

Annual Judicial Conference
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BENCH ETHICS AND ETIQUETTES IN COURT HEARINGS

Honourable Chief Justice Ahmed Muthasim Adnan and all other justices of the Supreme Court of Maldives, honourable Judges of High Courts, Civil Courts and honourable Magistrates, ladies and gentlemen:

I am deeply honoured by the invitation to join with you all at this important event of the Maldivian judicial calendar. The Judicial Conference, which is an annual event, gives an opportunity for all the judges to use a common platform and engage in a fruitful discussion on matters of common interest. Conferences of this nature play a vital role in our professional careers. It helps individually for each judge to enhance the knowledge base and improve the quality of service. Cumulative effect of the improvements in each judge will no doubt create an environment where the overall quality of the justice sector is enhanced to the benefit of the entire society.

I do not think it is necessary to reiterate the importance of the existence of an effective and efficient justice system for the development of a country. The contribution of the justice sector to preserve and protect law and order benefits not only the litigants who come before court, but the entire society.

There are many stake-holders in any system of administration of justice. Attorneys, court staff, as well as litigants and witnesses have their own stakes in the system. Roles played by law enforcement agencies, correctional services and experts such as Judicial Medical Officers and Government Analysts also have a great impact on the success of the overall system.

ROLE OF A JUDGE

Among all the stake-holders, we as judges also have our own role based on the jurisdiction of respective courts in which we dispense justice. Our main role as the final arbiter places a heavy responsibility on our shoulders. Our conduct is a major factor that can heavily influence the public perception on the overall system. Public confidence on the system is an inalienable factor that would determine the effectiveness of the system. It is through our own conduct that we could earn the respect and dignity that in-turn would strengthen the confidence in the overall system.

From time immemorial, judges have been compared with priests and the courts in which they officiate had been described as temples. This demonstrates the influence the judges and courts had been having on the society and the importance of protecting and preserving the dignity and the honour bestowed on us. It is our duty to earn such honour and respect. However, winning "Public confidence" in this context should not be mixed up or misunderstood as "giving way to pressures disregarding the legal order" or "making an attempt to climb the popularity ladder".

A judge is described as "the pillar of the entire justice system".

The Canadian Supreme Court had recognized that the public has a right to demand "virtually irreproachable conduct from anyone performing a judicial function."

In today's discussion what we are mainly focusing on is the conduct of judges in the context of court hearings.

Ethics and Etiquettes in Court hearings

Socrates, the Greek philosopher said:

“Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.”

Can we dispute the validity of this observation made more than twenty centuries ago? To what extent can we relate it to the present day judges?

Impartiality must be an attribute of each individual judge and also of the judiciary as a whole. Impartiality and the appearance of impartiality are necessary for the maintenance of public confidence in the judicial system.

Lord Devlin in his book *The Judge* recognised “impartiality and appearance of it” as “supreme judicial virtues”.

To what extent a judge’s conduct in court could have a bearing on this matter?

CONDUCT OF A JUDGE

“Code of Judicial Conduct for United States Judges” (as amended) recognises that

“A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge’s control, including lawyers to the extent consistent with their role in the adversary process”.

And,

“A judge should accord to every person who has a legal interest in a proceeding, and that person’s lawyer, the full right to be heard according to law.

The Code of Conduct of the Supreme Court of Florida recognises:

- *A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary*
- *A judge shall require order and decorum in proceedings before the judge*

Bangalore Principles of Judicial Conduct recognises that

“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”.

It is also said;

“ A factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality and good judgment”.

The American Bar Association Model Code of Judicial Conduct observes – *“a reasonable perception that a judge lacks impartiality is damaging to the judge, the judiciary as a whole and the good administration of justice. Judges should, therefore, avoid deliberate use of words or conduct, in and out of court, that could reasonably give rise to a perception of an absence of impartiality.”*

The Canadian Judicial Council recognizes that

“Litigants and others scrutinize judges very closely for any indication of unfairness. Unjustified reprimands of counsel, insulting and improper remarks about litigants and witnesses, statements evidencing prejudgment and intemperate and impatient behaviour may destroy the appearance of impartiality. On the other hand, judges are obliged to ensure that proceedings are conducted in an orderly and efficient manner and that the court’s process is not abused. An appropriate measure

of firmness is necessary to achieve this end. A fine balance is to be drawn by judges who are expected both to conduct the process effectively and avoid creating in the mind of a reasonable, fair minded and informed person any impression of a lack of impartiality.”

When we closely examine these canons or principles adopted in domestic and international spheres, we can identify certain core factors on which ethics and etiquettes of judges in court hearings are based on. Conduct that preserves and enhances public confidence, kind disposition towards all stake-holders in a court hearing, conduct that reflects impartiality of the judge and providing a fair opportunity for all parties to present their cases are a few of such core values a judge should be possessed with.

It is also important to observe that at certain instances the role of a judge in a court hearing has been equated to the role of an umpire or a referee in a game.

