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### Ethics and Change of Mindset – A Way Forward

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காலை வணக்கம்...

Good morning to all of you. It gives me immense pleasure to be amidst all of you in delivering the keynote address on the topic of Ethics and Change of Mindset.

It is often said that unethical behavior is not only confined to the legal profession but it is a cancer which is devouring all spheres of society at unprecedented levels. At the outset, I would first like to congratulate the Tamil Nadu State Judicial Academy for organizing a training session on such topic wherein efforts are being taken to educate the judicial officers to try curb such an epidemic.

#### Meaning of Values, Morals and Ethics

In order to understand the meaning of ethics, one has to look into the meaning of values and morals which form the basis of ethics. Values can be defined as "things that have an intrinsic worth in usefulness or importance to the possessor," or "principles, standards, or qualities considered worthwhile or desirable."

Moral values are relative values that protect life and are respectful of the dual life value of self and others.

Now coming to the meaning of "ethics", it is hard to pin down the views on ethics as it may differ from person to person. Before I dwell on to the meaning of ethics, I would like to quote the famous german philosopher Immanuel Kant's take on ethics. Immanuel Kant remarked "**In law, a man is guilty when he violates the rights of others. In ethics, he is guilty if he only thinks of doing so.** Thus, ethics in general terms can be defined as what one may feel is right or wrong.

Read the headlines on regular basis and you will see news such as doctor being caught in the business of revealing the sex of a foetus or a judge accused of taking a bribe or similar stories. Only a person of the respective profession can understand the shame the members of their profession feel when they read such news.

Professional ethics is the standard or code of behavior that a professional must follow. There is no clear definition of the word 'professional', but for the purposes of professional ethics it can be assumed that a "professional" means any person in an occupation which requires public licensing or certification. Doctors, lawyers, chartered accountants, teachers, etc are all supposed to keep it in mind at all times.

## **Legislations governing Professional Ethics**

Many professions in India, such as legal and medical professions have codes of practice that members of the profession must follow. For instance, the Advocates Act and Bar Councils Act for Advocates, and the Indian Medical Councils Act, 1956 and Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 for doctors lists out certain codes which aims at preventing exploitation of clients and patients; and at the same maintaining the integrity of the profession.

These disciplinary codes allow the profession to define a standard of conduct and ensure that individual practitioners meet this standard, by disciplining them from the professional body if they do not practice accordingly. This not only allows those professionals who act with conscience to practice in the knowledge that they will not be undermined commercially by those who have fewer ethical qualms but also maintains the public's trust in the profession, encouraging the public to continue seeking their services.

## **Judicial Pronouncements on Professional Ethics**

'Judiciary is an institution of integrity'. Therefore, Judicial Officers should possess the sterling quality of integrity.

**In Daya Shankar vs. High Court of Allahabad, (1987) 3 SCC 1**, the Supreme Court set the following standard: "Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy."

**In High Court of Judicature at Bombay vs. Uday Singh, (1997) 5 SCC 129**, in the matter of maintenance of discipline, the Apex Court stated as follows: "Maintenance of discipline in the judicial service is a paramount matter. Acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer. The confidence of the litigating public gets affected or shaken by lack of integrity and character of Judicial Officer."

**In High Court of Judicature for Rajasthan vs. Ramesh Chand Paliwal, (1998) 2 SCC 72**, the SC held that "Judges have been described as 'hermits', further reminding that, "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."

**In High Court of Judicature at Bombay vs. Shashikant S. Patil, (2000) 1 SCC 416**, in more emphatic words, it was stated that dishonesty is the stark antithesis of judicial probity, and "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 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.

Furthermore, the Supreme Court in the same case observed that “Dishonesty is the stark antithesis of judicial probity. Any instance of a High Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to erosion of the judicial foundation. Every hour we must remind ourselves that the judiciary floats only over the confidence of the people in its probity. Such confidence is the foundation on which the pillars of the judiciary are built.”

**In Tarak Singh vs. Jyoti Basu, (2005)1 SCC 201**, the Supreme Court held that

“Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside.”

**In A S Mohammed Rafi v State of Tamil Nadu Rep by Home Dept & Ors 2010 INSC 1060**, Justice Katju of Supreme Court held, “Professional ethics requires that a lawyer cannot refuse a brief, provided a client is willing to pay his fee, and the lawyer is not otherwise engaged. Hence, the action of any Bar Association in passing such a resolution that none of its members will appear for a particular accused, whether on the ground that he is a policeman or on the ground that he is a suspected terrorist, rapist, mass murderer, etc. is against all norms of the Constitution, the Statute and professional ethics. It is against the great traditions of the Bar which has always stood up for defending persons accused for a crime. Such a resolution is, in fact, a disgrace to the legal community. We declare that all such resolutions of Bar Associations in India are null and void and the right minded lawyers should ignore and defy such resolutions if they want democracy and rule of law to be upheld in this country. It is the duty of a [lawyer](#) to defend no matter what the consequences, and a lawyer who refuses to do so is not following the message of the Gita.”

