



Judicial Conduct: A Rethinking in Creating Public Confidence

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Abstract

The very edifice of Indian democracy is judiciary. The subordinate judiciary is said to be the kingpin in the hierarchical system of administration of justice. The role of the judges and their judicial integrity has to be displayed magnanimously. Any conduct of judge is under the radar of public scrutiny. So, confidence building is a continuing effort and a most important driving force. Refinement of the judicial conduct is necessitated in order to promote the trust of the public in the judicial system. The regulation of the judicial conduct is required to accomplish the values and virtues of the judges. The “Bangalore Principles of Judicial Conduct” intends to conceive the ethical standards for the judges. The expectation from a judge is of being independent, impartial, having integrity and creating confidence in the public. The morality and integrity of the judiciary is of utmost importance in any modern democratic society. A Judge shall exercise competence and diligence in performance of the judicial office. A judge is predictable self-restrictions and the conduct shall be consistent with the dignity of the judicial office. Judiciary shall bear the prime responsibility for the promotion and maintenance of highest standards of judicial conduct. Judge should never allow private interest or interest of the family members to override the prestige of the judicial office. Lack of integrity and character of the judge will affect or agitate the confidence of the litigating public. A greater responsibility is imposed on the trial court judge, who will have day-to-day contact with the litigant during the court proceedings. This responsibility is to build an atmosphere of trust amongst all the stakeholders in the judicial system. The author in this paper examines the important elements required for the enhancement of the public trust in the judicial system and the judicial response in upholding the ethical values.

Keywords: Independence of judiciary, Judicial Conduct, Public Trust, Judicial Integrity

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“A Judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn and be courageous enough to acknowledge his errors”.

Justice Ranganath Mishra¹

1. Introduction

The independent India has witnessed continued effort and development to refine the judicial system from time to time. The purpose of refinement of the judicial conduct is to promote the public confidence in the judicial system and inclination of the judicial systems across the globe. The efforts to improve and advocate the judicial conduct have achieved some recognition. The judicial conduct aims at the accomplishment of the values and virtues within the judges. This is in fact related to how the judges behave and what judges do, rather than directly related to the decision making. The Bangalore Principles of Judicial Conduct, 2002, (hereinafter referred as “Bangalore Principles”) expects a judge to be independent, impartial, having integrity and creating confidence in the public. The morality and integrity of the judiciary is the utmost importance in any modern democratic society.² In addition, a judge shall exercise competence and diligence in the performance of the judicial office.³ American Bar Association Model Code of Judicial Conduct (2007) requires integrity and impartiality as a major criterion to promote public confidence.⁴ The list is not exhaustive, but may consist of many more integral disciplines. Today, any conduct of judge is liable to public scrutiny and the confidence building is a continuing effort and the most important driving force.

¹ *All India Judges’ Association v Union of India*, (1992) 1 SCC 119.

² The Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, *available at*: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, last visited on October 24, 2022.

³ Value 6, *Ibid*.

⁴ Mark I. Harrison, the 2007 Aba Model Code of Judicial Conduct: Blueprint for A Generation of Judges, *available at*: https://www.ncsc.org/__data/assets/pdf_file/0021/15438/2007abamoddelcode.pdf, last visited on October 24, 2022.

It is desirable that, any expectation with reference to the judicial system shall not disassociate with the public confidence.

Before referring to the judicial conduct, it is pertinent to know the well-established rules of public policy, which is based on the following maxims and provide the basic premise for role of a judge in interpretation and application of law:⁵

- a) *Salus Populi Est Suprema Lex* (Regard for the public welfare is the highest law)⁶
- b) *Audi Alteram Partem* (No man shall be condemned unheard)⁷
- c) *Nemo Debet Esse Judex in Propria Sua Causa*. (No man can be judge in his own cause)⁸
- d) *Actus Curiae Neminem Gravabit* (An act of the Court shall prejudice no man)⁹

These fundamental principles have played a major role in the development of administration of justice and influenced the Canon

⁵ Referred in Y. K. Sabharwal, Former Chief Justice of India, “Canons of Judicial Ethics”, Speech as part of MC Setalvad Memorial Lectures Series.

