How to be a Good Judge - Advice to New Judges

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When do you become a good Judge? How can you be a good Judge? Is it by serving as a Judge for a long period with a clean record? Is it by promptly and regularly deciding the prescribed number of cases to meet the quota fixed by the High Courts? Is it by writing erudite judgments? Is it by being honest all through your career?

Rendering justice, in its larger sense, is giving every person, his or her due, said Aristotle. It is a broad concept that applies to all those who are entrusted with power – power to govern, power to legislate and power to adjudicate. A Judge renders justice, by adjudicating disputes and complaints in accordance with law. He also renders justice by deciding the cases speedily and effectively after due hearing.

Justice in accordance with law does not mean mechanical or robotic justice or disposing of cases for statistical purposes. It means the Judge has to decide the maximum number of cases to the best of his ability, by practising and upholding high ethical standards. The Judge, by his conduct, by his decision making process, and by rendering decisions fairly, equitably and justly, earn the trust and respect for the judiciary from the public and from the members of the bar. For this purpose, he has to develop judicial skills, administrative skills and most important, scrupulously follow judicial ethics.

**Judicial Skills:**

You require five judicial skills to effectively discharge your functions Judge – as an adjudicator presiding over a public forum.

*Firstly*, you should have a thorough knowledge of the procedural laws, that is, Code of Civil Procedure, Code of Criminal Procedure, provisions of Statutes dealing with Evidence, Limitation, Court Fees and Stamps, and forensic procedures. This will enable you to have control over the trial and avoid procedural irregularities. Most of the appeals and revisions against interim orders relate to errors committed in procedure. When you have mastery over procedural laws and conduct the proceedings in accordance with them, cases also get decided quickly and effectively.

*Secondly*, you should have a broad acquaintance with the substantive laws and fundamental legal principles. I am using the words 'broad acquaintance' and not 'thorough knowledge', as there are too many laws. It is not possible to master all laws before becoming a Judge, or in fact even after becoming a Judge. Each provision of law has different nuances which you will be able to appreciate and understand in the context of specific cases. You will get a chance to study different laws thoroughly as and when legal issues relating to such laws are argued and the lawyers analyse and interpret them in the context of the particular case. If procedural laws help you to control the conduct of the trial, substantive laws help you to render proper and just decisions and prevent injustice.

* Based on several lectures to newly appointed Judges given by him at National Judicial Academy, Bhopal, and State Judicial Academies of Karnataka, Madhya Pradesh, Delhi, Tamil Nadu, Andhra Pradesh, Uttar Pradesh and Punjab & Haryana.
Thirdly, you have to develop the skill of giving a due hearing. The entire Codes of Civil Procedure and Criminal Procedure are about giving a due hearing and giving effect to the first principle of natural justice – *audi alteram partem* ('hear both sides' or 'no man should be condemned unheard'). Due hearing is due opportunity to put forth one's case. It involves listening to the parties, considering the grievances, complaints, factual positions and legal contentions and thereafter reaching a decision. This is the main function of a judge. Many Judges, unfortunately, do not cultivate the art of due hearing – listening, absorbing the evidence and following the arguments. You should control and regulate the evidence and arguments by effective interventions, interjections and steer and guide the lawyers, so that they stay on course and do not meander into irrelevancies. Many judges are distracted and disinterested when the evidence is recorded and the arguments are addressed. The result is long and irrelevant evidence and arguments and the Judge failing to follow or understand what is happening in the proceedings. If you have 'heard' the case fully and properly, that is read the pleadings, recorded the evidence and heard the arguments, made proper notes, reaching a correct decision and writing the judgment becomes easy and simple. If the recording of evidence and hearing of arguments is continued on day-to-day basis, there would be no need for you to spend a long time in reading the files for writing the judgment.

The fourth is the skill of marshalling facts and arriving at findings, applying the legal principles to those factual findings to arrive at the correct decision, and putting the facts, reasoning and conclusions in a lucid, logical, precise and coherent manner, in the form of an order/judgment. The litigants, the lawyers and the appellate/revisional courts should be in a position to understand what you have decided. You should not repeat yourself. You should have clarity in about what you intend to say.

