learn by themselves the true values of judicial life. The discharge of judicial function is an act of divinity. Perfection in performance of judicial functions is not achieved solely by logic or reason. There is a mystic power which drives the earth and the sun, every breeze on a flower and every smile on a child and every breath which we take. It is this endurance and consciousness which enables the participation of the infinite forces which command us in our thought and action, which, expressed in simple terms and concisely put, is called the ‘canons of judicial ethics’.

JUDICIAL ETHICS - DEFINITION

Judicial ethics is an expression which defies definition. In the literature, wherever there is a reference to judicial ethics, almost it is not defined but attempted to be conceptualized. According to Mr. Justice Thomas of the Supreme Court of Queensland, said that there are

two key issues that must be addressed: (i) the identification of standard to which members of the judiciary must be held; and (ii) a mechanism, formal or informal, to ensure that these standards are adhered to. A reference to various dictionaries would enable framing of a definition, if it must be framed. Simply put, it can be said that judicial ethics are the basic principles of right action of the judges. It consists of or relates to moral action, conduct, motive or character of judges; what is right or befitting for them. 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 preferable to render justice.

APPROACHES TOWARDS CANONS IN VARIOUS JURISDICTIONS

A. POSITION IN INDIA

Canons of judicial ethics have been attempted, time to time and should be drafted as a Code. Several authoritative documents and its authenticity are available as put forth by several forums at the national and international level. The fact remains that such a code is difficult to be framed and certainly cannot be consigned as a consolidated single document. Some of the documents are;

- (i) Restatement of Values of Judicial Life adopted by the Chief Justices' Conference of India, 1999;
- (ii) The Bangalore Principles of Judicial Conduct, 2002
- (iii) The Oath of a Judge as contained in the Third Schedule of the Constitution of India

(i) Restatement of Values of Judicial Life (1999)

On May 7, 1997, the Supreme Court of India in its Full Court adopted a Charter called the "Restatement of Values of Judicial Life"¹ to serve as a guide to be observed by Judges, essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice. This Resolution was preceded by a draft statement circulated to all the High Courts of the country and suitably redrafted in the light of the suggestions received. It has been described as the 'restatement of the pre-existing and universally accepted norms, guidelines and conventions' observed by Judges. It is a complete code of the canons of judicial ethics. It reads as follows:

1. Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.
2. A Judge should not contest the election to any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.
3. Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.

¹ It was ratified and adopted by Indian Judiciary in the Chief Justices' Conference 1999.

4. 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 a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.
5. No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.
6. A Judge should practice a degree of aloofness consistent with the dignity of his office.
7. A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.
8. A Judge shall 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.
9. A Judge is expected to let his judgments speak for themselves. He shall not give interviews to the media.
10. A Judge shall not accept gifts or hospitality except from his family, close relations and friends.
11. A Judge shall 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 and deciding the matter is raised.
12. A Judge shall not speculate in shares, stocks or the like.
13. 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 shall not be construed as trade or business).
14. A Judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund for any purpose.
15. A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this behalf must be got resolved and clarified through the Chief Justice.
16. 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 the high office he occupies and the public esteem in which that office is held.

(ii) The Bangalore Principles of Judicial Conduct, 2002

The values of judicial ethics which the Bangalore Principles crystallizes are: (i) independence² (ii) impartiality,³ (iii) integrity,⁴ (iv) propriety⁵ (v) equality and (vi) competence & diligence.⁶ By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if

² 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.

³ **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.

⁴ **Integrity** is essential to the proper discharge of the judicial office.

⁵ **Propriety**, and the appearance of propriety, are essential to the performance of all of the activities of a judge. Ensuring **equality** of treatment to all before the courts is essential to the due performance of the judicial office.

⁶ **Competence and diligence** are prerequisites to the due performance of judicial office.

such mechanisms are not already in existence in their jurisdictions. The Preamble to the Bangalore Principles of Judicial Conduct states *inter alia* that the principles are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. These principles presuppose that judges are accountable for their conduct to appropriate institutions, established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

(iii) The Oath or Affirmation by Judge

The Constitution of India obligates the Indian Judiciary to reach the goal of securing to all its citizens- Justice, Liberty, Equality and Fraternity. This goal has to be achieved in the form of oath or affirmation to be made by the Judges of the Supreme Court and High Courts while entering upon the office. Swearing in the name of God or making a solemn affirmation a Judge ordains himself: (i) that I will bear true faith and allegiance to the Constitution of India as by law established; (ii) that I will uphold the sovereignty and integrity of India; (iii) that I will truly and faithfully and to the best of my ability, knowledge and judgment perform the duties of office without fear or favour, affection or ill-will; and (iv) that I will uphold the Constitution and the laws. The oath of a Judge is a complete Code of Conduct and incorporates therein all the canons of judicial ethics.

