

HOW TO BE A GOOD JUDGE

Maharashtra Judicial Academy

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Faculty members and officials of Maharashtra Judicial Academy;
and the newly inducted officers of Maharashtra Judicial Service.

A very good morning to all of you.

Today is my third visit to the Maharashtra Judicial Academy here at Uttan. First time I came in the year 2019 when I interacted with a new batch of judicial officers. Today also I am happy that I am interacting with a fresh batch of newly inducted judicial officers.

I take this opportunity to congratulate you on your achievement in getting selected as Civil Judge Junior Division and as Judicial Magistrate First Class. Considering the high level of competition, it is indeed a remarkable achievement on your part for which rightfully you should be proud of. I once again congratulate each one of you for your achievement.

Today's topic is quite interesting. It is about how to be a good judge. What are the essential qualities to be a good judge? What are the characteristics or features which distinguishes a good Judge from a not so

good judge? and who decides who is a good judge or who is not a good judge?

Before proceeding further, I may mention in a lighter vein as to what the American Bar Association had said about the difference between a good judge and a bad judge. According to the American Bar Association, the difference between a good judge and a bad judge is that practising before a good judge is real pleasure whereas practising before a bad judge is misery. Here I may add that while judges decide cases argued by lawyers but in the ultimate analysis it is the lawyers or collectively the Bar who are the judge of judges.

Before I came here, I was a judge in the Gauhati High Court. Prior to my elevation as a judge in the year 2011, I was a lawyer for more than 20 years. I was also designated as a senior advocate by the High Court. But I had no or very little idea as to how a judge functioned. And when I became a judge it was altogether a new experience for me. I may share with you an incident during my early days of judgeship; I think it was in November, 2011. I was given single bench roster dealing with miscellaneous writ petitions. Being a new judge I had studied all the files the evening before and made necessary notings. One particular matter, I had noted, deserved dismissal. Next day in court when the matter was called upon, my good friend at the Bar, Nishitendu Choudhary argued for

the petitioner. His short submissions were so effective and persuasive that I ended up not only issuing notice but granted an interim stay as well. This was a big lesson and an eye opener for me. I realized two things: firstly, the impact and effectiveness of oral hearing in open court; and secondly, the fact that as a judge one must have an open mind.

I recollect what Justice A.K. Patnaik, then a *puisne* judge of Gauhati High Court who went on to become Chief Justice of Madhya Pradesh High Court and then elevated to the Supreme Court, had said. According to Justice Patnaik, while dictating a judgment his mind used to swing like a pendulum. Only towards the final stages of the judgment he could firm up his views whereafter the final verdict would follow.

Going back to the case where I had issued notice and granted stay, I must confess that this was a very important lesson for me right at the initial stage of my career as a judge. Never have a closed mind, unwilling to listen to a contra view.

By the way, Nishitendu went on to become a judge but as destiny would have it, just into his third year as a judge he left all of us for his heavenly abode.

I will narrate one more instance during my stay at Guwahati which has relevance in so far today's topic is concerned. I was part of the High Court Recruitment Committee for recruitment of judicial officers. There the recruitment rules were amended whereafter instead of the State Public Service Commission the recruitment is carried out by the High Court on the administrative side. It was a recruitment process for Civil Judge Junior Division (there it is called "Munsiff") and for Judicial Magistrate First Class. Now a days the experience requirement of three years at the Bar for such recruitment is no longer there and fresh law graduates can compete for recruitment. One of the candidates in one of the interviews who was a fresh law graduate was asked a question as to what he would do as a Civil Judge Junior Division if an elderly lawyer filed a petition for adjournment on the ground of his wife's illness. The candidate replied that he would reject the application. To a further query as to what he would do if the lawyer continued to insist on adjournment, he said that he would initiate contempt of court proceedings against the lawyer.

No doubt adjournment is a serious malady afflicting the judicial system and a major cause for delay and arrears but it was the response of the candidate which I found disturbing. The candidate was impressed upon that he was required to handle the situation in a much more polite, dignified and in a compassionate manner. An elderly lawyer seeking an adjournment on the ground of wife's illness or son's illness is required to

be dealt with empathy. It is not necessary that there is always a motive or that a lawyer is trying to delay a matter in each and every case of adjournment. As the master of the court you are required to act in a sensitive manner. Ofcourse if you find that a prayer for adjournment is frivolous, you will reject the same. There can be no two views about it. All that I am saying is that you cannot have a rigid approach and must exhibit flexibility. In a genuine case you may accommodate the lawyer who is in difficulty.

