

## Judicial Ethics in India

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### Introduction:

Popularly acclaimed as the Father of India, Mahatma Gandhi believed in collective development against individual growth which was not only evident from his principles and ethics, but his way of life. Keeping the aforesaid in mind, the Constituent Assembly strived for the establishment of a Democratic Sovereign independent India, probably the World's Largest- a bicameral, multiparty in nature, comprising of the Legislature, the Executive and the very Honorable Judiciary. The Constitution of India promotes independent functioning of the aforesaid entities and creates scope for collective growth by provisioning interdependence and mandating State to maintain it till the end of time<sup>2</sup>. Each of these bodies has certain powers, privileges and a unique way of performance, thereby contributing to the progress of the country. And with power comes responsibility, which is codified either through the medium of legislations or simple oaths to sternly limit their potential abilities to disharmonize this consonance. For assuring loyalty to these established principles and abide by them until death seems a big challenge, which in itself, lays the foundation for the respective Ethics. In simple words, they are “*a collective of universal values, treating each human equally, acknowledging human and natural rights, obeying the law of land, showing health and safety concerns, caring for natural environment.*”<sup>3</sup>

For instance, an army officer takes the oath to lay down his life for his nation; Doctors pledge their time for restoring every patient back to health. The consequences of its violations portray the offender being dragged to the Court and justly banished from his/her duties of serving for a noble cause if proven guilty. Likewise, even

the most respected office of a Judge is expected to follow the respective Judicial Ethics for confirming their best behavior and applying their expertise in law in an appropriate manner and dispensing justice within their jurisdiction, in the country. And this paper attempts to illuminate the very essence of the Judicial Ethics with respect to the attributes of an Indian Judge; duly elucidated below:

### Indian understanding of an Ideal Jurist:

Through the columns of the *Schedule III of the Constitution of India*:

*“I <name>, having been appointed as the Chief Justice (or a judge) of the Supreme Court of India/ High Court at/of <name of place> do swear in the name of God that I will bear true faith and solemnly affirm faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favor, affection or ill-will and that I will uphold the Constitution and laws.”*

The aforesaid oath attempts to entail the prominent obligations of a Judge in Indian Courts and is subject to interpretation, in almost every way possible. However, its failure to cover every responsibility attached with this mechanism paved way for the Indian Judiciary to evaluate the powers, privileges and the notion of “righteous conduct” of a Judge through the medium of a several landmark judgments. Naturally, the picture of an ideal Indian Judge became clear, which today, requires them to:

1. Never judge their own cause, as inspired from the Latin Maxim “*nemo debet esse iudex in causa propria sua*” and is entitled to listen to

both the parties to the Court, before rendering the rationale.

2. "Have to live and behave like hermits, who have no desire or aspiration, having shed it through penance."<sup>4</sup>
3. Deliver justice impartially<sup>5</sup> and be aware about their duty towards the citizens of the country as a whole<sup>6</sup>.
4. Out of human nature, a Judge might get ambitious though they shall never compromise their judicial functions<sup>7</sup>.
5. Be rectitude, honest and uphold the integrity of their respective judicial mechanisms<sup>8</sup>.
6. At any given point of time, a Judge must administrate justice fearlessly and live up to the Latin Maxim *fiat justitia ruat caelum*<sup>9</sup> besides functioning expeditiously by ensuring speedy disposal of cases<sup>10</sup>.
7. Avoid their near and dear ones to not exploit this closeness<sup>11</sup>.
8. Restrain themselves from excessive participation in social functions and are justified in rejecting any invitation from a political party, club, business organization etc<sup>12</sup>.
9. Propound flawless verdicts and suffice the meaning of their noble profession, preventing injustice on their part.

A thorough read of the aforesaid features correctly describes the judicial ethics in India, which aims to produce competent and sincere Judges in India. And cataloguing a majority of the aforesaid with the instituted conduct of Judicial Officers worldwide, the Honorable Indian Judiciary adopted the "***Restatement of Values of Judicial Life***", thereby devising an order for framing and promoting the righteous conduct of its Officers - eliminating the prevailing corruption and establishing a healthy Judiciary for the coming century.

### The Reforms:

The British Common Law system

introduced the Court system, which sadly, was largely influenced and under the control of the British Government. This implied their obvious failure to conserve judicial independence and accountability in British India and several natives were victim to this authoritative rule. And when one organ of Government yields more power against the other or surpasses its limits and acts beyond its scope, the crux of a Democratic Government ceases to exist- witnessed on several occasions in the British Indian Diarchy. Post-Independence, the Indian lawmakers adopted the American policy of preserving independent Judiciary, besides recognizing their achievement of drafting and enforcing certain rules for supervising the Judge's powers.

Although introduced in 1924, their effectiveness was assured as late as 1972, which marked the beginning of the development of the commended Code of Judicial Ethics in United States of America<sup>13</sup>.

