

## CONDUCT OF A JUDGE

### Mr. Justice (R) Shafiur Rahman

Officially, as a Judicial Officer, under the existing law you have two capacities, of a Civil Servant and that of a Judicial Officer. As a Civil Servant you are governed by the same generality of the conduct rules as govern the other civil servants. No formalized rules of conduct of a judicial officer have so far been framed for you at the National or Federal level. What is surprising is that no need has been felt for framing it. In the matter of disciplinary control also you fare with the other civil servants the same protections, the appointing and dismissing authority being government and the appellate Authority being the Service Tribunal. In 1987, when I was performing the duties of Wafaqi Mohtasib I had to call for the Confidential Reports of a number of Grade 19 officers of the judiciary for selection. My colleagues in the Wafaqi Mohtasib office doing the preliminary selection were surprised and shocked at the fact that all the Confidential Reports were average, non outstanding, or even above average, and it was almost impossible for them to pick and choose. They expressed their extreme disappointment to me. I was then reminded of what had happened twenty eight years earlier. As Registrar of the High Court of West Pakistan I was noting down the Annual Confidential Remarks decided upon by the Judges of the Administration Committee of the High Court. It was average in most cases. Probably, unwittingly I showed my discomfiture whereupon the Chief Justice turned to me to say that it is customary to record at the most average till such time as the Officer is not proposed to be recommended in the next twelve months for elevation to the High Court, and in that case he is given above average. What a rigid and absolute rule. How can anyone, not initiated and unaccustomed, understand the full implication of an average remark particularly so when with the marking system, outstanding and ten over ten is the prevailing standard on the executive side.

In this context too therefore the insularity and independence of judiciary, in all its tiers demands that there should be a separate code of conduct for judicial officers and like the superior judiciary they should be judged by their own peers, the government and the Service Tribunal playing no decisive role in it.

There are four distinguishing features of judicial office held by you. First you function in full view of the public vitally concerned and directly affected by your performance. Secondly, you express yourself by a reasoned judgment, which can and does adequately reflect your capacity to ascertain facts, to analyze them and to apply law to them. Thirdly, your output is substantially quantified leaving little scope for subjective assessment. Fourthly, the work of a judge is essentially personal to himself.

Personally, I consider that the greatest protection that a judge enjoys is on account of his functioning in full public view. His punctuality, his politeness, his control over his own temper, and that of other, his patience, his capacity for sustained work, all demand from him the best and inevitably leave a lasting impression, notwithstanding the fact that fifty percent of the litigants and the lawyers those who do not succeed, have reason to feel dissatisfied, The Bar as a body is intelligently sensitive to the performance of a judge and its reactions and responses are usually closer to the truth. For sustained functioning in public, one has to strain himself to the utmost. It also affords an invaluable opportunity of self-improvement and of observing the results of such improvement in day to day working. It is on account of this aspect of the judicial duties- of functioning in public- that the maxim has come into existence that justice should not only be done but it should manifestly appear to have been done.

The duties of a Judicial Officer are personal to himself. In other capacities one may delegate functions and duties; one may get the duties discharged by others, taking the full responsibility for it but not so in judicial office. Unless suffering from a disability, and so certified, a judicial officer cannot leave even the recording of deposition of witnesses to Court officials. He cannot share the responsibility with anyone else. It is true that he is quite often assisted by well paid and fully qualified lawyers but the responsibility being entirely his, he cannot shift it to anyone else.

There is yet another aspect of your official life as a Judge. Rewards, recognition and correction is slow to come; so slow at times that you may feel that it does not come at all. In any other capacity you receive a pat on the back as soon you have done your duty well. You are mentioned in the dispatches. Your feat is told to the world and retold. Also you receive correction and guidance, as soon as you commit a mistake. In the judiciary it is different because you enjoy exceptional independence in your functioning. None can praise or criticize your performance except in the hierarchy, at the appropriate stage, in a recognized and formal manner. Even when that is done language moderate and restrained is used, providing you no immediate inspiration nor it is hurtful. In this background you have to devise your own method

of evaluating your performance, of locating your mistakes and errors, of improving upon your performance and of deriving satisfaction and solace from duty well done. No doubt the Bar is the quickest to respond to your virtues and to your faults but you are not, and should not be, in communication with them individually as regard your personal performance because it will inevitably give rise to sycophancy, which may in turn destroy your Judicial perspective.

The Bar and the bench are said to be the two wheels of the chariot of justice. The quality of assistance rendered by the bar adds to the quality of your performance. It should be your effort therefore to encourage and assist them, consistent with your impartiality and detachment, in observing punctuality in court, in preparing and presenting their cases, in exploring and examining new areas in their attending to peripheral matters related to the administration of justice and the profession of an Advocate. An atmosphere of intellectual pursuit, seriousness of purpose and discipline should prevail inside and outside the Court premises.

Socially, you are expected to be a model of sobriety, moderation, restraint, politeness. With friends and foes, with neighbors and strangers, with the family and with the relatives you have to deal fairly and justly. If you do not do so or fail, your capacity as a judge is put in jeopardy. Your entire perspective in life gets value oriented and your success comes to be associated with judiciary's success and your failure as Judiciary's failure. You get institutionalized.