Related to the above aspect is the issue of Bar and Bench relationship. I will advert to this a little later.

Friends, you are now part of the judicial service. But what do we mean when we say judicial service? Are you, as judicial officers, employees of the state? Well the answer is in the negative. Judicial service is not a service in the sense of employment. Judges are not employees. In *All India Judges' Association Vs. Union of India, (1993) 4 SCC 288*, Supreme Court drove home the point that as members of the judiciary, judges exercise the sovereign judicial power of the state. Judges at whatever level they may be, they represent the state unlike the administrative executive or members of other services. Therefore, members of other services cannot be placed at par with the members of the judiciary, either constitutionally or functionally. That apart, please remember, you are not judges only during the court hours.

You are judges 24 x 7. Therefore, you have to mould your conduct and public appearances accordingly. As we shall see, the key word is 'restraint'.

As a judge you have the right and the freedom to decide a case in a manner which you consider it to be in accordance with law. Though the expression 'subordinate judiciary' is used in the Constitution of India to describe the judiciary other than the Supreme Court or the High Courts, judges serving in the subordinate judiciary are subordinate only in the hierarchy. As you know, we have a hierarchy in the judiciary: *a pyramid like structure*. At the base is the trial judiciary or the district judiciary which has been referred to as the subordinate judiciary; those are also referred to as lower courts. At the middle is the High Courts and at the top is the Supreme Court. Though we have a pyramid like structure in the judiciary, it is not that High Court is functionally or jurisprudentially inferior or subordinate to the Supreme Court. Likewise the trial judiciary or district judiciary referred to in the Constitution as the subordinate judiciary is not subordinate in the sense the expression is understood.

There can be no interference by any-body in the manner in which you decide a particular case as a Civil Judge Junior Division or as Judicial Magistrate First Class except by way of appeal or revision that too after the decision is rendered. The difference between members of the subordinate judiciary and members of the higher judiciary is only in jurisdiction.

Karnataka High Court in a recent decision had ordered that the trial courts should not be referred to as lower courts. Very recently, Himachal Pradesh High Court passed an order that all the courts in the State of Himachal Pradesh other than the High Court shall be referred to as district judiciary; these courts shall not be referred to as subordinate courts but as trial courts.

Professor Upendra Baxi in one of his articles in the Indian Express has justified this decision. According to him, the High Court's decision to stop use of the expression 'subordinate courts' is justified as it restores dignity to judges serving in the trial courts. The colonial idea of 'subordination' stands replaced by the constitutional idea of independence of the judiciary. He writes that the Constitution no doubt contemplates a hierarchy of jurisdictions but no judge acting within her jurisdiction is inferior or subordinate. On appeal or revision, a court with ample jurisdiction may overturn such decision but this does not make the concerned courts lower or inferior courts. It is true that the High Court under Article 235 of the Constitution of India has the power of superintendence on the administrative side over the district judiciary. But according to Professor Upendra Baxi the time has come to have a relook at Article 235 which uses the expression "control over subordinate courts".

However this aspect of the debate is beyond the scope of today's lecture. All that I want to highlight or emphasize upon is that as Civil Judge Junior Division or as Judicial Magistrate First Class you are not inferior or subordinate or lower. Nobody can tell you to decree the suit or to convict the accused or decide a case in a particular manner. That is a decision you and only you will take on an understanding of the law and facts. These expressions are only used to describe the hierarchy. Within your jurisdiction you are neither inferior nor subordinate to anybody. As I said, you will decide the case as per the record and in accordance with law.

Friends, I would like to put in a note of caution here. We must keep in mind that judicial independence does not mean freedom to do whatever you feel like doing or whatever order you feel like passing even within your jurisdiction where you are a sovereign. You cannot do or write whatever you like. It is the duty of the judge to follow the law. As Justice Benjamin Cardozo of the United States had said:

‘... 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.’

Likewise, Supreme Court in *Union of India Vs. Madras Bar Association*, (2010) 11 SCC 1 observed as follows:

‘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.’

Justice R. V. Ravindran, former Judge, Supreme Court of India has written and spoken extensively on the *qualities of a good judge*. According to him, a judge’s duty is to render justice. Rendering justice in a larger sense means giving every person his or her dues. All those entrusted with power i.e. power to govern, power to legislate, power to adjudicate or 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 with equity 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 members of the Bar and of the public.