By 1999, the Indian Judiciary finally ratified the "***Restatement of Judicial Life***", for regulating and limiting the unfettering powers vested within the Indian Judges, and devising a systemized code of conduct for these luminaries. These principles aver on delivering impartial justice and nurturing aloofness for validating the dignity of the office besides only contesting elections for holding elective offices in societies or associations connected with Law. Moreover, he or she are forbidden from entertaining any disputes involving their family, friends, or companies which hold their shares, though one may accept gifts made from their near and dear ones. Criticizing close relations with those practicing in the same bar, they are not allowed to shelter any relative practicing in bar within their residence. The Judge is prohibited from remarking upon socio-political or commercial issues or those concerning the interest of the public at large. Interestingly, Judges are deprived of the power to speculate in shares, stocks etc. or

engage directly in any form of trade or business. Lastly, they cannot actively associate with fund raising to seek financial benefit through the office, besides performing his duty to the fullest, in order to uphold the esteem of this office<sup>14</sup>.

A careful look at the aforesaid reveals that these principles have considered the impact of modern technology and the increasing importance of money upon the Judge's behavior, besides sustaining the principles of Natural Justice.

And no sooner were these propounded, the *United Nation Centre for International Crime Protection* within their *Global Programme Against Corruption*, invited several Chief Justices and Senior Judges from all over the world in *Vienna* to suggest the much required measures for restoring the faith of people in their respective Judicial mechanisms. Herein, a dire need to fabricate universally acceptable statement of Judicial Standards and ensure Judicial Accountability was felt and inculcated within the meaning of *Bangalore Draft Principles of Judicial Conduct, 2002*<sup>15</sup>, owing its name to the place of ratification<sup>16</sup>.

True to its meaning, it bestows the Judges must commit to honor and respect the Judicial Office and demands the maintenance of high standards of Judicial Conduct on their part. An in-depth analysis reveals that the Judges must uphold Judicial Independence and perform their duties without any bias or prejudice. Interestingly, their behavior is a determinant of Judicial Integrity and a pre-requisite for proper discharge of judicial functions. With respect to the Indian Context:

*"Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system, resulting in the failure of public*

*confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm."*<sup>17</sup>

This propagates an outstanding interpretation and application of the aforesaid principles by the Indian Judiciary- endowing the very sanctity of their profession therein. Furthermore, these principles elucidate the importance of propriety and competency of the Judiciary, besides commanding it to uphold the Rule of Law by providing equal treatment to those who knock its doors. Lastly, it mandates every Judicial Office in the world to adopt these guidelines within their scope of jurisdiction and play their part uplifting the declining statuses of these Law Mechanisms<sup>18</sup>.

#### **Conclusion:**

*"By the mere fact a person enters government service, he does not cease to be a citizen of India or disentitle himself to the rights conferred by this article"*<sup>19</sup> implying that even the Judicial Officers are entitled to freedom of speech and expression<sup>20</sup> and every other rights enlisted in the Indian Constitution. However, the *"Restatement of Judicial Life"* imposes restrictions upon the Judges of Indian Judiciary and proscribes them from formulating their views and opinions with regards to a judgment pending in the Court or any political controversy over the media- any such action amounts to an infringement of Judicial Code of Conduct.

Quite recently, 4 Decorated Judges of the Supreme Court of India, namely *Justice Chelameshwar, Justice Kurrian Joseph, Justice Ranjan Gogoi, Justice Mandan Lokur* staged a *Press Conference in Delhi* and made allegations against the abuse of judicial power on the part of Chief Justice of India *Dipak Mishra*- Justifying their actions, they emphasized on the dire need for making the masses aware about the ongoing maladministration in the Indian Judiciary on the part of the Chief Justice and such a move seemed

plausible, after the attempts to warn him had failed miserably<sup>21</sup>. Undoubtedly, this move received mixed reactions, wherein the liberals applauded their efforts while the conservatives specified this drama as a violation of their expected conduct. For instance, Senior Counsel *Prashanth Bhushan* supported the move and openly accused the Chief Justice of India for misconduct<sup>22</sup> while Learned Lawyer *Vrinda Grover* and *Ex-Bombay High Court Judge Promod Kode* settled for acknowledging this as an attempt to safeguard people's right to justice<sup>23</sup> and maintaining the dignity of Indian Judiciary<sup>24</sup> respectively. On the other hand, celebrated lawyers such as *Ujwal Nikkam* and *RS Sodhi* declared it as "**Black Day**" in the Indian Judiciary<sup>25</sup> and insisted an immediate impeachment of these judges<sup>26</sup> on the grounds of sheer disobedience<sup>27</sup> respectively.