The Hon’ble Supreme Court in **Registrar General, Patna High Court vs. Pandey Gajendra Prasad, 2012 STPL(Web) 305 SC** mentioning about the role of trial judge stated that:

“There is no gainsaying that while it is imperative for the High Court to protect honest and upright judicial officers against motivated and concocted allegations, it is equally necessary for the High Court not to ignore or condone any dishonest deed on the part of any judicial officer. It needs little emphasis that the subordinate judiciary is the kingpin in the hierarchical system of administration of justice. It is the trial judge, who comes in contact with the litigant during the day to day proceedings in the court and, therefore, a heavy responsibility lies on him to build a solemn unpolluted atmosphere in the dispensation of justice which is an essential and inevitable feature in a civilized democratic society.

### **Philosophical views on ethics**

Apart from these judicial pronouncements, it is pertinent to understand the perceptions of various philosophers. Christopher St. Germaine (Barrister at the Inner Temple) in his book “The Doctor and Student” while addressing law students brought an analogy of conscience and the light lit in the lantern. “As light is set in a lantern, that all that is in the house may be seen thereby; so Almighty God hath set conscience in the midst of every reasonable soul as a light whereby he may divine and know that he ought to do, and what he ought not to do; to hold clear and pure conscience and that though do justice to every

man, as much as in the three is; and also, that in every general rule of the law, thou do observe and keep equity. And if thou do thus, I trust the lantern, that is, thy conscience, shall never be extincted.”

Likewise, in the context of Indian legal anthropology it is necessary for us to appreciate the quote the phrase ‘Yetho Dharma Thato Jayaha’ from the Bhagavat Gita. The text ‘Yetho Dharma Thato Jayaha’ means ‘Where there is Dharma, there is victory’. Thus, ‘ethics’ or ‘good conduct’ is the highest Dharma which is the root of all tapas (penances) and austerities. Thus, by being ethical, not only is Dharma being upheld but the end result is always victory.

William Graham Sumner, a political scientist said that “laws can regulate only behavior and not values, morals and attitudes. Examples are laws asserting equality for blacks which were not accepted by whites for many generations. On the other hand, this law that required change in behavior has gradually changed attitudes too. Today, the idea of racial superiority is no longer characteristic of whites.” Thus, there is a necessity to enforce legislations which in turn is likely to change the attitude of people to be more moral and responsible to the state.

Relevance can also be made to ‘The Justice Trail of The Nuremburg Trial’. In that particular trial a judge who knowingly sentenced even one innocent Jew or Pole to death was, however, guilty in the eyes of the prosecutors and judges at the Justice Trial in Nuremberg. Schlegelberger, one of the accused judges argued that he continued to serve as long as he did because "if I had resigned, a worse man would have taken by place." Indeed, once Schlegelberger did resign, brutality increased. One case described in the decision involved the prosecution in 1941 of a Jew (Luftgas) accused of "hoarding eggs." Schlegelberger gave Luftgas a two-and-a-half-year sentence, but then Hitler indicated that he wanted the convicted man executed. Although Schlegelberger may well have protested, he signed his name to the order that led to the execution of Luftgas. The Tribunal convicted Schlegelberger for life in spite of all his defenses. I would like to express at this juncture that, it is a moral responsibility of a judge to facilitate justice.

The concept of ethics is not something new in our history. The famous story of King Manuneethi Cholan in the tamil literature symbolizes the moral and ethical code of a judge during adjudication. It advocated for the equality of law and the administration of justice at any cost. In the said Tamil literature King Manuneethi Cholan had hung a huge bell in front of his palace. He announced that anyone seeking justice could ring the bell and their voice will be heard.

One day the young prince went around the city in his chariot. People cheered him where ever he went and welcomed him by beating drums and with pipes. A young calf terrified with the loud noises ran berserk and got itself crushed under the wheels of the prince's chariot. The mother of the calf helplessly watched its little one die .The cow walked to the palace gates and rang the huge bell demanding justice from the king. The king came out and saw the cow,he learnt from his courtiers the death of the young calf under the wheels of his son's chariot.

King Manuneethi Cholan kept his promise, he ordered his son to be killed for his recklessness. The prince was killed the same way the calf had died, he was crushed under the wheels of the chariot .The king went through the same pain the cow had as he witnessed his son die and thereby being just at all cost. This is a good example of a judge who facilitated justice even to a cow.