⁶ *Pritam Pal v. High Court of Madhya Pradesh*, AIR 1992 SC 904, referring the meaning as “welfare of the people is the supreme law, enunciates the idea of law”, which can be achieved by administering the justice - lawfully, judicially, without fear or favour and without being hampered and thwarted. This cannot be effective unless respect for it is fostered and maintained. See also *Special Deputy Collector v. N. Vasudeva Rao*, [2003] 12 ILD 342 (AP).

⁷ *Maneka Gandhi v. The Union of India*, AIR 1978 SC 597 held that “law and procedure, should be followed in a just, fair and reasonable manner.

⁸ Value 3, The Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, available at: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, last visited on October 24, 2022. *State of U.P. v. Mohammad Nooh*, AIR 1958 SC 86; *A. K. Kraipak & Ors. Etc v. Union of India & Ors*, AIR 1970 SC 150, Disqualifies a person from deciding a dispute, where such person has any interest in the subject matter.

⁹ *Kalabharati Advertising v. Hemant Vimalnath Narichania*, (2010) 9 SCC 437, any party to a litigation cannot take benefit of his own wrongs and thereafter blame the Court. Later, if the case is dismissed as it was found devoid of any merit or it was withdrawn (frivolous litigation has been filed), the act of the Court in such cases shall prejudice no-one.

of Judicial Conduct. The very edifice of any democracy is judiciary. The immense role played by Judges and their judicial integrity is displayed magnanimously. In order to strengthen the role of judiciary, the Bangalore Principles was adopted.

The Bangalore Principles is a unique framework to provide guidance for judges to regulate their conduct. The objective of the Bangalore Principles is intended to establish standards for ethical conduct of judges with a competent, independent and impartial judiciary for upholding the constitutional norms and rule of law. An independent and impartial judiciary is the backbone of proper administration of justice.¹⁰ It is more so important, because the protection of rights either fundamental right or human rights completely depend on judiciary. In a democratic society, trust towards the judicial system is of utmost importance and quintessential. The Bangalore Principles endorses and advocates that the judiciary shall not only be independent in relation to society, but also towards the parties while adjudicating any dispute.¹¹ The judicial officer must individually and collectively respect and honor the judicial office.¹² It is possible only when judiciary bears the prime responsibility for the promotion and maintenance of highest standards of judicial conduct. The author in this paper examines the relevance and challenges for the judicial officers. The second part of the article deals with the attribute of a judge being independent. The third part refers to the impartiality and integrity requirement while acting in judicial capacity. Fourth part refers to the obligation of the judge to maintain equality or of being non-discriminatory. The judiciary's role in recognizing and maintaining it as an integrity institution is

¹⁰ Value 1, The Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, *available at*: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, last visited October 24, 2022.

¹¹ Value 1.2, The Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, *available at*: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, last visited October 24, 2022.

¹² *Ibid.* Value 1.

elaborated in the fifth part. Finally, the sixth part deals with the judicial conduct and the response of the judiciary in regulating the behavior of Judges and then concludes.

2. Independence of Judiciary

The Independence of judiciary is the pre-requisite to the rule of law and a fundamental guarantee of a fair trial. Only if judicial officer's exercise independent decision making, it will uphold and exemplify its individual and institutional aspects of creating public trust.¹³ The judicial independence can be exercised on the basis of assessment of the fact, based on understanding and imbibing the law. Judicial officer is not to be under any external influences, inducements, pressures, threats or interference, direct or indirect, for whatsoever reasons. Independence of the judiciary not only refers to it as a collective body or organ of the government from other organ like, the executive and the legislature, but act independently.¹⁴ This is to be practiced by every member of the judiciary in the performance

¹³ Article 50 Directive Principle of State Policy, the Constitution of India, "the State shall take steps to separate the judiciary from the executive in the public services of the State", *Supreme Court Advocates on Record Association v. Union of India*, (1993) 4 SCC 441; Siracusa Draft Principles on the Independence of the Judiciary, CIJL Bulletin No. 25-26, at 59 (Apr.-Oct. 1990), "Independence of the judiciary means (1) that every judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without any improper influences, inducements, or pressures, direct or indirect, from any quarter or for any reason, and (2) that the judiciary is independent of the executive and legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature. Cited in M. P. Singh, "Securing the Independence of the Judiciary - The Indian Experience", *IND. INT'L & COMP. L. REV.* Val. 10:2, available at: <https://mckinneylaw.iu.edu/iiclr/pdf/vol10p245.pdf>, last visited October 23, 2022.

