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JUDICIAL ACCOUNTABILITY IN REFERENCE TO JUDGMENTS CONDUCT AND ETHICS

by

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1. Introduction

The judges are accountable to their judgments, their conduct and judicial ethics. The extent and the content of the responsibility is our subject.

2. Meaning

Accountable means justification of decisions and actions. Interestingly the word 'account' comes from French language meaning 'to count'. The decisions and the conduct of the judges should be within the legal framework and norms. All must be clearly or explicitly understandable with no secret or hidden reasons.

3. Judge

A "judge" is defined under Sec. 19 I.P.C. as an officer empowered to give a judgment. A judge is to act judicially according to Sec 20 I.P.C. Every judge is a 'Public Servant' as per Sec.21 I.P.C. A judge is 'Public Officer' according to Sec 2(17) C.P.C.

3. What is a judgment?

"Judgment" means a considered decision or conclusion of a court of law. It is humorously put as a misfortune given as a divine punishment. (Oxford Dictionary) Order 20 Rule 4(2) C.P.C. says that Judgments of courts shall contain statement of the case, the points for determination, finding and the decision with reasons thereof.

4. Conduct

Conduct is the way a person behaves. The conduct required of a Judge may depend on the requirement or the work expected of him. The Government of Tamil Nadu has framed code of conduct for its officers under Art.309 of the Constitution of India. The same rules besides other principles apply to the judges.

The Tamil Nadu Government Servants Conduct Rules 1973.

The gist of some of the important conduct rules are as follows:

- 1) Maintain absolute integrity and unquestionable honesty at all times.
- 2) Devotion to duty and sincerity to work at all times.
- 3) Independence and impartiality in discharge of duty
- 4) Responsible standard of conduct in private life
- 5) Maintenance of political neutrality
- 6) To avoid indebtedness

- 7) Inform Legal proceeding initiated against the officer to the higher authorities.
- 8) Courtesy to Members of Parliament & Legislatures
- 9) Not to practice untouchability
- 10) Not to accept hospitality or borrow money from any person or entity having official dealings with likely pecuniary obligation
- 11) No sexual harassment in work place
- 12) Do not employ children below 14 years
- 13) Recusal from cases in which impartiality might be questioned (Sec 479 Cr.P.C)
- 14) Avoid becoming members of Club or Public Trust with possibility to become associated with public/litigant in the court
- 15) Apply and follow the rules of law in private and in office

5. Misconduct

Violation of anyone of the Code of conduct and norms expected of a judge may be construed as 'misconduct'. It means conduct unbecoming of a judge.

6. Judicial Ethics:

Ethics are principles of right, acceptable good conduct expected from a judge. The difference between code of conduct and ethics is that the code is laid down written rules whereas the judicial ethics are unwritten rules of judicial conduct acknowledged as principles to be followed. There is a distinction between social ethics followed in social life and judicial ethics. There are sanctions for immoral conduct in a society. Similarly judges bear the good or bad consequences for their following and not following judicial ethics.

Some of the Do's and Don'ts of judicial ethics for a judge are as follows:

A) Do's

- 1) Hear the parties patiently as if every case is important'
- 2) Develop a reputation for fairness and impartiality
- 3) Render justice unmindful of consequences
- 4) Act according to conscience
- 5) Maintain punctuality in all matters
- 6) Maintain confidentiality
- 7) Maintain honesty
- 8) Courteous to litigants, advocates and subordinates
- 9) Address all persons with respect
- 10) Require all staff to observe the requirements
- 11) Maintain decorum and quiet atmosphere in court halls
- 12) Give instructions clearly
- 13) Give priority to judicial work and importance to administrative works, keep track of cases regularly
- 14) Follow the precedents and directions of Higher courts
- 15) Appreciate the difficulties of ignorant poor and villagers
- 16) Provide written instructions to be followed in court like, no cell phone, keep silence etc.,
- 17) Pass speaking order whenever required.

B) Don'ts

- 1) Subject the victims of crime unjust scrutiny
- 2) Comment on physical appearance in public
- 3) Make personal exchanges with advocates and witnesses
- 4) Make inappropriate jokes
- 5) Make disrespectful observations like "you are wasting courts time", "You have not studied law proper/y"
- 6) Compel the parties to settle the matters
- 7) Put questions or make comments showing bias
- 8) Show religious or caste affiliation or prejudice
- 9) Enter into unauthorized communication
- 10) Handle money matters personally
- 11) Show or seek personal favours
- 12) Make comments on the functioning of administrators or colleagues or superiors
- 13) pre sign or pre date of orders
- 14) delegate judicial work to others or staff
- 15) assure a particular order on plea bargaining
- 16) interfere with advocate-client relationship
- 17) judicial robe for while not conducting official work
- 18) retaliatory orders for non complying with the suggestion of the court

7. These principles are not exhaustive. The application of judicial ethical principles depends on facts circumstances and context. A good judge follows these principles as a rule.

8. ACCOUNTABILITY

With this background we shall go into the real question namely the extent of accountability of judge in reference to judgments, conduct and ethics.

Any proven misconduct will invite action contemplated under. TNCS (CCA) Rules departmentally. A judge's duty is to decide according to law. Any bonafide error in the judgment can be corrected by Review, Revision or Appeal. To err is human. But if the error is deliberate it will be a different story. In this context Sec. 8 of the Evidence Act dealing with motive and conduct will be relevant.