According to him, the following are the qualities of a good judge :-

1. He should be competent, independent and impartial;
2. He should give a fair and public hearing; and
3. He should treat all persons equally.

According to Justice Ravindran, to achieve the above qualities a judge has to develop certain judicial skills, certain administrative skills and more importantly follow certain judicial ethical standards.

Amongst judicial skills, Justice Ravindran has mentioned the following five which are essential for effective discharge of functions as a judge:-

1. Thorough knowledge of procedure;
2. Broad acquaintance with substantive laws;
3. Art of giving proper hearing;
Infact due opportunity of hearing to a party is one of the main functions of a judge. Due hearing would mean the opportunity to put forth one's case. It involves hearing the parties, considering their grievances or complaints, facts and legal contentions and thereafter to reach a decision, all with an open mind.
4. Marshalling of facts and writing good judgments;
An important facet of judgment writing is language. There should not only be lucidity in language but it has to be sober and restraint. You must be careful not to use harsh, intemperate or unparliamentary words in the judgment.
5. Handling interim prayers and request for adjournments.

Likewise amongst the administrative skills, Justice Ravindran lists the following :-

1. Time management;
2. Board management;
3. Registry management or office management;
4. Bar management; and,
5. Self management.

Self management would include self discipline, punctuality, commitment, positive attitude and hardwork. It also refers to maintaining good health and good habits. Besides being properly and neatly attired, as judicial officers you should hold court on time; should deliver judgments and orders promptly; and avoid taking unnecessary leave. You should have good health and should be comfortable with technology.

On judicial ethics, according to Justice Ravindran to be a good judge one has to cultivate and maintain five ethical principles. These are :-

1. Integrity and Honesty;

As a matter of fact for a judge, honesty and integrity are neither special qualities nor achievements to be appreciated. These are fundamental pre-requisites for a judge and are non-negotiable.

2. Judicial aloofness and detachment;

Judicial aloofness not only refers to a state of mind but also refers to maintaining a physical distance. In this connection, Justice Ravindran highlighted the *Restatement of Values of*

Judicial Life and the Bangalore Principles of Judicial Conduct.

3. Judicial independence;
4. Judicial temperament and humility;

Humility is the quality which makes a judge realize 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.

5. Impartiality i.e. freedom from prejudice and bias.

More than 2400 years ago in the fourth century B.C. Greek philosopher Socrates had listed four qualities which a judge should possess while dispensing justice:-

1. To hear courteously;
2. To answer wisely;
3. To consider soberly; and
4. To decide impartially.

These characteristics hold good even today. Therefore, we can say that qualities of a good judge would include patience, wisdom, courage, firmness, alertness and incorruptibility, with a sense of empathy.

Courtesy and patience may be more difficult virtues to practise on the Bench than is imagined seeing how many otherwise admirable judges

have failed to exhibit them. Yet, they are essential if our courts are to enjoy public confidence.

A judge is the Presiding Officer of his court. Therefore, it is he who must ensure that the court functions punctuously and in an orderly manner. By the strength of his personality the judge as the Presiding Officer should be able to control the court proceedings. He must be able to deal effectively with members of the Bar; members of the Registry and handle the board in an effective manner.

Society expects a lot from its judges. Most people have opinions and beliefs that arises from their identities but we expect judges to set these aside. Most people over-react to mechanisms of accountability but we expect judges to respond in a measured fashion. Most people rely too heavily on intuition and heuristics but we expect judges to be deliberative and logical. Emotions and biases influence people too readily but we expect judges to decide within the law and on the record.

Therefore, public perception of a judge is very important. As Justice Frankfurter of the United States had famously said:

‘Judiciary has neither the purse nor the sword. It has only moral authority which is based on public confidence’.

Chief Justice Marshal of the United States Supreme Court had said:

‘We must never forget that the only real source of power we as judges can tap is the respect of the people. It is undeniable that the courts are acting for the people who have reposed confidence in them.’

Chief Justice Murray Gleeson of the High Court of Australia had said:

‘Confidence in the judiciary does not require a belief that all judicial decisions are wise or all judicial behaviour impeccable. However, what it requires is a satisfaction that the justice system is based upon values of independence, impartiality, integrity and professionalism and that within the limits of ordinary human frailty, the system pursues those values faithfully. Courts and judges have a primary responsibility to conduct themselves in a manner that fosters that satisfaction. That is why judges place much emphasis upon maintaining both the reality and the appearance of independence and impartiality.’