¹⁴ *All India Judges Association v. Union of India*, AIR 1992 SC 165; *All India Judges Association v. Union of India*, AIR 1993 SC 2493; *Union of India v. S. H. Sheth*, AIR 1977 SC 2328 (challenge to the transfer of a Judge from Gujarat High Court to Andhra Pradesh was withdrawn by Union of India).

of their duties as judges.¹⁵ A judge can be called as independent, when such judge has freedom from any relation to society in general. Judge should recuse when the parties to the dispute, either directly or indirectly are related. A judge is said to act freely, if the officer has not acted inappropriately without any influence by the executive or the legislative branches. Even judicial colleagues should not influence each other while making decisions. The judge with such great virtues will reinforce public confidence in the judiciary, which is the very foundation to the maintenance of judicial independence.

The concept of independence of judiciary was examined in *S.P. Gupta v. Union of India*,¹⁶ wherein it was held that the role of the Court is to observe independence, which is said to be within the constitutional scheme. Highlighting the principle of “rule of law” as the principle on which, the judiciary is entrusted the task in keeping every organ of the State within the limits of the law, expects judges to be fearless and thus, making it meaningful and effective. Further, the Supreme Court elaborated that the power of judicial review conferred on the judiciary is to be exercised in order to protect the citizens against violation by the State or its officers of the constitutional or legal rights or when there is a misuse or abuse of power. Hence, independence of judiciary is the livewire of the judicial system and will be a dooms day, if that wire is snapped.¹⁷ Similarly, it is considered as the “cardinal feature”, which strengthened to act as a protector of the constitutional rights.¹⁸ In view of the scope of judicial review being expanding, it is the need of the hour to protect and secure the independence of individual

¹⁵ M. P. Singh, “Securing the Independence of the Judiciary - The Indian Experience”, IND. INT’L & COMP. L. REV. Val. 10:2, available at: <https://mckinneylaw.iu.edu/iiclr/pdf/vol10p245.pdf>, last visited October 23, 2022.

¹⁶ 1981 (Suppl.) SCC 87.

¹⁷ *Supreme Court Advocates on Record Association v. Union of India*, (1993) 4 SCC 441.

¹⁸ *Union of India v. Sankal Chand Himatlal Sheth and Another*, AIR 1977 SC 2328; *Shamsher Sing v. State of Punjab*, AIR 1974 SC 2192.

Judges and of the Judiciary, as an institution.¹⁹ Accordingly, Prof. M.P. Jain observes that

*“The Constitution makers had expected that all constitutional functionaries will act in public interest in the independence of the judiciary uninfluenced by personal, political, or even ideological considerations that could harm that interest.”*²⁰

The independence of the judiciary can be achieved by the cooperation not only by the State and its departments or agencies, but also the general public.

3. Impartiality and Integrity²¹

Impartiality and Integrity is a *sine quo non* in the decision-making process²² and the judicial duties shall be performed without favour, bias or prejudice²³. Similarly, a judge shall ensure that the conduct in general perception is above reproach. In *Supreme Court Advocates on Record Association v. Union of India*, the Apex Court held that *“Impartial judiciary supplies the reason for the judicial institution, and it also gives character and content to the constitutional milieu.”*²⁴ Impartiality is reflected when judicial duties are discharged without favoritism, biasness and prejudice. Such conducts are displayed both inside and out of the Court demeanor.

¹⁹ *Supreme Court Advocates on Record Association v. Union of India*, (1993) 4 SCC 441.