The fifth is the skill to consider and dispose of interim prayers, interlocutory applications and requests for adjournments, effectively and firmly. The legendary 'delays' in Indian Judicial System, is mainly on account of ineffective and inefficient handling of these prayers and requests. You should keep under check any unwarranted sympathy in considering requests for adjournments and interim orders. You should also keep in check the temptation to be a populist Judge. You should be adept at clearing all obstructions, tangential deviations, and camouflages adopted by litigants and lawyers to delay the progress of the cases. You should focus your attention upon deciding the main case. I am not saying that you should not entertain interlocutory applications. I am saying that you should not allow them to bog down the main case. I am not saying that you should deny all requests for adjournments. I am saying that you should be strict in granting adjournments. Statistics show that out of the judicial time spent on each case (from beginning till the end), on an average about 40% of the time is spent on preliminaries, adjournments and interlocutory matters.

If you acquire a thorough knowledge of the procedural laws and a broad acquaintance of the legal principles and substantive laws, and develop the skills of giving a proper hearing and then marshalling the facts to arrive at proper conclusions and put them in the form of a cogent judgment/order, and master the skill of disposing interlocutory applications and controlling adjournments, you can be said to have judicial skills required.

**Administrative skills:**

Side by side with the judicial skills, you have to develop five administrative skills. Let me describe them briefly.
Time Management. You have about 250 working days (that is about 1250 court hours) in a year. You should know how much time you require for preliminary work, how much time you can allocate for recording evidence, how much time for hearing interlocutory applications and how much time for final arguments. You must conceptualise the entire day, week and month as different units, to manage your time. This will help you to plan the number of cases you can hear and decide in a month and then gradually increase your output. You should also provide time slots for your physical and mental well being (exercise/yoga/meditation) and time for your family.

Board Management. On an average, each of you may have anything between 1000 to 3000 cases pending on your board. You should know how to manage your board. If you post a large number of cases every day, then most of the judicial time will be spent in non-productive preliminary hearing. You should plan your working day – how many evidence cases you should list, how many argument cases you should list (taking note of the fact that some cases would get adjourned), how many cases you should hear and dispose of without delay. The lesser the number of hearings in a case, speedier will be the disposal of the case and lesser the hassles and harassment for the litigant.

You should not list too many cases for evidence and arguments. There is no point in listing, say twenty cases for evidence or twenty cases of arguments. Whenever a case is listed for evidence, the litigant is expected to be present and be ready to lead evidence. Imagine the time and energy wasted by a litigant in repeatedly getting ready and attending court for evidence. Same is the position regarding listing too many cases for arguments. Each time a case is listed for arguments, the advocate is required to read the file and get ready. If a case gets adjourned repeatedly, parties and lawyers will stop getting ready on the assumption that the case is not likely to be taken up. When ultimately the case is taken up, many a time, the parties and advocates are unprepared, and the result is a request for adjournment or ineffective or defective presentation of the case, requiring subsequent 'repair' by way of recall of witnesses, rehearing arguments, or remands by higher courts.

You should apply case management rules and case flow management rules effectively. You should be persuasive in referring parties to alternative dispute resolution process. Board management and time management go hand in hand and even overlap each other and will together ensure that the number of disposals keep up with the fresh filings and pendency.

Registry Management. You have to exercise control and supervision over your court officers, stenographers, clerical and attendant staff, to ensure that they do their work properly and assist you effectively. Particular attention should be given to bailiffs/process servers (to ensure prompt service of notices, summons, effecting attachments/sales, etc.), staff in charge of Record Room (for proper maintenance of records), the staff in charge of Material Room (to ensure that material objects and evidence are properly catalogued and stored safe and secure). Please remember that if the staffs are not efficient, or lack in integrity or courtesy, that will reflect upon the functioning of the court.

Bar Management. Lawyers are officers of the court. Unless you have their cooperation, you cannot dispose of cases, expeditiously or effectively. You should be firm in handling them, and at the same time courteous and diplomatic. You should show uniform courtesy to the members of the bar and litigants. You should be able to earn their respect by your commitment, conduct and behaviour. You should be able to extract work from the
members of the bar, without antagonising them. You should carry the Bar with you and avoid unnecessary confrontations with them. Genuine requests for adjournments should be accommodated. Frivolous and casual requests for adjournments should be firmly dealt with. If you grant adjournments merely for the asking, you cannot expect the lawyers and the litigants to be ready. You should dispose applications for interim relief and bail expeditiously. You should not be overly rigid. At the same time you should not grant interim reliefs merely for the asking, so as to be a populist Judge. You should build a reputation that you will not tolerate non-sense and you will not permit unnecessary evidence, lengthy arguments, frivolous submissions, and requests for adjournment, dilatory tactics or misrepresentations. In short, you should mean business.

**Self-Management.** This means self-discipline, commitment and hard work. This refers to maintaining, good health and being punctual. This means being properly and neatly dressed and groomed.