If an officer in discharge of his duty does an act or renders a decision pursuant to a corrupt motive to oblige someone, it will amount to misconduct for the purpose of taking disciplinary action under TNCS(CCA) Rules as well as prosecution under Prevention of Corruption Act after obtaining sanction under Sec 197 Cr.P.C. In a strict sense committing of offence can never be part of official's duty. It must be seen whether the officer had committed the misconduct in abuse of his official status.

For instance an officer while dictating a judgment in his chambers outrages a modesty of a woman or steals from her purse, no sanction would be required for criminal prosecution. The officer can also proceeded with for "misconduct". By the very nature of offences like 'bribery' 'cheating' 'assault' 'wrongful confinement' 'embezzlement' and 'misappropriation' they cannot be supposed to be part of one's official duty or connected with it.

A High Court or Supreme Court judge is liable to be removed on the ground of proved misbehavior or incapacity under Art. 124 (4) or 217 of the Constitution of India

9. A judgment may be bad for the following among other reasons;

- a) If the judgment is based on conjectures, on surmises, unsupported by reason, or on personal knowledge of the judge.
- b) If the language is unbalanced, and biased.
- c) Finding given without pleading and on matters unnecessary for disposal of the matter.
- d) If the judgment is bald, vague and unintelligible.
- e) On colourable pretence of considering evidence without considering the argument.
- f) If the fundamental basic principles of law is disregarded.

A judgment however bad, by itself may not be sufficient to invite disciplinary proceedings. Even if a judgment is good in every aspect but rendered on corrupt motive appropriate action can be initiated.

Every officer is responsible for his judgments. He can not disown it at any time. Though ordinarily a judgment speaks for itself and no explanation or evidence is permissible in support of it, and the hierarchy of forums are there to take care of mistakes and miscarriage of justice, the responsibility of the officer can be fixed for a motivated or reckless omission.

The supreme court in *Union of India v R.K.Desai* 1993 SCC (L&S) 318 held that while exercising judicial/quasi judicial function if the officer takes the decision pursuant to corrupt or improper motive disciplinary action would lie.

In *H.H.B. Gill v R* AIR 1948 PC 128 it was held that a judge neither acts nor purports to act as a judge in receiving a bribe, though the judgment which he delivers may be such an act.

The Supreme Court in *Union of India v K.K.Dhawan* (1993) 24 ATC 1, held that an officer who exercised judicial or quasi judicial powers act negligently or recklessly or in order to confer undue favour on a person is not acting as a judge. The Supreme Court was not concerned with the correctness or legality of the decision, but on the conduct of the officer in discharge of his duties as an officer. The court concluded that disciplinary action can be taken in the following cases:

- i) "Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- iii) if he had acted in a manner which is unbecoming of a Government servant;
- iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- v) if he had acted in order to unduly favour a party;
- vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago" though the bribe may be small, yet the fault is great."

The Supreme court observed a word of caution holding that each case will depend upon the facts and no absolute rule can be postulated.

The Supreme Court in *H.C. of Judicature at Bombay v Shashikant* 2000 SCC (L&S) 144 held as follows

"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. The judiciary has to be reminded itself every hour that it 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.

The judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of other service. Judicial service is not merely an employment nor the judges mere employees. They exercise sovereign judicial power. They are holders of public officers of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect be disastrous and deleterious" A dishonest judicial personage is an oxymoron".

The Supreme Court in *Ramesh Chand v High Court of Allahabad* 2007 4 MLJ 1055 (SC) held that D.P can be initiated only on stronger grounds of suspicion of bonafides and orders passed on malice, bias or illegality. There must be prima facie material to show recklessness or misconduct or undue favour to a party. It was held" Fearlessness and maintenance of judicial independence are very essential for an efficacious judicial system. Making adverse comments against subordinate officers and subjecting them to severe disciplinary proceeding would ultimately harm the judicial system at the grassroots level"

In *V.C.Rajamanickam V State Tamil Nadu* 2007 5 MLJ 1181 (DB) the High Court upheld the charge of us disparaging language and un parliamentary comments about the judges of High Court and thereby failed to maintain the dignity and decorum of the court and thereby committed acts insubordination and conduct unbecoming of a judicial officer.

In *K.Veerasingam v Union of India* (1991) 3 SCC 655

Justice Veerasingam was appointed as a judge in the Madras High Court in the year 1960. He became the Chief Justice in 1969. An FIR under Sec. 5 of the Prevention of Corruption Act was filed in Feb 1976 in one of the courts in Delhi and on coming to know he proceeded on leave from Mar 1976 and retired on superannuation in April 1976. The charge against him was that he was in possession of pecuniary resources and property disproportionate to the known source of income. The contention that a High Court judge is immune from prosecution under PC Act and that the charge sheet did not contain the particulars of enquiry by the investigating officer was rejected and directed the case to be proceeded. Though on merits after trial he succeeded he had suffer in the process. No body can claim exemption from legal process.

10. A judge will have to face the consequences of bad judgment or conduct. The consequences may vary from mere advise or warning to dismissal. A judge has to reap the consequences, A good judgment and good behaviour will get appreciation and satisfaction and happiness. An adverse action will bring disrepute to the person and office. A good judgment comes from sincere and devoted work and so also a good conduct and judicial ethics can be cultivated and imbibed. Everything depends on the will of the officer. If one wants to be known as a good and fine judge he must work hard to earn it. Nothing comes easily or ready

made. The reputation of a judge will be known quickly to everybody. Ultimately one must be honest to one's conscience.

We can aptly refer to a Thirukural in this context

“செயற்பாலது ஓரும் அறனே ஓருவற்கு
உயற்பாலது ஓரும் பழி” திருக்குறள் - 40

"That which should be done is virtue;
That which should be avoided is vice" - Thirukural No. 40