²⁰ M. P. Singh, “Securing the Independence of the Judiciary - The Indian Experience”, *Ind. Int’l & Comp. L. Rev. Val. 10:2*, available at: <https://mckinneylaw.iu.edu/iiclr/pdf/vol10p245.pdf>, last visited on October 23, 2022.

²¹ Value 3, *The Bangalore Principles of Judicial Conduct*, United Nations Office on Drugs and Crime, available at: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, last visited October 24 2022.

²² Value 2, *Ibid*.

²³ Value 2.1, *Ibid*.

²⁴ *Supreme Court Advocates on Record Association v. Union of India*, (1993) 4 SCC 441.

Utmost care has to be taken that a Judge does not make any comment, which may affect the outcome of proceeding or impair the fairness of trial. It has to be seen that a condition that should never arise, where a judge had to be disqualified from deciding cases. The conduct either within or outside shall be to maintain and enhance the confidence of the public, the legal profession and litigants.²⁵

However, judges are not deities. There may be a precarious situation, where a judge cannot decide the matter impartially or has biasness towards a concerning party or has personal knowledge of disputed evidentiary facts of the proceedings or has served as professional lawyer or material witness or has economic interest not only of himself, but of his family members, in such matters the judge should be recusive or recuse, except in situation where it may lead to serious miscarriage of justice.

George Mikes in his article “Professional Deformities” writes as under:

“It was not that Judges were, or are, Sadists. Very few of them are. But sooner or later most of them develop a ‘God complex.’ When everyone keeps kowtowing to you; when people laugh at your silliest jokes and listen to your most, trivial utterances though they were the Sermons on the Mount; when the outcome of quarrels and arguments, and often the fates of men, and women and their children rest in your hands; when you cannot be sacked from your job, however, incompetent or senile you become... when, in other words you are treated like God, then it is difficult not to believe in your own divinity. You are addressed as ‘My Lord’, almost like Him, so naturally you are inclined to believe. He is your colleague.”

The behavior and conduct of a judge should reaffirm the people’s faith in the institution of judiciary. The judicial office is to be honored

²⁵ Value 2.2, Ibid.

principally a public trust and strive to to enhance and maintain confidence in the judicial system.²⁶ The society expects that a judge should possess the highest integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences and righteousness.²⁷ Thus, a judge is required to have a challenging standard of conduct in exercise of the judicial duty. The conduct which are not expected are those tending to undermine public confidence with specific reference to the integrity and impartiality of the court. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards, which would generate public confidence and accord dignity to the judicial office. This not only enhances the public image, but also the recognizes the existence of ethical behavior of the judge and safeguarding the reputation of the court as an institution. It is, therefore, a basic requirement that a judge's official and personal conduct be free from impropriety, but having probity.²⁸ As they are under constant public scrutiny, a judge shall accept any restrictions and conduct consistent with the dignity of the judicial office.²⁹ The standard of conduct is higher than expected of a layman and an advocate.³⁰ A judge shall avoid any situation giving rise to the suspicion, favoritisms or partiality.³¹ Hence, there is no concession to the personal or private life, which is higher than those deemed

²⁶ Preamble of The Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, *available at*: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, last visited on October 24 2022

²⁷ *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee & Others*, (1995) 5 SCC 457.

²⁸ Value 4.2, Judge shall ensure that propriety is essential in the activities, The Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, *available at*: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, last visited on October 24, 2022,

²⁹ 4.2, *Supra* n. 25

³⁰ *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee & Others*, (1995) 5 SCC 457; see *Muzaffar Husain v. The State of Uttar Pradesh*, (2011) 4 SCC 584.