If you are late to court, you cannot expect the lawyers and staff to be prompt. You should hold court on time. You should not take unnecessary leave. You should be on the seat during the entire court working hours. You should delivery judgments and orders in time.

You should have good health. Unless you have good health, you cannot function effectively. For every five to six hours of work in court, you have to spend a couple of hours on administration and four to five hours at home for reading files and writing/dictating/correcting orders and judgments. You are therefore glued to a chair for more than 12 hours each day. Such sedentary but stressful life invites blood-pressure, diabetes, lower back ache, spondylitis varicose veins and other ailments associated with sedentary life. That will lead to frequent bouts of ill health, constant irritation in court and inability to focus and pay attention in court and perpetual tiredness. Physical exercise, yoga, proper diet and dieting to maintain good health are absolutely necessary, if you want to work effectively and efficiently.

You should be comfortable with technology. You should have a working knowledge of computers and Information Technology. It will help you write and correct orders/judgments, research on case law and articles maintain statistics and prepare reports. The days of paperless E-courts, presentation of evidence and arguments through video conferencing are not far away. Get ready to manage and cope up with technology.

The aforesaid administrative skills will make you efficient. The following guidelines under the caption 'competence and diligence' in the Bangalore Principles of Judicial Conduct are relevant:

6.1 The judicial duties of a judge take precedence over all other activities.

6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

**Judicial Ethics**

You are knowledgeable. You are competent. You have judicial and management skills. Will these make you a good judge? This brings us to your conduct as a Judge. This brings us to Judicial Ethics. What are the ethical standards to be followed and practised by a Judge? How should a Judge behave? What should be the demeanour of a Judge? What do people expect from a Judge?

To be a good judge, you have to cultivate and maintain five ethical principles – judicial aloofness and detachment, honesty and integrity, judicial independence, judicial temperament with humility, and impartiality. All of you, as Judges, know about these ethical standards of judicial conduct. The difficulty is in scrupulously and constantly following them. Let us discuss them.

**Judicial aloofness and detachment**

What is judicial aloofness? It refers to conditioning your mind to be aloof, maintaining detachment from the arena of contest and rendering justice unmindful of the consequences. You have to dispassionately decide who is right and who is wrong in accordance with law. Lord Birkett explained it thus (see 'Norman Birkett' by H. Montgomery Hyde published by the Reprint Society Ltd. London, in 1965, page 547):

“The duty of the Judge to keep complete control of the proceedings before him is an essential part of the administration of justice in all our Courts. He has a duty to intervene by way of question or otherwise at any time that he deems it necessary to do so. He may wish to make obscurities in the evidence clear and intelligible; he may wish to probe a little further into matters that he deems important; and in a score of ways his interventions may be both desirable and beneficial. But it is safe to say that all his interventions must be governed by the supreme duty to see that a fair trial is enjoyed by the parties. His interventions must be interventions and not a complete usurpation of the functions of counsel. **But the judge best serves the administration of justice by preserving the judicial calm and the judicial demeanour, aloof and detached from the arena of contention.**”

(Emphasis supplied)

Of course, there may be cases (as for example, Public Interest Litigation) where a Judge may have to show judicial activism or be mindful of the consequences of his orders and actions. That is dealt with in my article on 'Rendering Judgements – some basics' [published in 2009 (10) SCC Journal Page 1].
Judicial aloofness is not living in ivory towers. It does not mean that you should not be alive to the problems of the society or that you need not understand the day-to-day realities of life. Judges should be able to understand the needs of the society and 'connect' to the problems and difficulties of the weaker sections and provide access to justice to the poor and downtrodden. The rich, the powerful, the capable, the crooked can protest loudly about violation of their fundamental rights, human rights or property rights and protect them by engaging competent lawyers. You should remember that for every rich and powerful, there are hundreds belonging to weaker sections who cannot protest against injustices, nor engage lawyers and assert their rights in a court of law.

At the physical level, judicial aloofness refers to the need for Judges to maintain 'distance.' You should avoid mixing with members of the Bar, politicians or litigant public, except at public functions or at open private events like marriages and deaths. Your smile at a lawyer or a litigant inside a court, your chat with a lawyer or litigant outside your court, share a joke with a politician at a public function, tend to be misunderstood and misinterpreted by the public and the bar. If you meet or mix with them in private, either in your house or their house or places like hotels, restaurants, clubs, you are inviting trouble. We live in a world full of suspicion. More so in the case of Judges. Therefore, you should avoid mingling with lawyers and the litigants. Who knows - when Judges and Judiciary get an unshakable reputation for integrity and impartiality, hopefully things will change.

