



ISSN: 0976-3376

Available Online at <http://www.journalajst.com>

ASIAN JOURNAL OF  
SCIENCE AND TECHNOLOGY

Asian Journal of Science and Technology  
Vol. 11, Issue, 09, pp.11163-11166, September, 2020

## RESEARCH ARTICLE

### COOPERATIVE PROTECTION BETWEEN LAWYERS AND JUDGES: BENCH- BAR RELATIONS

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#### ARTICLE INFO

##### Article History:

Received 17<sup>th</sup> June, 2020  
Received in revised form  
09<sup>th</sup> July, 2020  
Accepted 24<sup>th</sup> August, 2020  
Published online 30<sup>th</sup> September, 2020

##### Key words:

Judicial Ethics, Social Values,  
Corruption, professional Ethics, Co-  
operative Protection, Bench and Bar

#### ABSTRACT

On the eve of retirement of Chief Justice of India, Justice H.L. Dattu when media person quipped that he was being tipped as the next Chairperson of the National Human Rights Commission, Justice Dattu aptly remarked "Prabhu ki Kripa". A Thomas could raise eyebrow on it whether it qualified a reward to him for enriching the relationship between Bench and Bar. Ultimately Justice Dattu has been credited with coveted post of chairmanship of NHRC. This is not for the first time that Judicial Ethics collaborated with the indictment of beneficiary, may be a judge himself or a litigant or protector for litigant. Judicial Ethics is considered as myth as well as a reality, Hob-nabbing for jobs and elevation have caused decline in social values and judicial ethics. The elevation of Justice A.N. Roy superseding, the three senior most judges is a case in point Judicial ethics is an integral part of professional ethics which is equally applicable to both, the Bar and Bench. Etymologically, ethics is a combination of rules of good behavior and cleanliness in dealings. Justice Ashutosh Mukharjee in the case of Ragina Guha (1916) pointed out that legal profession was in existence during the Hindu period. One of Chief Justices of U.S. Supreme Court Mr. Marshall observed that the fundamental aim of legal ethics is to maintain the honour and dignity of the law profession to secure a spirit of friendly cooperation between Bench and Bar in the promotion of higher standards of Justice. There are complaints of corruption in the judiciary also. Justice Ramaswamy was subjected to impeachment. Advocate Shanti Bhushan openly leveled a charge that at least eight of the Supreme Govt. judges had been indulging them-selves in corrupt practices. Former chief Justice of India Justice V.N. Khare had admitted that judges are also human beings and they are not infallible. Therefore, someone must judge with same spirit to the judges. Such admissions speak of the fact that canons of judicial ethics are being flouted. Even some judges have acknowledged that today the judiciary is at a cross-road. They admit that the accountability of judges, quality in delivery of judgments, operational skills of the judges, ethical values, speedy justice and gender sensitization among judges are alarming matters in so far as the ethical myth and reality are concerned. The recent case of MP High Court has brought the credit of judiciary into lurking shame as impeachment notice has been admitted in the Rajyashabha signed by as many as 58 members of Parliament on judge's misconduct in sexually harassing the lady Judge of District Judge level who was posted at Gwalior and had resigned after the incident. The cases of Law Interns being sexually exploited or harassed even by the Supreme Court Judges have affected the spirit of Co-operative interaction between lawyers and Judges. To maintain the high standard of conduct in the society, Professional ethics is equally important for both, the judges and the lawyers. They are complimentary to each other. The success of judicial administration depends upon the co-operative inter-action between the Judges and the advocates. Bench and Bar relations thrive on mutual trust and respect for each other of two pillars of adjudicatory process. The dignity of legal profession can be maintained if there are amicable and respectful relationship between Bench and Bar by observing and adhering to professional norms by the both, judges and the advocates. The legal Profession is under challenge and to ward off the unhealthy trend of vices, cordial relationship between Bench and the Bar would be the sustainable remedy. Under the atmosphere of indisposition in protecting the values in the judiciary, the emergence of a pro- active judge is call of the time, as Lord Woolf has envisioned: 'Ultimate responsibility for the control of litigation must move from the litigant and their legal advisors to the court.' This research paper discusses the ethics and professional conducts of the judges and lawyers, what are their duties, obligations and standard of conduct towards the court, society and the peoples of the country. It has also provided a model for better co-operation between the Bar and the Bench.

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Citation: Prof. (Dr) Patel, C.L.. 2020. "Cooperative protection between lawyers and judges: bench- bar relations", *Asian Journal of Science and Technology*, 11, (09), 11163-11166.