³¹ 4.3, *Supra* n. 25

acceptable for others. For e.g., a Judge can ill-afford to seek shelter from the fallen standard in the society. The “dispensation of justice” is one of the noblest professions of the world. The life of a judge is nothing less than a hermit, and

*“they have to live and behave like hermits, who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat”.*³²

A judge has to be vigilant and avoid impropriety in words, conduct and activities. It demands certain sacrifices in the form of personal restriction, which is burdensome for common people, but then it has to be, as the justice delivery system demands it. The situation is sensitive as a judge’s duty is to constantly make effort in keeping away from suspicion or appearance of favouritism or partiality. Such restriction is not individualistic, but extends to the entire family members. A judge has to abstain from cases, where the family members are associated, either directly or indirectly or remotely. Family members also have responsibility to respect the judge’s “judicial office” and shun making improper influence over the judicial conduct and judgment. The residence is also subjected to restriction, where no person can be allowed including the member of legal profession to receive a clients or other member of legal profession. The freedom of expression, belief, association and assembly is subjected to upholding the dignity, impartiality and independence of the office. Judge should never allow private interest or interest of the family members or anyone else to override the prestige of the judicial office nor should give impression of the subjugation to improper influence. At any cost a judge has to maintain the confidentiality of his office.

4. Maintain Equality or Non-discriminatory

Judicial officer should maintain equality of treatment with any person appearing before the court. A judge shall have an

³² *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal*, (1998) 2 SCC 72.

understanding and consideration to diversity in a society including race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes. Appropriate hearing and opportunities shall be given to the parties without differentiation. The parties may be witnesses, lawyers, court staff and judicial colleagues in course of exercising the judicial duties. Judicial officer should not allow a lawyer appearing in the court, to display biasness or prejudice. The Supreme Court in *R. Viswanathan v. Rukn-UI-Mulk Syed Abdul Wajid*³³ held that the rule of law about judicial conduct is strict. Hence, no judge will be considered competent to hear a case where there exist either a direct or indirect interest. This will not only disqualify to adjudicate the dispute, but also renders the judgment a nullity. In addition, based on the principle that no litigant should leave the Court feeling reasonable that the case presented was not heard or considered on its merit, thus, a judge is expected to be serene and even-handed.³⁴

5. Judiciary is an Integrity Institution: A Judge an Oracle³⁵

A judge is expected to discharge the duties with having utmost integrity towards the judicial office. The judge's conduct shall ensure it is above reproach in the view of a reasonable observer.³⁶ Hence, the behaviour and conduct of a judge must reaffirm the people's faith.³⁷

³³ 1963 SCR (3) 22

³⁴ Ibid.

³⁵ Blackstone is said to have used that the judges should be "living oracles" to be qualified as judges, cited in Unini Chioma, "The Living Oracle: The Judex As An Embodiment of Justice, *available at*: <https://thenigerialawyer.com/the-living-oracle-the-judex-as-an-embodiment-of-justice/>, last visited on October 23, 2022.

³⁶ Value 3 & Application 3.1., The Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, *available at*: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, last visited on October 24, 2022.

³⁷ Ibid.

Justice Y. K. Sabharwal, former CJI suggested that judges must remain humane and considerate by referring to an anonymous phrase quoted as: *“Never become so intelligent; never become so high; never become so wise; that someday no one may be able to see the human in you”*.³⁸ The judge shall maintain the decorum in exercise of judicial function by an “act of restraint” and expected of being sober, unruffled and temperate in language even during situations that are incomprehensible. A judge has to imbibe and maintain order and decorum in all proceedings and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others dealing in an official capacity. He shall require the similar conduct to be maintained by legal representatives, court staff and others subject to the judge’s influence, direction or control. For e.g., section 151 and 152 of the Evidence Act, 1872 provides a judge or an advocate in a hearing shall not ask scandalous, indecent, or any insulting or annoying questions to parties before the court.³⁹ Hence, even under any grave provocation, the judge shall not outburst by contemptuous or insulting words or actions. This act will not be sustainable and shall be considered as outside the scope of exercising the judicial duty.⁴⁰

A humane Judge will always be just and merciful. Hence, a judge would always remember that *“mercy seasons justice”*⁴¹ is the

³⁸ Cited in Y. K. Sabharwal, “Canons of Judicial Ethics”, Speech delivered at M.C. Setalvad Memorial Lectures Series.

³⁹ See section 151, Indian Evidence Act, 1972 provides that *“the Court may forbid any questions or inquiries, which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.”*; Section 152, Indian Evidence Act, 1872, *“Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.”*

⁴⁰ *Bidhi Singh, Petitioner v. M. S. Mandyal and another*, 1993 CRI. L. J. 499.