When I give this advice to Judges about maintaining physical ‘distance,’ I some times get the following query from the members of the Judiciary:

“You ask us to maintain 'distance.' But the Legal Service Authorities require us to hold Legal Awareness Programmes where we have to mix with the public, including lawyers and litigants. We have to take assistance of the district administration, police, elected representatives and members of the bar for organising these functions. How can we maintain distance and independence?

The issue is no doubt difficult and delicate. You are required to wear two hats. One hat is that of a Judge. As a Judge, you are not supposed to mix with lawyers, litigants or take favours from any one. Your other hat is that of an authority implementing the provisions of the Legal Service Authorities Act, 1987, where you have to interact with litigants/officials/elected representatives. If you are seen talking to someone in public, in a legal awareness programme, no one is going to question your integrity or independence. But if some one sees you in a restaurant or a bar with a lawyer or with a litigant, it will give room for adverse comments. If you keep in mind the distinction between your judicial hat and your legal service hat, you will have no problem.

I agree that Judges should under no circumstances be put in a position where they feel obliged to lawyers or police officers or the district administration or for that matter, any one else, whether it is a connection with legal service functions, or visits of any dignitary, or otherwise. If Judges have to seek and get favours for conducting such functions, the next stage would be for them to return the favour in some manner, which means compromising judicial detachment and independence, which may ultimately even lead to loss of integrity. Judges are not expected to conduct political size meetings or ostentatious functions. Small gatherings, select target audiences and meaningful dialogue are what is needed to spread legal awareness Please have the courage to organise legal service and other court related functions.
in a spartan manner within the sanctioned budget and avoid big and ostentatious functions.

I may add an unsolicited advise to the Chairmen of Legal Service Authorities. Please ensure that in organising or conducting legal services programmes, Judges are not embarrassed or compromised. In fact it is better if legal service activities are organised by the employees of Legal Service Authorities, who are not judicial officers. Judges should attend such functions only as Guests/Speakers. Personally, I am of the view that spreading legal awareness and enabling access to justice should be the function of the executive. But, if Parliament wants the Judges to take this burden, we have to discharge those duties sincerely. Be that as it may.

The following conduct under the caption “propriety” in the Bangalore Principles of Judicial Conduct (2002) are relevant:

4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge’s family represents a litigant or is associated in any manner with the case.

4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

**Integrity and Honesty**

When some one compliments a Judge for being a man of integrity, I feel amused and in fact irritated. In a Judge, honesty and integrity are not special qualities or achievements to be appreciated. They are fundamental pre-requisites for a Judge. They are non-negotiable 'eligibility criteria' for a Judge. A Judge is required and expected to be a man of integrity and there is nothing special about a Judge being honest. If a Judge is not honest or lacks integrity, he has no business to be a Judge.

We have around fifteen thousand judges in the country. Even if there are a few aberrations among them, the public and media have a tendency of tarring the entire judiciary as corrupt. Please remember that if you do something improper, it is not only you, but the entire judiciary that will be seen in a bad light. Judges should be doubly careful in their conduct and behaviour, so as to maintain the high reputation of the Judiciary. Every improper act and every misbehaviour of a Judge is likely to be magnified, reducing the faith and trust of the common man in the Judiciary.

Many accused are rich, powerful and resourceful. Many civil litigants indulge in
litigation out of ego, greed, jealousy and hate. These litigants - both criminal and civil - would go to any length to succeed, which unfortunately includes attempts to influence Judges. Therefore the temptations to judges to become corrupt are high. You should be forever on guard against such temptations. You are the last bastion of democracy, rule of law and fight against corruption.

John Marshall said: “The power of Judiciary lies, not in deciding cases, not in imposing sentences, not in punishing for contempt, but in the trust, faith and confidence of the common man.” If Judiciary loses the trust, faith and confidence of the common man, that will be the end of rule of law and democracy. There cannot be a strong and vibrant Judiciary unless the Judges are persons of integrity.