Therefore, it is important to always remember that justice must not only be done but must be seen to have been done. It is the capacity to decide impartially which is the most important criterion for judging the performance of a judge. A judge has to be not only impartial but must be seen to be impartial. As Lord Denning had said:

‘Justice is rooted in confidence and confidence is destroyed when the right minded go away thinking that he was not heard or that the judge was biased.’

Therefore, in each and every case it is the judge who is on trial. He has to ensure that he does his job honestly and properly.

As observed by Lord Atkin:

‘Justice is not a cloistered virtue and she must be allowed to suffer the criticism and respectful though outspoken comments of ordinary men.’

To be a good judge one has to be socially sensitive and has to be open minded; he should not be rigid or dogmatic. He must be conscientious. The most important mental qualities of a judge are emotional stability, tolerance and the ability to engage in constructive activities in emotionally stressful conditions.

While impartiality and independence of judicial officers are important so also efficiency and competency but it is not enough for a judge to be impartial, independent, efficient and competent. A very important aspect of judicial functioning or judicial effectiveness is judicial predictability. You are bound by precedents. Therefore, do not try to unnecessarily experiment. Not only there must be uniformity in approach resulting in predictability but there must be clarity in decision making as well.

Judges must be fair-minded, impartial, patient, wise, efficient and intelligent. They must set aside their politics and prejudices, making rational decisions and follow the law.

Justice Y. K. Sabarwal, former Chief Justice of India, while delivering the M. C. Setalwad Memorial Lecture had said that newly appointed judges should appreciate the fact that they are now part of an institution and that their individual actions could have a bearing on the entire institution. In the public perception, a single wrongful act committed by a judge could often annul much of the credibility upheld by the judiciary. Although the Indian judiciary is known for its high ethical standards, it need not be pointed out that though the media may or may not highlight the personal sacrifices and the generally high levels of ethical conduct maintained by the vast majority of judges, a single infraction could often lead to untold damage to the entire institution of the judiciary.

Too much of public activity and participation in social functions should be avoided. Supreme Court in *Rampratap Sharma Vs. Dayanand*, **AIR 1977 SC 809** had issued a note of caution to the effect that it is proper for a judge not to accept any invitation and hospitality of any

business or commercial organization or of any political party or of any club or organization run on sectarian, communal or parochial lines.

However, all said and done, judges are human. To err is human. It is inevitable that there may be mistakes and errors in our decision making, both on the judicial side and on the administrative side. So we have the system of appeals and revision. Friends, please remember. There is no perfection in life. Therefore, do not chase perfection. There is no perfect human being. A perfect judge is yet to be born and a perfect judgement is yet to be delivered. Therefore, do not waste your time and energy striving for that elusive perfection. Perfection is like a mirage.

Having said that let me revert back to the topic of Bar and Bench relationship.

I am of the firm view that Bar and Bench are the two wheels of the same chariot. Bar and Bench are the two great institutions. There is and there can be no conflict of interest between these two great institutions. Bar and the Bench together constitute the justice system. The Bench is an offshoot of the Bar. Neither the Bench alone nor the Bar by itself can secure justice to the people.

In my view, three prime requisites for sustaining rule of law are a strong Bar, an independent judiciary and enlightened public opinion. They

must act in unison and harmony. There is need for a meaningful and continuous dialogue between the Bar and the Bench on issues which concern administration of justice. I am reminded of what Justice PV Rajamannar who was the first Indian Chief Justice of Madras High Court and who served as Chief Justice of Madras High Court for long 13 years had said:

‘The High Court in the larger sense is not merely a collection of judges. It is an institution of which the Bench and the Bar and I would add the public are all integral parts with its own traditions and ideals which have inspired them and standards which have been maintained.’

Replace the words ‘High Court’ with the word ‘judiciary’ and the essence remains the same.

While the lawyers should be respectful towards the judges and show due deference to the court proceedings, judges should also treat the lawyers with respect and dignity. After all, a lawyer is an officer of the court. A judge should appreciate that members of the Bar have also their difficulties and limitations and, therefore, should have regard for the problems of the members of the Bar. For this the best guarantee is the personality of the judge. For a judge, trust and confidence of the Bar and thereby of the people is his greatest asset. It must always be remembered that respect and dignity can never be demanded; respect is earned. The road to dignity is humility. There is no place for arrogance in the world of justice.