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#### INTRODUCTION

In India there is unified judiciary and not a duel system as exists in the U.S.A. The judiciary plays a significant role in dispensing justice to its people and protects the Constitution and the fundamental rights of the citizens.

It is expected that judiciary should display the highest standard of propriety in its conduct. The issues of conduct and integrity of the judges is endorsed with the perceptual overtones and sensitivity, embedded with cultural and moral sophistication which are the prime requirements of a judge for emulation.

Not only in the public life but also in private life, standard of probity and higher conduct of propriety are essential so that the judge may command unquestionable respect of and confidence from the people. The performance of the judge to a great extent depends upon the cooperation provided key the lawyers. "Every judge is a role model to the society. Dispensation of justice is an attribute of God. Blessed are those on whom godly assignment has been fallen. Even God does not sit on the judgment of a human being's deeds until his death, but judges have been given the authority to sit in judgment over the deeds of a man in his life time. And hence, the assignment must be undertaken with pride, dignity and honor."<sup>1</sup> Justice A.R. Lakshamanan has rightly said that "successful judicial system is a hallmark of any developed civilization"<sup>2</sup> Hon'ble S.B. Sinha is of the opinion that "the effectiveness of any system usually depends, in a substantial measure, on the effectiveness of the men who belong to and operate the system. Therefore, the quality of justice depends more on the men who administer the laws than on the laws they administer."<sup>3</sup> Speaking about the qualities of judges, former Chief Justice of India, Shri Balakrishnan, has aptly observed "the judicial system even if it moves in the right direction may not be able to deliver justice if the judges do not possess requisite operational skills. Small errors committed by judges and judicial officers may cause grave injustice and irreparable harm to the stakeholders."<sup>4</sup>

**Code of conduct highlighted by mr. Moseneke:** To mark the 30<sup>th</sup> anniversary of assassination of Rutt Frost, Mr. Moseneke addressed that while Legislature is the will of the majority, the Court must always remain the conscience of the society. The Codes of conduct as highlighted under the Judicial Standards and Accountability Act have been summarized by one eminent Professor as follows<sup>5</sup>:

- No judge shall give an interview to the media in relation to any of his judgment delivered, or order made, or direction issued, by him in any case adjudicated by him,"
- No judge shall enter into a public debate or express his views in public on political matters, except views expressed by a judge in his individual capacity on issues of public interest, other than as a judge during a private discussion or at an academic forum,"
- Among other things that bars the judges from indulging into include allowing any member of his family, who is a practicing lawyer, from "using the residence in which the judge actually resides or uses of any other facilities provided to the judge, for professional work or any family member."
- The law expects judges not to "delay delivering a judgment beyond three months after conclusion of arguments and have bias in judicial work or judgments on the basis of religion, race, caste, sex, or place of birth."
- Any "willful breach of judicial standards" could be treated as misbehavior, and lead to a disciplinary panel initiating proceedings against the erring judge.
- A complaint alleging misbehavior or corruption would be referred to a scrutiny panel comprising three judges.

**Guidelines issued by former c.j. k.g. balakrishan:** To prevent corruption in the judiciary, former Chief Justice of India K.G. Balakrishnan issued a - 16 point guidelines to the

Judges with a copy of the resolution of values of judicial life to the Chief Justices of all the High Courts. The resolution said "every Judge should make a declaration of all his/her assets in the form of real estate or investment held by him/her or spouses or dependents with a reasonable time of assuming office". The main guidelines are as below-<sup>6</sup>

- Judges should not waiver from the path of impartiality, the core value on which people repose faith in judiciary.
- A judge should not contest election to any office or club, society or other association, except those connected with law.
- Judges should not have close association with advocates.
- Any immediate family member, who is a member of the Bar, should not live in the judge's residence, even if he/she is the spouse.
- The judge should practise a degree of aloofness consistent with the dignity of his office.
- The judge should not enter into a public debate or express views on political matters.
- The judge should avoid give interviews on his judgments.
- Right of Practice cannot be denied to an Advocate simply because his father is a judge, being son of a High Court Judge is not a disqualification for being a member in Bar.. Some workable solution has to be found.