## **Ethics and change of mindset**

It is an accepted fact that no institution, however gorgeous, is impervious to change. This is least of all, especially in a profession like law which repeatedly boasts of its capacity to adapt to changing times. If we look at the judiciary post the Independence era, those that had a calling to become lawyers wanted to do something to serve people. There was a certain amount of honesty, integrity, value and satisfaction that one had having done something good for a client. However, with the efflux of time, especially in the recent years, the scenario is that of absolute greed and corruption. This is where the change in mindset needs to be developed and one has to stick to the principles of ethics to confront these issues and challenges.

Practicing and enforcing law is a privilege coupled with a sense of responsibility, and that ethics is not a question of rule on rule but a manifestation of one's inner self. We lawyers should not be adverse to acknowledging that many changes, which alter somewhat the character and activities of the legal profession, often forced upon it reluctantly, have been for the better. Clinging to old ways, just because they are old, is not very rational, least of all in a profession which boasts of being "learned".

If changes, resisted at the time, are now seen to have been "beneficial reforms" members of the legal profession must keep their minds open to the possibility that other changes, urged today, will in due course come to be seen as beneficial to the ultimate objective of practicing lawyers, which is to ensure that as many people as possible secure accurate advice and competent representation.

Also, the promotion of ethical decision is vital to support the justice system. If we do not interrogate legal ethics education or look at our ethical practices and adjust our actions accordingly, the legal profession is at the risk of losing the respects which it commands. Therefore, it is important for the bar as well as the bench to inculcate into their daily life, whatever they learn at the university level, at the professional level or at a practical legal training session.

## **A Way Forward – Clues from other jurisdictions**

If we take a clue from other jurisdictions like U.S. and Australia, the courts and bodies, supervising professional conduct, have also been entrusted with the additional duty to uphold high standards of honest, faithful, diligent, competent and dispassionate legal advice and representation.

Also, separate vigilance cells in the form of Legal Service Commissioner's office have been established with a view to hear complaint on any professional misconduct by lawyers. This may actually be hard on the professional bodies especially in a country like ours which are often unyielding in their pursuit of a professional colleague accused of misconduct. But it seems to be the fact. Such professional bodies should look on external guardians not as enemies to be traduced but as supporters of the high standards which are vital if they are to earn the privileged position which the legal profession, at least, still enjoys in a society such as ours.

Secondly, these jurisdictions have also been encouraging gathering and analysis of data on ethical defaults so that they can derive from the lessons about the teaching of law and ethics.

Thirdly, countries such as USA, Canada, Australia and China have formulated its own **Canon on Judicial Ethics** which includes certain basic principles such as that the Judges should uphold judicial independence and integrity, avoid impropriety and the appearance of impropriety, and be impartial and diligent in performing their duties. It is pertinent to highlight that these codes have undergone various changes keeping in mind the dynamic environment, in which the judiciary operates.

In India, until 1996 there were no concrete principles as to the conduct and principles to be followed by judges. However, the restatement of values of judicial life was adopted by the Supreme Court in 1997, similar to the lines of the canon listed out in the other jurisdictions, with the objective of service as a guide of judicial conduct for Judges. It is ironic to highlight that the same is not exhaustive in and has merely served as a general guideline all these years.

Also, it is desirable that the Bar and the Bench must move with fast changing times. Technology has stimulated rapid change. Other factors are also at work. They include a better educated community; a much expanded legal profession; a less monochrome society with changing values and an era in which every institution is under the microscope of critical social scrutiny.

In the case of the law, such scrutiny not only reveals the many wrongs in the substantive law which, in the good old days, too many lawyers accepted without complaint. It also includes fresh perceptions of the imperfections of the system as presently organized to deliver justice to the ordinary citizen and new insights into the unsatisfactory features of the ethnic and class makeup of the legal profession itself.

## Conclusion

India is a diverse society and the habits of its lawyers and judges will not present themselves as a unitary homogenous set of values. Feelings, laws, and social norms can deviate from what is ethical. So it is necessary to constantly examine one's standards to ensure that they are reasonable and well-founded. Ethics also means, then, the continuous effort of studying our own moral beliefs and our moral conduct, and striving to ensure that we, and the institutions we help to shape, live up to standards that are reasonable and solidly-based.

Thus, I conclude my speech by quoting the sayings of Aristotle, wherein he remarked, **“That to become a musician, it requires skill and repetitive practice”**. In the same way, to become virtuous requires repeating virtuous actions and being ethical at all times. Likewise, as Dwight D. Eisenhower quoted **“A people that values its privileges above its principles soon loses both.”** Based on the saying, I would suggest everyone to value the principles more than the privileges rather than losing both.

I thank you all for your patient listening and I hope this speech would have enlightened you on the necessity and significance of Ethics as law officers.

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