Many Judges tend to think corruption as financial dishonesty that is taking bribes with reference to a case to be decided by them. They assume that taking favours generally from a lawyer or a politician, without reference to any pending case, does not affect their integrity. But integrity has several facets. For example, let us say that a Judge borrows a lawyer's car for going on a vacation/tour; or a Judge accepts gifts during functions in his family (marriages, naming/birthday celebrations, etc.) from lawyers; or a Judge gets a seat allotted free for his son or daughter from the Management Quota of a Medical College which the college would otherwise 'sell' for Rs. Ten lakhs. Please note that none of the above favours had anything to do with any case to be decided or judgement to be rendered by the Judge. But any act which is likely to affect his integrity in future is also objectionable behaviour, even though there may be no specific quid-pro-quo for the benefit received by the Judge. Receiving any favour or benefit of a discretion, is objectionable, if it is given because you are a Judge. Please remember nothing in this world comes free or without strings attached. Every one expects the return of a favour. Whenever a concession/favour is shown to a Judge (or any Government servant), the person showing the concession/favour has a selfish motive. He considers it as an investment for the future and would demand, or at least expect, a return of the favour in some form. The best way to maintain your integrity is not to accept any favour from any one, when you are a Judge.

You should not only be honest, but seen to be honest. You have to be careful how you deal with others in your private life. You cannot assume: “My conscience is clear. I am not corrupt. I can therefore mix with any politician. I will go for lunch with a lawyer.” You may be honest. But, unfortunately, the litigants and the public do not assume that you are honest. A cynical world, which has seen dishonesty and corruption everywhere, would assume corrupt motives, if your conduct gives room for it, even though you may be honest. If they see you in the company of a lawyer in a club, they will always assume that some 'deal' is going on. Therefore, to ensure that no improper motive is imputed to you, to ensure that your good name and the good name of Judiciary are not sullied, keep a distance.

The following guidelines in the Bangalore Principles of Judicial Conduct (2002) are relevant:

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.
4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

**Judicial Independence**

You are members of the District Judiciary. Use of word 'sub-ordinate' judiciary in the Constitution of India to describe the district judiciary, is not intended to put any fetter on your judicial independence. The word 'sub-ordinate' literally means someone in a lower position than someone else. The Constitution uses the words merely to describe Judges who hold a lower position than the Judges of the High Court, in the judicial hierarchy. But of late, the word 'sub-ordinate' unfortunately is understood by some Judges, as referring to someone who is subservient. The higher courts have power to correct you after you render your judgment, but none can direct you as to how you should decide in the first instance or what you should decide. Your independence to decide in accordance with law is not subject to any restrictions or control (except on an appeal or revision, after you decide by a judicial order). In the exercise of your judicial functions you are not independent and sub-ordinate to any one. The difference between the members of the District Judiciary, and members of the higher courts is only in jurisdiction.

Judicial independence is not a freedom to do what you like or what you consider as just and equitable. You are required to render justice in accordance with law, and not justice as per your convictions or what you consider as just. Justice Cardozo warned:

“The Judge, even when he is free, is still not wholly free. He is not innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of fairness and justice. He has to draw his inspiration from well consecrated principles. He is not to yield to spasmatic sentiments, to vague and unregulated benevolence. He is to exercise discretion informed by tradition, methodised by analogy, disciplined by system, and subordinated in the primordial necessity of order in social life. Wide enough in all conscience is the field of discretion that remains.”

It is said that Judicial independence is not a privilege enjoyed by Judges, but is the reflection of the privilege of the people to rule of law in a democracy. It is a safeguard for the protection of the people against the vagaries of the legislature and the executive. Judicial independence comes with the responsibility to be sincere and conscientious in performing your duties. In Union of India Vs. R. Gandhi, Madras Bar Association the Supreme Court observed:
“Independence is not the freedom of Judges to do what they like. It is the independence of judicial thought. It is the freedom from interference and pressures which provides the judicial atmosphere where he can work with absolute commitment to the cause of justice and constitutional values. It is also the discipline in life, habits and outlook that enables a Judge to be impartial.”

The Bangalore Principles of Judicial Conduct (2002) explain the principle of Judicial Independence thus:

Principle: Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

**Humility (Judicial temperament)**

Judges are public adjudicators and should not consider themselves as 'VIPs.' In India they are treated as VIPs. They are addressed as 'my lord' and 'your honour.' Everyone bows and salutes them. Everyone shows them deference. Day after day, they decide the fate of litigants. They have captive audiences in the court who lap up every word uttered by them, laugh and smile at every witticism and show appreciation at every remark. It is no wonder that after some time, some of the Judges start feeling that they are very wise, knowledgeable, intelligent, powerful and important, and that their word is law, and their wish a command. Humility is far away from their mind and demeanour. Harold R. Medina warned:

“A Judge is surrounded by his subordinates, lawyers and litigants who keep telling him what a noble, wonderful, wise and knowledgeable person he is. A Judge
believing them, becomes a lost soul ending up as the opposite of all that a Judge should be.”