Many members of the Bench are drawn from the Bar, infact an overwhelming number, and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar as well. In this regard, Supreme Court observed in *RK Garg Vs. State of HP*, **(1981) 3 SCC 166**, that it is unquestionably true that courtesy breeds courtesy and that courtesy must begin with the judge. While the law has been well settled regarding conduct of lawyers *vis-a-vis* the court, it is essential however to emphasise courteousness of a judge towards members of the legal profession.

In the case of *R Muthu Krishnan Vs. Registrar General of High Court of Judicature at Madras*, **2019 SCC Online SC 105**, Supreme Court had the occasion to once again examine the role of the Bar. Observing that Bar is an integral part of the judicial administration, Supreme Court held that in order to ensure that judiciary remains an effective tool, it is absolutely necessary that Bar and Bench maintain dignity and decorum towards each other. Mutual reverence is absolutely necessary. It is the joint responsibility of the Bar and the Bench to ensure that equal justice is imparted to all. However, a fine balance between the Bar and the Bench has to be maintained. Just as independence of the judges and judiciary is supreme, likewise independence of the Bar is on equal footing. Independent Bar and independent Bench form the backbone of democracy. Balancing of values and reverence between Bar and the Bench is the edifice of an independent judicial system.

Now coming back to the answer given by the candidate, I feel that such a response was perhaps because of his lack of exposure to court proceedings and the history and high traditions of the Bar. What I therefore feel is the need for greater sensitization of the new recruits to the judicial service towards the Bar. The approach has to be multi-pronged.

Friends, after you complete your training, you will go and join your posts. The first thing that you should do is to call on the Principal District Judge. He is the head of the judicial family in the district. He will be there to help you and guide you. He must be shown the due courtesy and respect. Infact, you have to be respectful towards your seniors. Now that you are in judicial service, there is a hierarchy in place and you must respect the hierarchy, being part of the hierarchy.

We in the judiciary live like a family. When you go to the districts, you will become part of the judicial family of the district which in turn is part of the larger judicial family. There is no room for one upmanship and as a judicial officer, please stick to the rule book. Do not try to experiment at this stage of your career. Your prime duty is to decide cases which are before you. Please go through the brief, record the evidence properly, hear the advocate; extend them the due courtesy, particularly the elderly advocates, and then decide the cases. This is no rocket science. Everything is

there in the book. If you have any doubt, you can always seek the guidance of your seniors.

Please do not be unduly worried about disposals. If you work hard, and I am sure all of you will work hard, everything will fall in place and you will certainly get the disposals. But if you are only focused on disposal, you may lose out on many things and justice may be the casualty.

Speaking about humility, I may quote what the Supreme Court had said in the case of *Vinay Chandra Mishra*, (1995) 2 SCC 584, and this is what the Supreme Court had said:

‘No one expects a lawyer to be subservient to the court while presenting his case. Cases are won and lost in the court daily. One or the other side is bound to lose. The remedy of the losing lawyer or the litigant is to prefer an appeal against the decision and not to indulge in a running battle of words with the court. That is the least that is expected of a lawyer.

Brazenness is not outspokenness and arrogance is not fearlessness. **Humility is not servility.**’

Humility is not servility, Supreme Court says. If it is true of a lawyer, it is equally true of a judicial officer. To be humble, to have humility, is not a sign of weakness. Why only an attribute of a lawyer or an attribute of a judge; it is an attribute of a refined mind and a refined personality. If you feel that a particular lawyer is not maintaining the decorum of the court; he

is not showing due respect to the court proceeding, please convey it to him that his conduct is unacceptable. You don't have to shout back at him or indulge in a running battle of words with him. You can be polite, and yet be firm.

Court proceedings should always be conducted in a decent manner. Decency and maintaining civility in court is a must. It does not behove of a judge to scream or shout or act in an uncivil manner. Therefore, anger management is very crucial.

Please cultivate the attribute of humility and I am sure it will keep you in good stead. It would be one of your greatest assets as you climb the hierarchy.

I don't want to sound too judgmental.

One last thing I would like to say before I wind up.

Please maintain punctuality in court. Court timing starts from 10:30 a.m.; therefore you should sit in the court at 10:30 a.m. and commence the work fixed for the day. Only during the recess and only after the day's work is over, you should retire to your chamber.

My best wishes to all of you.

God bless.

(Justice Ujjal Bhuyan)