⁴¹ William Shakespeare, the Merchant of Venice, Act IV, Scene I [The quality of mercy is not strained], *available at:*

answer. “Integrity” is an often-used, but seldom well-defined term that can get bound up with issues of public confidence as well as issues of appearances when it comes to the substance of regulating the judicial conduct.⁴² The public expects and recognize judges having integrity. “Integrity,” in this context, is often used as a kind of catch-all for the general idea of being reasonably decent, upstanding, and honorable, but more often than not, it is used without any serious consideration of what any of those ideas mean, exactly, within the context of the judicial role. Therefore, judicial officers should possess the sterling quality of integrity. Integrity is the hallmark of judicial discipline apart from others. It is suggested that judiciary should act with utmost care and will not allow the temple of justice to crack from within. Hence, any issue pertaining to the question of integrity of a judge in exercise of judicial duty shall be dealt sternly.⁴³ It will lead to a catastrophe in the justice-delivery and results in the failure of public confidence in the system. It was observed that “...*that woodpeckers inside pose a larger threat than the storm outside.*”⁴⁴ A judge must decide the case on the basis of the facts on record and the law applicable to the case. When a judge has misconducted and decides a case for extraneous reasons while discharging the duties as a judicial officer, which is actuated by corrupt motive, is not said to be performing the duties in accordance with law. Hence, any judicial orders with undue favour are the worst

<https://www.sparknotes.com/shakespeare/merchant/quotes/page/4/>, last visited on October 29, 2022.

⁴² Judges selected shall be individuals of integrity and ability with appropriate training or qualifications in law is in harmony with the 'Basic Principles on the independence of the Judiciary' forming a part of the universal “Human Rights in the Administration of Justice” envisaged by the Seventh United Nations Congress at Milan and endorsed by the U.N. General Assembly in 1985.

⁴³ *Tarak Singh v. Jyoti Basu*, (2005)1 SCC 201; see also *Sadhna Chaudhary v State of Uttar Pradesh*, Civil Appeal No. 2077/2020 [Arising out of Special Leave Petition(C)No. 8550/2019, Decided on March 6, 2020.

⁴⁴ *Ibid.*

kind of judicial dishonesty and misconduct.⁴⁵ The courts will strive to prevent people from resorting to animalistic instincts. Instead, they provide with gentler and more civilized alternative of resolving disputes. The Courts do not make use of guns or other (dis)incentives, but instead rely on the strength of their reasoning and a certain trust and respect in the minds of the general populace.⁴⁶ Hence, it is necessary that any deviation from judicial propriety by the guardians of law themselves, be dealt with sternly and swiftly. Thus, it is necessary that judicial officers should possess the sterling quality of integrity.⁴⁷ Kurian Joseph, C.J., enumerated the requirement of a judge and affirming that “judiciary is an integrity institution” in the following words:

“Integrity according to Oxford dictionary is moral uprightness; honesty. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short it depicts sterling character with firm adherence to a code of moral values.”⁴⁸

⁴⁵ Justice D.Y. Chandrachud and Justice Bela M Trivedi observed in *Muzaffar Husain v. State of Uttar Pradesh*, Civil Appeal No. 3613/2022 (Arising out of SLP (C) No. 21948/2019), decided on May 6, 2022.

⁴⁶ *Sadhna Chaudhary v. State of Uttar Pradesh*, Supra N.38

⁴⁷ *Shrirang Yadavrao Waghmare v. State of Maharashtra.*, Civil Appeal No. 7306/2019, (Arising out of SLP (C) No. 33818/2015., Decided on 16 September, 2019.

⁴⁸ *K.P. Singh v. High Court of H.P.*, LPA No. 163/2009, decided on 21.4.2011, by Division Bench of Hon’ble H.P. High Court, comprising of Justice Kurian Joseph, Chief Justice and Justice Deepak Gupta, Judge. The same expression was conveyed by the Supreme Court of India and various High Courts.