Humility is the quality which makes a Judge realise that he is not infallible, not omnipotent, that he should patiently hear the lawyers who appear in the case as they have studied the facts and researched on the law, and that he should follow the arguments and then decide the matter by deciding all issues by keeping an open mind. Without humility, a Judge becomes arrogant and perverse with a closed mind, believing that the lawyer does not know, that he knows and his decision is always just and right. He tends to showcase his cleverness, knowledge and learning in his judgments and orders, relegating justice to the back seat. In short, he ceases to be a 'Judge'.

You should be more concerned about rendering justice rather than trying to show off your eruditeness, intelligence or power which inevitably leads to injustice. Justice Frankfurter described a 'Judicial humility' as having a mind that respects law, that can change its thinking, that can accept that another view is possible, that can be persuaded by reason, that quests for truth and that which is detached and aloof, and that puts passion behind its judgment and not in front of it.

You should avoid the temptation of jumping to conclusions or taking a 'view' and then refusing to budge from it. If you first decide what should be the result without hearing or without hearing fully and properly, and want to blindly stick to it, then you will be searching for the law and facts to fit your decision, rather than basing your decision on the facts and law. You will also try to ignore or overlook the law and the facts that are inconvenient or contrary to your view. Choosing the facts and law to support a pre-determined decision only demonstrates a desire to show off your intelligence and cleverness, and not any desire to do justice. It is therefore said that many a successful and brilliant lawyer do not make a good Judge, if he is obsessed with showing off his intelligence and knowledge in every decision, rather than render justice.

You should not try to force a compromise or settlement. In fact, you should not even suggest a compromise without knowing the full facts. What happens when you suggest a compromise? In many cases, the party whose case is weak may be eager to agree, while the party with a strong case or a just cause may be reluctant to agree for a compromise. If you suggest a compromise, you would naturally feel irritated with the party who is not agreeing with your suggestion. When you thereafter hear the matter, your resentment against the party who refused to compromise may persist and you may tend to 'teach a lesson' to the party unwilling to listen to your suggestion, ignoring the merits of the case. Of course, that is not likely to happen when judicial maturity is developed with experience. In fact many judges, who genuinely feel that a compromise is appropriate and pursue their suggestion with parties, very fairly rescue themselves from hearing it, if the compromise fails to materials.

You should also not be perturbed or worry about the comments of the media or adverse reaction of any particular group. Neither your judgment nor your actions should be populist. You are not running for a public office. You are not seeking publicity. If Judges should decide in a manner which will please the majority, no justice can be rendered to the minority. If Judges should go by the views of the rich and powerful, no justice can be rendered to the poor and downtrodden.

Common grievance against Judges is that they live in ivory towers, that they do not
understand the ground realities, and that their orders are impractical if they go by the rule book. Do not be worried by such remarks. Judges deal with the problems, concerns and difficulties of the common man, every day. They read newspapers and magazines, and watch television. They have access to internet. They have their feet firmly on the ground. In fact, the worry is that many a times, their decisions, particularly in sensational criminal cases, may be affected by the pressure of public opinion. In regard to the second part of the complaint that the decisions are ‘impractical’, it should be remembered that Judges decide in accordance with law. They do not make law. The legislature makes the law. If there is any rigidity or impracticality, the blame should not be placed at the doors of Judges.

**Impartiality (Freedom from Prejudice and Bias)**

We now come to the most crucial and special among the qualities of a Judge – impartiality. In fact, to achieve impartiality, you should have all the other four qualities mentioned above – honesty and integrity, judicial independence, aloofness and humility – and something more, that is freedom from bias and prejudice. You may have honesty and integrity but may still suffer from bias and prejudice. Bias and prejudice in a Judge may be of two kinds – external and internal.

**External bias and prejudice.**

When a lawyer of your caste or community appears, the case should not swing in his favour by reason of his caste. If there is a dispute between persons belonging to your caste/community and a person belonging to a rival caste, you should not lean towards the litigant belonging to your caste/community. That will be bias. When a litigant is of another caste/community, you should be, by reason of his caste/community, being harsh or overly strict. That will be prejudice. Judges should guard against any prejudice and bias based on caste/community.

Sometimes, a friend or distant relative or even mentor (or a person who is a leader or member of the political party of which you may be an admirer or follower) may appear before you, as a lawyer or litigant. When that happens, you should curb any inclination or tendency to decide in their favour or to exercise judicial discretion in their favour. If you exercise your discretion in their favour, on the specious ground that what is granted is only an ex parte interim order and that when the other side appears, you will modify the order and be totally impartial, you would clearly be guilty of nepotism.