**Advices of justice deepak mishra to budding lawyers:** Hon'ble Justice, Mr. Deepak Mishra, the judge of Supreme Court while delivering the lecture at Bhartiya Vidya Peeth Deemed University Pune, gave valuable advice to the budding lawyers, which are summarized as below—<sup>7</sup>

- Enter into the profession with a sacrosanct feeling like entry into a temple to serve the cause of justice
- Harbor the conviction of hard work for success.
- Concretize the confidence with humility and respect without fear
- Avoid any kind of envy and belief in the philosophy of action
- Develop the sense of introspection and anxiety to learn new things
- Always strive for efforts and hard work
- Develop a sense of responsibility and rationality
- Be inspiring and research oriented
- Be an aristocrat in your thought and be yearning for knowledge
- Abandon fixity of notion and have progressive out look
- Believe in being unthinkable pillar of serviceability as an officer of the Court
- Adorn the sense of humor and have patience, perseverance, politeness, punctuality, passion for knowledge with a spirit to develop the Newtonian complex and novelty every moment.

I do suggest that our honorable members of Bench should also borrow the above qualities and should inculcate the niceties of the professional acumen as mentioned above besides adhering to the Codes of judicial standard for their accountability to the people. Judges should maintain cordials relation with lawyers and also to contain corruption from the body politic of judiciary.

**Bar-bench relations revisited:** To maintain the high standard of conduct in the society, professional ethics is equally important for both, the judges and advocates. They are complementary to each other. Former Chief Justice of India, Mr. Meharchand Mahajan acknowledged the contribution of Mr. M.C. Sheetalvad as an erudite advocate and came out with the remark that no welfare State can flourish and effectively function unless there is an administration of justice and sine qua non for the same is closest co-operation between the Bar and Bench. The mystic poet William Blake has rightly said that "great things are done when man and mountain meet; this is not done by jostling in the street." Here lies the importance of co-operation between Bar and the Bench. It is rightly said that Bench and Bar are the two arms of the same machinery and unless they work harmoniously, justice cannot be properly dispensed by the Courts. "If an over-subservient Bar would be one of the greatest misfortunes that could happen to the administration of justice, a weak Bench that would be cowed down by the bullies, if any, at the Bar, who dare to insult and abuse the court in its face would be curse to the administration of justice."<sup>8</sup>

The responsibility of maintaining harmonious relationship vests with the lawyers as well as the Judges. "A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns to the Bar as well. The Bar is the principal ground for recruiting judges. Nobody should be able to raise a finger about the conduct of a lawyer. Actually judges and lawyers are complementary to each other. The primary duty of the lawyer is to inform the court as to the law and facts of the case and to aid the court to do justice by arriving at the correct conclusions. Good and strong advocacy by the counsel is necessary for the good administration of justice. Consequently the counsel must have freedom to present his case fully and properly and should not be interrupted by the judges unless the interruption is necessary."<sup>9</sup> Both, lawyers and judges have pious obligation to be courteous, cooperative and considerate towards each other.

**Obligations to be adhered to by the bench and the bar:** To get the administration of justice run smoothly and on right wheels, the following obligations in the form of relationship are to be adhered to by both, the Bench and Bar:

- Mutual confrontation should be avoided. To prevent the miscarriage of justice or misuse of judicial process, the judge is required to give a patient hearing to the arguments and examination by the lawyers.
- The respect and safeguards of privileges of bar and Bench are to be protected reciprocally.
- Both should avoid discourteous treatment and servility to each other.
- Rules governing the Ethics of Legal Profession should be strictly followed by the lawyers so that acrimonious relationship are not brewed and they are not subjected to disciplinary proceedings as has been specified under Rule 45 of the Advocates Act 1961 for lawyers and Contempt of Courts Act 1971 applicable to judges also.
- Lawyers are also the officers of the Court and in such capacity they are obliged to assist the Court with proper

conduct and behavior during the course of pleading and other proceeding in the Court room.

- Bench is expected to deal with the Bar devoid of any bias and both are required to respect each other.
- Influencing the judge by an Advocate luring him for gratification in lieu of favorable verdict to his case is an act to jeopardize the interest of legal service and justice.
- It is the responsibility of both, the judge and the lawyer to create a conducive atmosphere in the interest of the Court so that the canons of dignity of self respect are preserved.
- Bench and Bar relationships are disturbed if a lawyer's behavior is rude, insolent and insulting towards a judge and in reaction, the judge repulses with oversensitivity to the remarks made by the advocate. Such situations should be avoided in the interest of administration of justice.
- Actually self restraint and respectful attitude towards the court, presentation of correct fact and the law with a balance of mind and without over statement, suppression, distortion or embellishment are the requisites of good advocate.<sup>10</sup>
- The judge should display a clean character as be reference from being named as Uncle judge. Both the Judges and Advocate should keep distance in the court matter so that the judge is not suspected of being Caesar's Wife nor should he indulge into any moral turpitude. It is suggested that the Advocates who are elevated to the position of High Court or Supreme Court Judges should be given posting outside their professional territorial jurisdiction where they were practicing. It is also suggested that the advocates affiliated to the political parties should not be considered for selection as judges to avoid unnecessary bias in dispensing justice.
- Now-a-days, media-trial has become a phenomenal practice even in the judicial arena. It is suggested that the judge should keep himself aloof from gaining popularity or otherwise from the media, so that he/she is not disdained by the Bar. With smooth Bench Bar relations, the independence of judiciary shall remain intact in letter and spirit.