In the Punjab, in 1976 the then Chief Justice of the Lahore High Court prescribed a Code of Conduct for the Members of the subordinate Judiciary. I reproduce it hereunder:-

I. "No man has a right to judge another man except when the Society has entrusted him with the task of judging others and settling their disputes. The members of the superior subordinate Judiciary in our country have been chosen by our society to carry out this onerous duty.

II. For the members of the superior judiciary a Judicial Code of Conduct has been presented by the Supreme Judicial Council. For the members of the subordinate Judiciary in the Province of the Punjab I prescribe the following Code of Conduct:-

1. The Judicial power being a sacred trust, the Judicial Officer should exercise it honestly, efficiently and to the best of his capacity keeping always in mind that he is accountable not merely to his superior officers but God Almighty Himself.
2. While deciding an issue, only Judicial considerations should weigh with the Judicial Officer who in matters of discretion should be guided only by his own conscience and the rule of law and not by whims and caprices.
3. His behaviour generally should be gentlemanly and his conduct in Court particularly should be courteous and polite but at the same time firm and dignified.
4. While dealing with others he should always imagine himself in the position of the person he is dealing with him as he would like himself to be treated.
5. He should always exercise self restraint and self denial and avoid mixing with members for the general public or the Bar and attending private parties and functions.
6. He should always be keen to learn and try to gain knowledge throughout his career. No one can at any stage of one's life claim to have learnt every thing or to know everything.
7. He should never publicize his honesty of any other merit. He should leave it to others to recognize his merits.
8. He should be respectful and obedient to his superiors, helpful and sympathetic to his subordinates.
9. He should always live within his honest means.

10. He should avoid employing impolite language in writing as well as in conversation and should also try not to annoy others.
11. It is human to err. The Judicial Officer is no exception to this rule. But he should be brave enough to admit his mistakes frankly and should sincerely try and avoid repeating them in future.
12. He should not incur personal obligations as far as possible.
13. He should never backbite or crib and should never stoop to flattery.
14. He should not judge himself. It is the job of his superiors to judge him. And when the superiors point out some short-coming in him, he must take it in good grace and try to remove it.
15. He should never lose his temper while presiding over the Court and should avoid entering into arguments with lawyers, parties or witnesses.
16. He should never lose his composure while performing judicial functions.
17. In the matter of performing judicial duties and taking judicial actions, he should always maintain his independence and should never allow himself to be swayed either by those who are near and dear to him or by those in authority over him.
18. He should maintain cordial and affectionate relations with his colleagues and show due respect to his seniors.
19. One should never forget that one is accountable to God Almighty in the end.”

There were simultaneously issued a set of directions by the then Chief Justice of Lahore High Court (PLD 1976 Journal 168-C) to supplement the Code of Conduct. These are also reproduced hereunder as all of you belong to Punjab Judicial Service and are governed by these:-

“The following directions should issue to the members of the subordinate Judiciary for strict observance:-

1. The Judicial Officer should have full control over the members of his staff and he should not put the litigants at their mercy. It is his duty to ensure that the orders of the Court are carried out as a matter of course without the litigants having to bribe the staff to get necessary rokbars or summonses etc. issued.
2. His attitude towards the staff should be such that they should have full confidence in him. He should try to achieve this by extending to them all lawful help, by giving them guidance and showing them due respect. Nevertheless he should maintain necessary distance between himself and his subordinates.
3. He should never allow himself to be dominated either by his staff or by the Bar. He should always maintain his position as the Presiding Officer of the Court without, however, being over-ruled or harsh.
4. Punctuality is not merely a virtue. It is the duty of every Judicial Officer to be punctual.
5. Every Judicial Officer is a Class I Officer and a presumption of correctness attaches to his official acts. He should, therefore, prove from his performance that this presumption is justified.
6. A separate registrar should be maintained for all the orders and requisitions received from the superior Courts and the Presiding Officer should personally make sure that all such orders and requisitions have been complied with or replied to.
7. The Judicial Officer should be fully conversant with the High Court Rules and Orders.
8. He should not sign any document without having conscientiously read and approved it.
9. Should he find it necessary to admonish a subordinate official, he should not do it in the presence of others, but as far as possible in the privacy of his retiring room.

10. Subordinate officials are not private servants. The Judicial Officer should not, therefore, treat them as such and permit himself to be obliged by them.
11. Should a distasteful communication be received by him criticizing him, he should consider it with detachment and try to appreciate the contents thereof objectively. He should not hasten to reply to the communication in a state of passion.
12. He should from time to time study the instructions received from the High Court.
13. He should be careful about his dress. He should always be in robes while presiding over the Court and be properly dressed also otherwise.
14. Some Judicial Officers try to cultivate friendship with the ministerial staff of the High Court. This is an unhealthy practice which must be abstained.
15. The Judicial Officer should make it a habit to read the law reports regularly. He should also keep reading the basic enactment like Civil Procedure Code, the Evidence Act and the Pakistan Penal Code etc. over and over again.

In the end I will commend to you all to keep an eye on the code of Conduct framed by the Supreme Judicial Council under Article 128(4) of the constitution for Judges of the Supreme Court and the High courts in Pakistan (PLD 1967 Journal 97). Remember and never forget the very first sentence of it, the opening words which mention "The prime duty of a Judge as an individual is to present before the public an image of the justice of the nation."

If you get interested over in utilizing, channelizing and meaningfully directing the vast resources of the Bar for the betterment of judicial administration in all its comprehensives you should dwell deep into the history of American Bar.