Some Judges think that it is good to encourage juniors by granting interim orders. This is on a total misconception of what constitutes encouragement. You ‘encourage’ juniors by giving them a patient hearing, by not being impatient or harsh with them, by allowing them to get over their inhibitions, stutters and stumbles, and by permitting them to argue on another day if they want to research on the case. Giving an interim order in an undeserving case, because a junior appeared, is not encouragement of the junior, but abuse of judicial power causing prejudice to the other party. Such sympathy is not encouragement but unwarranted bias in action.

Let me refer to some other forms of bias and prejudice. There are advocates who are very respectful towards the court, who are always very courteous, who always bow to the Judge when they enter and when they leave a court hall. They sit in the front row in the court hall and smile appreciatively at all jokes and witticisms of the Judges, howsoever foolish or pedestrian they are, and nod approvingly, whenever the Judge expounds legal principles,
howsoever erroneous or absurd. When this happens, the Judge starts thinking: “Oh, this lawyer is intelligent and good” and is lulled in a feeling of ‘positiveness’ towards such lawyers. On the other hand, there are some lawyers who sit in the court with a dour face. Whenever, the Judge cuts a joke or enunciates some legal principle, they look away disinterestedly or wear an expression implying that they consider the Judge to be shallow or ignorant. The Judge therefore thinks: “This fellow appears to be dumb. He does not appreciate or understand my wit, knowledge and wisdom” and starts developing a 'negativeness' towards such lawyers. After sometime, there is every likelihood of the 'pleasant' lawyer having a better chance of winning a march over the 'dour' lawyer, in getting some discretionary interim orders. This is bias and prejudice in action. This should be cut short.

There are also other variations. Some lawyers are very reasonable in their submissions. They are precise, respectful and brief. But there are some “cantankerous” lawyers, who will beat around the bush, refuse to come to the point, disagree with the Judge and go on arguing and arguing, testing the patience of the Judge. Whenever the 'reasonable' lawyer appears, the Judge will mentally lean forward and whenever the 'cantankerous' lawyer appears, he will mentally lean backwards. If the very reasonable lawyer has a bad case, and the cantankerous lawyer has a good case, there is a very good chance of the good lawyer with a bad case getting some relief and the bad lawyer with a good case not getting adequate relief. These responses are nothing but bias and prejudice in action. You should always guard against it.

Your dislikes and likes for any lawyer or litigant, or your feeling towards or against particular caste, community, religion, region should not have a bearing on your decision or decision making process. Every one of these external factors/considerations should be kept away. A case should be decided on its merit, and not on the merit or reputation or status or attitude of the lawyer or a litigant.

**Internal bias and prejudice:**

Let me next refer to 'internal bias and prejudice.' Every Judge has his own perception about what is right and what is wrong, what is just and what is unjust, and what is fair and equitable, which have a bearing on his decision in a case. Such perceptions are based on his personal philosophies, traditional beliefs, acquired convictions and prejudices which are deeply rooted in his psyche moulded by what he heard, what he read, what he felt and experienced. Over a period of time, these perceptions lead to Judges being type-cast in their decisions. For example, the experiences of a Judge may make him view all police action with suspicion and consequently lead him to believe that most of the accused are framed or falsely/wrongly accused of offences, and innocents should not be made to suffer or that third-degree methods would have been employed to get confessions, and that there is a need to give the benefit of doubt to the accused. He therefore tends to acquit and therefore becomes an 'acquitting judge.' Another Judge may feel that when the police investigate and file a charge-sheet and place evidence supporting the charge, they should not be disbelieved and ignore all discrepancies in evidence on the ground that they are due to human 'error' or 'pressure'. He tends to convict and therefore becomes a 'convicting Judge.' When a 'Convicting Judge' is holding the roster, usually there is 70% to 80% convictions, and every defence lawyer would avoid hearing and decision by such Judge. But when an 'acquitting judge' sits in the roster, and there is 90% to 95% acquittals, the very same defence lawyers will stand in a queue to argue their cases. You should be careful to be a neutral judge who is known for deciding cases purely on their merit, without being branded as either as a ‘acquitting or convicting
Let me give another example. Let us say that there are two similar claims for compensation where the age, income and number of dependants of the deceased are the same. One Tribunal awards Rs. Five lakhs and another Tribunal awards Rs. Six lakhs, as compensation. Both Tribunals may be presided by honest men with utmost integrity. Nevertheless, their personal philosophies enter into their judgements, leading to award of different quantum on similar or same facts. This result in the former being referred to as a 'tight-fisted judge' and the latter being referred to as a 'liberal judge.' Another example: Before a particular Judge, 90% of eviction cases succeed; while in another court, 90% of eviction cases are dismissed. They will be known as 'landlord judge' and 'tenant judge' respectively. Similarly, we have 'pro-management judges' and 'pro-labour judges' in labour matters. Fali Nariman refers to one such Judge was a 'tenant Judge' and 'Pro-labour Judge'.