**SUM UP:** Rededicating the faith on the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights and U.N.O. basic principles on the independence of judiciary, the Bangalore Code of Judicial Conduct was adopted at The Hague on 25-26 November 2002. It prescribed some principles to establish standards for ethical conduct of judges on global level. These are independence, impartiality, integrity propriety, equality, competence and diligence. To enhance the ethical values in the functioning, the independence of the judiciary should be indispensable for impartial justice and to promote the independence of the judiciary which is an essential element of rule of law. The provisions of Indian Constitution ensure the independence of judges in conformity to judicial independence in International Law. To ensure the factum of independence, I suggest some postulates of ethical norms to be observed by the judges. These are as follows:

- The judge should discharge his/her duties in a fair and fearless manner

- The judge should not be influenced or be biased with any party under dispute.
- The judge should avoid the conflict of interest, perceived or expressed
- The judge should keep himself/herself away from indulging into any impropriety
- Strict confidentiality should be a rule in deliberations until the judgment is delivered in open Court
- In the performance of his/her judicial obligations, the judge should be given immunity from arrest in criminal allegations and trial for civil consequences during his/her tenure of appointment. However, In the cases of bribery, corruption and moral turpitude, immediate vigilance inquiry be conducted and if found guilty, he/she should compulsorily retired.
- The judge should exercise appropriate restraint in commenting extra-judicially on the colleagues and should refrain from political entities from hobnobbing favor in the matters of recruitment, transfer, posting etc.
- There should be no prohibition in re-employment of judges after they relinquish the office or position held by them but the re-employment should be given on the basis of extra-ordinary caliber, spotless character and exemplary moral character
- The adherence to the Principles of Ethics by the judges would be beneficial to them as well as to other beneficiaries viz., lawyers and litigants.

For cooperative protection, certain principles were evolved by the Lahore High Court in 1948 which were cited by Bombay High Court- in 1973- those principle are reproduced as below:- "It is difficult to lay down any hard and fast rule as to what expression lawyer can use with impunity while addressing the court and what should ordinarily be tolerated by it. A lawyer should always conduct himself properly in a court of law and exert his best at all times to maintain the dignity of the court, but the court has also a reciprocal duty to perform and should be not only discourteous to a lawyer but should also try to maintain his respect in the eyes of his clients and the general public with whom he has to deal in his professional capacity. Hypersensitiveness on the one side or rudeness on the other must be avoided at all costs. Both the Bench and the Bar are the two arms of the same machinery and unless they work harmoniously, justice cannot be properly administered. Therefore, mutual adjustment and not mutual antagonism should be the end in view on both sides, eliminating all ideas either of domination or of servility.....Without failing in respect to Bench, it is the duty of the members of the Bar to assert their just rights to be heard by the tribunal before which they are practicing.

They should be fearless and independent in the discharge of their duties, and would be perfectly right in protesting against irregular procedure on the part of any judge; and if the advocate is improperly checked or found fault with, he should vindicate the independence of the Bar. He would be perfectly justified in insisting on getting a proper hearing and he would be perfectly right to object to any interruption with the course of his argument such as to disturb him in doing his duty to his client. Plenary powers vested in the Presiding Officer of the court, apart from the fact that they have rarely been used against members of the legal profession so far, should only be used to vindicate the honor of the court or to satisfy the necessities of public justice and not as a matter of course."<sup>11</sup> Our former President of India, Smt. Pratibha Patil is remembered in summing up this write-up, she said "Our people continue to repose great hope on the judiciary and they respect the judiciary as well. Therefore, it is important for the judiciary to remain in the high esteem of the people and to be seen as being capable of maintaining high standards of probity and good functioning."<sup>12</sup> Under the atmosphere of indisposition in protecting the values in the judiciary, the emergence of a pro- active judge is call of the time, as Lord Woolf has envisioned: 'Ultimate responsibility for the control of litigation must move from the litigant and their legal advisors to the court.'

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