6. Judicial Conduct

A judge shall exhibit and promote high standards of judicial conduct, which is fundamental to the maintenance of judicial independence.⁴⁹ Judges manning the judiciary are human beings and being in such a privileged position, a word of cautious is required. There is nothing wrong to have ambition to achieve. However, if such ambition to achieve is in conflict with the duties or likely to compromise the divine judicial duty, it would be better not to pursue the same. In the colour of achieving the self-aspirations, judge may tend to become timid, which will lead to work being compromised with personal interest and ultimately conflict between interest and duty exists.”⁵⁰ The maintenance of discipline is thus, paramount in judicial service. The credibility of the conduct, honesty, integrity and character of the judge is considered as an essential requirement for acceptability of the judgment delivered. Lack of integrity and character of the judge will affect or agitate the confidence of the litigating public.⁵¹ Hence, a judge cannot have two standards, one within the court and the other beyond the court. The standard required is of rectitude, honesty and integrity and cannot act unworthy even remotely.⁵² Thus, Impeccable integrity should be reflected both in public and personal life of a Judge.

The Supreme Court in *High Court of Judicature at Bombay v. Shashikant S. Patil*,⁵³ held in unequivocal words that dishonesty is the stark anti-thesis of judicial probity, and observed as follows:

*“A dishonest judicial personage is an oxymoron...
Having regard to certain sporadic instances of lack
of probity and integrity among some of the
personnel who man this high office, it is high time*

⁴⁹ Rule 1.6. The Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, available at: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, last visited October 24, 2022.

⁵⁰ *Tarak Singh v. Jyoti Basu*, (2005)1 SCC 201.

⁵¹ *High Court of Judicature at Bombay v. Uday Singh*, (1997) 5 SCC 129.

⁵² *Daya Shankar v. High Court of Allahabad*, (1987) 3 SCC 1.

⁵³ (2000) 1 SCC 416.

that specific standards are set with regard to value system to be adopted and followed by the members serving in the temple of justice. No doubt, they are more self imposed than imposed. While dispensing justice, the messenger is also important as the message itself. A judge is judged not only by the quality of his judgments, but also by the quality and purity of his character and the measurable standard of that character is impeccable integrity reflected transparently in his personal life as well. One who corrects corruption should be incorruptible. That is the high standard, the public has set in such high offices of institutional integrity. Therefore, any departure from the pristine codes and values of discipline and disciplined conduct on the part of the judicial officers will have to be viewed very seriously lest the very foundation of the system would be shaken and, if so, that will be the death knell of democracy... Honesty and integrity are the hallmarks of judicial probity. Dishonesty and lack of integrity are hence the basic elements of misconduct as far as a Judicial Officer is concerned..."⁵⁴

Hence, maximum precaution shall be taken in question of discipline and misconduct of a judge in condoning or compromising the dishonest deed of such person. Any leeway or leniency towards such wrongful officer will contribute to the erosion of public confidence in the judicial system. The loss of trust and probity before the general public will disturb the pillars of judiciary, which is dangerous and frightening to comprehend.

A greater responsibility is imposed on the trial court judge, who will have day-to-day contact with the litigant during the court proceedings. This responsibility is to build an atmosphere, which is

⁵⁴ High Court of Judicature at Bombay v. Shashikant S. Patil, (2000) 1 SCC 416.

unpolluted and to maintain and restore the public confidence in the justice delivery system, which is the indispensable and an expected feature of any democratic society.⁵⁵ The reason for such strict requirement is because there is a stark difference between the judicial service and other services. There cannot be a comparison of the judicial officer and other service. Irrespective of the level at which the judicial officer is serving, they represent the State and its authority, unlike other services. The judges exercise sovereign judicial power and such that they are of great trust and responsibility".⁵⁶ When the Full Court of the High Court has recommended compulsory retirement of a judge for misconduct, on the judicial side, it has to exercise great caution and circumspection in setting aside that order, because it is complemented by the Judges of the High Court, who looks into the question of law. If a bona fide opinion is formed that the integrity of an officer is doubtful, the correctness may not be challenged before courts. Any judicial review of a constitutional function exercised on the administrative side of the High Court should be made only with great care and circumspection. Thus, an opinion that compulsory retirement of a judicial officer is in public interest, the concerned court would not interfere with the order made under Article 226 or Article 32 respectively."⁵⁷ One of the major concerns in judiciary is about appointment of judicial officers, which has raised questions leading to suspicion. The recent decision on the National Judicial Appointment Commission quashing the Constitution (Ninety-Ninth Amendment) Act, 2014, the Supreme Court of India held that such appointments may lead to political interference by which the