*"There was no need to go into the public. They (four judges) should have raised the issues in a chamber meeting in the Supreme Court."*<sup>28</sup>

Nonetheless, a historic move on the part of these eminent Jurists was witnessed on 12<sup>th</sup> January, 2018, which entailed media coverage regarding the functioning of the Judiciary, an unacceptable conduct which could have been avoided<sup>29</sup>. In my opinion, the whole prospect of taking over the media and conveying their message is clearly a violation of the established conduct<sup>30</sup>, irrespective of their motive or the noble intention. Transpiring my views in the words of *Soli Sorabjee*<sup>31</sup>:

*"The effect it has on the public image of the judiciary, I'm very upset. I wish they hadn't done it. I see it as a very disappointing, distressing feature that four judges gave a press conference. It will have serious repercussions for the public image of the judiciary and the Indian Constitution. I think the judges should have a free and frank conversation."*

32

**(Endnotes)**

- 1 \* Student , ILS Law College, Pune
- 2 Interpreting Art. 50 of Chapter IV of Constitution of India
- 3 As retrieved from: (<https://thelawdictionary.org/ethics/>)
- 4 High Court of Judicature for Rajasthan V. Ramesh Chand Paliwal [{1998} 2 SCC 72]
- 5 Dr. D.C. Saxena V. Hon'ble Chief Justice of India [(1996) 5 SCC 216]
- 6 Nand Lal Mishra V. Kanhaiya Lal Mishra [AIR 1960 SC 882]
- 7 Tarak Singh V. Jyoti Basu [{2005} 1 SCC 201]
- 8 Daya Shankar V. High Court of Allahabad [(1987) 3 SCC 1]
- 9 Let justice be done though the heavens fall
- 10 N.G. Dastane V. Srikant S. Shinde [AIR 2001 SC 2028]
- 11 Satyendra Narayan Singh V. Ram Nath Singh [AIR 1984 SC 1755]
- 12 Ram Pratap Sharma V. Daya Nand [AIR 1977 SC 809]
- 13 Code for Conduct for United States Judges. As retrieved from: (<http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>)
- 14 ROC .No. 1207/1016-Vigilance Cell (Circular issued by High Court of Judicature at Hyderabad) . As retrieved from: ([http://ecourts.gov.in/sites/default/files/ROC1207\\_Vig\\_060616.pdf](http://ecourts.gov.in/sites/default/files/ROC1207_Vig_060616.pdf))
- 15 Drafted in 2001, in effect since 2002
- 16 Commentary on the Bangalore Principles of Judicial Conduct. As retrieved from: ([https://www.unodc.org/documents/corruption/publications\\_unodc\\_commentary-e.pdf](https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf))
- 17 Supra 10
- 18 The Bangalore Principles of Judicial Conduct,2002. As interpreted from: ([https://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf))
- 19 Kameshwar v. State of Bihar [AIR 1962 SC 1166]
- 20 So envisaged under Article 19(1)(a) of Indian Constitution
- 21 A Vaidyanathan, Democracy at Stake, Things Not in Order- 4 Supreme Court Judges- 10 Points. As retrieved from: (<https://www.ndtv.com/india-news/for-first-time-ever-4-senior-supreme-court-judges-to-address-media-1799152>)
- 22 CJAR Salutes Four Judges for exposing CJI'S Abuse Power. As retrieved from: (<http://www.freejournal.in/india/cjar-salutes-four-judges-for-exposing-cjis-abuse-of-power/1203852>)
- 23 Four Most Senior Judges rise to have press conference at Chelameswar J residence. As retrieved from: (<https://barandbench.com/sc-judges-press->

- conferenceelameswar/)
- 24 As retrieved from: (<http://www.newindianexpress.com/nation/2018/jan/12/supreme-court-judges-mutiny-maintain-dignity-of-the-judiciary-say-former-bombay-high-court-judges-1751967.html>)
- 25 Former SC Judges & Lawyers React to SC Judges' Press Briefing. As retrieved from: (<https://www.thequint.com/news/india/supreme-court-judges-chelameswar-press-conference-reactions-cji-dipak-misra>)
- 26 Punit Nicholas Yadav Mutiny on the Bench. As retrieved from: (<http://www.indialegallive.com/constitutional-law-news/special-report-news/supreme-court-judges-bench-mutiny-on-the-bench-42274>)
- 27 Of the expected Judicial Conduct
- 28 Maintain dignity of the Judiciary: Ex-Bombay HC Judges. As retrieved from: (<http://www.financialexpress.com/india-news/maintain-dignity-of-the-judiciary-ex-bombay-hc-judges/1012753/>)
- 29 Press Conference 'could have been avoided', expect resolution of Saturday: Attorney General. As retrieved from: (<https://timesofindia.indiatimes.com/india/press-conference-could-have-been-avoided-expect-resolution-by-saturday-attorney-general/articleshow/62476633.cms>)
- 30 Elucidated above
- 31 Supra 27
- 32