We cannot have one Judge deciding one way and another Judge deciding another way and a third Judge a third way, on the basis of their personal philosophies. It is true that Judges are not robots or computers to give identical judgments. So long as Judges are human, their personal philosophies will to a certain extent, mould their decisions. But a litigant, who is adversely affected by a judgment, will be perplexed as to why he should suffer because the case came up before a particular Judge when another identical case before another Judge ended differently. It is to avoid the ill-effects of personal philosophies and prejudices; the 'precedent' principle is adopted to ensure uniformity and consistency in decisions.

We should be careful that personal philosophy does not gain upper hand when precedents are available. The litigants are not bothered about the length of the judgement or about the erudition of the Judge. He is concerned only with the result – the relief which the Judge grants or does not grant. Therefore, there should be an effort to achieve consistency and uniformity in decision making. I am not saying that you should give up your judicial independence. Nor can I say that your personal convictions and views cannot at all play a part in the decision making. All that I say is that if there are precedents, you should follow them and not your instincts or personal philosophies, which show internal bias or prejudice.

You may be from any background, from any religion, from any caste, from any political philosophy. You may be friendly with many and you may be obliged to many – your friends, teachers, mentors, elders and seniors. Whatever maybe your background or antecedents or beliefs or convictions, when you become a Judge, your allegiance should only be to law and justice and not to your friends and relatives who might have helped you, mentors who might be responsible for your becoming a Judge, or to the Judges of the High Court who selected you, or the political party whose ideologies you identify with. Friendship, loyalty, gratitude, are great qualities by themselves, but not when they are pitted against your allegiance to integrity, impartiality and justice as a Judge. You shall truly and faithfully perform the duties of your office without fear or favour, affection or ill-will. Thomas Fuller said: “When a Judge puts on his robes, he puts off his relationships and friendships. He becomes a person without a relative, without a friend, without an acquaintance. In short, he becomes impartial.”

The Bangalore Principles of Judicial Conduct (2002) described the quality of impartiality thus:

Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not
only to the decision itself but also to the process by which the decision is made.

Application:

2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
2.5.2 the judge previously served as a lawyer or was a material witness in the matter of controversy; or
2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

**Conclusion**

Read the Restatement of Values of Judicial Life (adopted by the Chief Justices
Conference of India 1999). Though they are addressed to Judges of High Courts, the principles underlying them apply to District Judiciary also. Study the Bangalore Principles of Judicial Conduct 2002. Let me draw your attention to two of the great values of Judicial life (from the Restatement of Values of A Judicial Life) – 

(i) Every Judge must, at all times, be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the office he occupies. (ii) The behaviour and conduct of Judges must reaffirm the people's faith in the impartiality of the Judiciary. Justice must not merely be done, but must also be seen to be done. Read the inspiring life stories and writings of great judges.

You ensure the rule of law. You are the interpreters of law. You are the seekers of truth. You are the renderers of justice. But you are not a legislator, you are not an administrator, you are not a trader. You have to remind yourself everyday about the onerous nature of your powers and functions and that every case that comes up before you relates to the fate of a person relating to - the right to survive, the right to livelihood, the right to life, the right to liberty and the right of property. You have to pray every day to give you the courage and conviction to do justice with humility, wisdom and compassion.

Though you might have studied or known the ethical principles, mere knowledge is not sufficient. It is practice of these principles every moment of your judicial life that will make you good Judges and earn a good name for the Judiciary.

NOTE: Some of you may feel that some things which I have said are impractical, idealistic, far-fetched and not realistic; or that some fears and apprehensions are exaggerated; or that the advice regarding ethical standards are too rigid, and ignores ground realities. May be. May be not. Some aberrations which have recently come to light underline the need for strong ethical standards. You are at liberty to have a different view as to how to practise and maintain judicial ethics. But let there not be any compromise in regard to the fundamentals of judicial ethics which are constant. Adherence to them should be non-negotiable and non-dilutable. I wish you a meaningful and fruitful judicial service, with courage, commitment, hard work and ethical behaviour.