B. UNITED STATES OF AMERICA

The American Bar Association formulated its Canons of Judicial Ethics for the first time in 1924. However, these canons were intended more as guidelines than statutory restrictions and therefore their applicability was limited as they did not address complex ethical issues. Consequently, the Model Code of Judicial Conduct was introduced by the ABA in 1972 to meet these challenges. The American Federal Code mainly delves on the following canons:

Canon 1: A judge should uphold the integrity and independence of the judiciary;

Canon 2: A judge should avoid impropriety and the appearance of impropriety in all activities;

Canon 3: A judge should perform the duties of the office impartially and diligently;

Canon 4: A judge may engage in extra-judicial activities to improve the law, the legal system, and the administration of justice;

Canon 5: A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties;

Canon 6: A judge should regularly file reports of compensation received for law-related and extra-judicial activities;

Canon 7: A judge should refrain from political activities.

This Code applies to all officers of the judicial system and non-lawyer, judges such as town justices and justices of the peace with the exception for part-time judges, judges pro tempore, and retired judges. This Code provides that judges should uphold judicial independence and integrity, avoid impropriety and the appearance of impropriety, and be impartial and diligent in performing their duties. The ABA undertook a revision of the 1972

Code taking societal changes into account and the new Model Code of Judicial Conduct was adopted by it in 1990. However, in the absence of specific jurisdictions statutorily adopting it, the Code is limited in its applicability.

C. CANADA

The Canadian Judicial Council in Canada was instrumental in the creation of the Canadian Judicial Ethical Principles in 1971 to deal with the issue of discipline and education of judges. After extensive debate and consideration⁷ including inputs from, it decided against an elaborate code of ethics based on the American model and in its place adopted the Ethical Principles in 1998. These principles⁸ draw inspiration from the Magna Carta which set out that judges well-versed in the law be appointed and from the Act of Settlement, of 1701 that prohibited the arbitrary removal of judges by the crown; thus paving the way for the establishment of an independent judiciary. The Canadian Judicial Council's "Ethical Principles for Judges" states in its foreword "The ability of Canada's legal system to function effectively and to deliver the kind of justice that Canadians need and deserve depends in large part on the ethical standards of our judges. The adoption of a widely accepted ethical frame of reference helps the Council fulfill its responsibilities and ensures that judges and the public alike are aware of the principles by which judges should be guided in their personal and professional lives." primary basis for initiating disciplinary action for ethical misconduct in comparison to the brief statement of ethical principles adopted by Canada. However, it may be noted that both systems have worked efficiently even though codification of ethical principles in Canada is not as detailed.

D. AUSTRALIA

The Australian 'Guide to Judicial conduct'⁹ thrives for high standards of conduct for the community to have confidence in its judiciary. It provides members of the judiciary with practical guidance about conduct expected of them as holders of judicial office and also takes into account the changes that have occurred in community standards over the years. It assumes a high level of common understanding on the part of judges of basic principles of judicial conduct. It also addresses issues upon which there is greater likelihood of uncertainty. It was noted that a majority of Australian judges subscribed to this view. However, the principles¹⁰ that the primary responsibility of deciding whether or not a particular activity or course of conduct is appropriate or not rests with the judge, though it does strongly recommend consultation with judges and preferably with the head of their jurisdiction.

⁷ Recommendations of the Bertha Wilson Committee and the Working Committee of the Canadian Judicial Council

⁸ The Canadian Ethical Principles has developed five core principles namely, (i) judicial independence; (ii) integrity; (iii) diligence; (iv) equality; and (v) impartiality. Impartiality in the American Code is encapsulated in canons 5, 6, and 7.

⁹ It was drawn from the Canadian Ethical Judicial Principles as well as from the writings of Justice J. B. Thomas of Australia and Prof. Wood of the University of Melbourne.

¹⁰ The Australian principles applicable to judicial conduct find foundation in three core values. a) To uphold public confidence in the administration of justice b) To enhance public respect for the institution of the judiciary and c) To protect the reputation of individual judicial officers and of the judiciary.

CONCLUSION

The above comparative study clearly shows that most of the countries have adopted the canons or wrote their own canons based on the version of American Bar Association. Nevertheless, the canons were roundly criticized as ineffective and were replaced by the ABA in 1972 with the code of judicial conduct. In order to strike an equitable balance between the need for maintaining certain degree of detachment and the necessity for moving in society to understand it so as to be a practical judge, he should have to conscientiously keep a vigil of his own movements and decide thoughtfully where to go and where not to go. Experience and caution would be the best guide of a judge in this regard. The judge ought to remember that what he thinks of himself is not so material as how people would perceive and interpret his movements and presence at a given place. Thus, the quality of the judicial pronouncement should be with high regards in the society so that, the judicial decision will be upheld the law and justice both in letter and spirit.

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