⁵⁵ *The Registrar General, Patna High Court v. Pandey Gajendra Prasad*, (2012) 6 SCC 357.

⁵⁶ *High Court of Judicature at Bombay v. Shashikant S. Patil*, (2000) 1 SCC 416.

⁵⁷ *Rajendra Singh Verma (Dead) Through LRs. v. Lieutenant Governor (NCT of Delhi)*, (2011) 10 SCC 1; Reiterated the principle laid down in *High Court of Judicature at Bombay v. Shashikant S. Patil & Anr.*, (2000) 1 SCC 416.

independence of judiciary is lost.⁵⁸ But this judgment has created a scope for discussion that everything is not fine as to appointment of Judges to the Higher Judiciary.

The judges including the higher judiciary shall individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.⁵⁹ The principles applicable to judicial conduct have three main objectives:

- a) 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

Justice Frankfurter in *Baker v. Carr*,⁶⁰ said:

“The Court’s authority-possessed of neither the purse nor the sword-ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Courts complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.”

⁵⁸ The Supreme Court struck down the 99th Amendment and consequently the NJAC Act as unconstitutional and void. It was observed that *“involvement of the executive in the appointment of judges impinged upon the primacy and supremacy of the judiciary, and violated the principle of separation of powers between the executive and judiciary which formed part of the basic structure of the Constitution,”* Supreme Court Advocates-on-Record Association and another v. Union of India, (2016) 4 SCC 1.

⁵⁹ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime. available at: https://www.unodc.org/res/ji/import/international_standards/commentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_english.pdf. last visited on October 24, 2022.

⁶⁰ 369 U.S. 186 (1962), rendered the dissenting opinion.

Hence, the Bangalore Principles has reiterated the need and efforts to formalize, workable and meaningful goal of a regulatory regime for judicial conduct. However, the best way for judges to gain public confidence is simply to do a good job. That, of course, may be true, but it demands answers to complicated questions about what public confidence is, why it is important, and what it means for a judge to do a good job.

A related subject for judicial conduct regulation is extra-judicial speech, which is also public in nature and potentially tied directly to concerns about confidence in judicial impartiality. Extra-judicial remarks may be delivered quite dispassionately, and thus indicate no problem of intemperance, but there is still a potential conduct problem due to the questions that may arise about objectivity and open-mindedness on matters before the court, currently or in the future. This is largely problematic, if the judge is making public statements indicating an established position on an unsettled point of law or an application of the law yet to be determined.

7. Conclusion

The essence of administration of justice is public confidence. It can only be maintained with highest standards of ethical and moral values by judiciary and expression of probity in the public and private lives by the judges. Public confidence is different from popular opinion. Public confidence does not mean satisfying average human being with the decisions of the court. If judiciary has to satisfy public with its decision, then it is consumerism and not akin to justice delivery system. Judiciary has delivered some unpopular decisions, but without undermining the public confidence. It is reiterated that the judiciary has to deliver justice and not popular decisions, thus, the process of decision-making assumes importance. In this process of decision-making, impartiality, independency and integrity of judicial conduct is tested. A Judge is professionally devoted to the judicial duties apart from discharging the task relevant to the judicial performance and court operations. Knowledge, skill and personal qualities should not

be stagnated and it requires continuous learning. This can be through life experiences or training. A judge should prudently update the development of laws not only with reference to the national legislation but also on international laws and Conventions. The judges are considered “an oracle” of law and people do believe them as God and thus, the judiciary has a monstrous responsibility to build and increase the faith and public confidence. Every judicial officer shall strive to achieve and build the public confidence