Late Dr A.R.M.B.Amarasinghe, judge of the Supreme Court of Sri Lanka in his book “Judicial Conduct Ethics and Responsibilities” observed:

“We have seen that judges must act within the norms of the adversary adjudicative process. Ludovic Kennedy was quoted as saying: ‘whereas in Britain the judge acts as a kind of referee in what is largely a test of debating skills between counsel, in France it is the presiding judge who does all the questioning.’ Although in some civil law jurisdictions which have an inquisitorial system, it is the responsibility of the judge to develop the litigative facts, in common law countries like Sri Lanka, which as we have seen, have the adversarial system, judges are arbiters who must, in general, leave it to counsel to place the evidence before the court, and to deal with the case that is put before the court by counsel for the parties.”

However, it is also important to note that equating the role of a judge to the role a referee has its own limitations. This is demonstrated in contrasting observations made in two judgments of the Court of Appeal of Sri Lanka.

In one judgment it is observed that:

“When we speak of the adversary or accusatorial system as distinguished from the continental inquisitorial system, we refer to a particular philosophy of adjudication whereby the function of the counsel is kept distinct from that of the judge. It is the function of counsel to fight out his case while the Judge keeps aloof from the thrust and parry of the conflict. He acts merely as an impartial umpire to pass upon objections, hold counsel to the rules of the game and finally to select victor. This common law contentious procedure has its defects and has been criticised by jurists like Roscoe Pound (see Landmarks of Law ed. Hensen-Beacon series pp.186, 187) but it is the Anglo-American system and prevails in India and Sri Lanka too. In fact the Foster Advisory Committee in its Report on the English Civil Procedure (1974) recommends the retention of the adversary system of procedure- see the Stevens publication of the report- chapter 5 paragraph 102 pp.28,29. This system is built on the English notion of fair play and justice where the Judge does not descend into the arena and so jeopardise his impartiality. Under this system it is the counsel's duty to prove the facts essential for his case with the other party striving to disprove these facts or to establish an affirmative defence. It is logical therefore, subject to the strict rules of evidence, to leave the choice of witnesses and the order of calling them to counsel as it is his business so to present his case as would best advance his client's cause. The Court will interfere in the exercise of its discretion only in an exceptional case to avert a miscarriage of justice.”

In another judgment, the court observed that:

“The trial judge should not play the role of a mere umpire but must take effective action to ascertain and discover the truth. Justice Bertram with Justice Garvin agreeing- Sunderam Pulle v. Kathirase Pulle lamented thus: “It is a great pity I think that Judges, when they see two sides fencing with one another and maneuvering for positions, should conceive themselves merely as umpires in a game of strategy and should not themselves determine that the truth must be ascertained and themselves

call witnesses, who for strategic reasons or through misconception are withheld by either party.”

These contrasting views need to be considered in the proper context. To what extent should the judge go beyond the role of an umpire? The answer to this question would take us back to the core values attributed to the judge and the overall objective of the adjudication process in the justice system. The nature and the extent to which a judge should intervene at a trial will depend on the nature of the issue the judge has to resolve in a given situation. Ethics and etiquettes that we should observe are there to enhance the overall quality of the justice system and not to hinder the just outcome of proceedings. In this regard it is also opportune for us to focus on an observation of Francis Bacon in the essay “Judicature”. In his view, *“Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal”*.

When we take all these views, canons, rules and principles is it an unfair conclusion to make that a person who is possessed with good human qualities will not have much difficulty to adhere and shape his conduct to satisfy all these virtues a judge should possess? Therefore in this context it will be of immense value for all of us to lay a foundation in ourselves rich with good human qualities, which will easily support the additional burdens that we need to carry on our shoulders as judges.

I would perhaps conclude by sharing some thoughts and experience of a prominent Sri Lankan jurist:

Late professor C.G.Weeramanthri who was a vice president of the International Court of Justice and a judge of the Supreme Court of Sri Lanka once remarked:

“One of the greatest pleasures a judge can enjoy is the support and goodwill of a friendly bar. I had this in ample measure. Never once in my years on the Bench did I encounter the slightest rudeness or discourtesy from a single member of the bar. On the contrary it was cooperation and courtesy all the way.

I did of course observe some of the basic virtues – punctuality in the commencement of the court’s sittings, a full opportunity to the bar to present its arguments and assistance to young juniors who were feeling their way in court with all the diffidence their situation entails. At the same time I insisted on thorough preparation of the brief and stimulated and indeed expected a high degree of research. If lawyers came into court inadequately prepared I was able in a gentle manner to convey to them my disappointment with their level of attention to the niceties of the case.

In the result, I had very well researched legal arguments presented to me and I rewarded those who had done this extra work by a careful reference in my judgments to all the arguments they had raised. This cordial inter-relationship resulted in mutual benefits to both bench and bar, for I believe it stepped up the quality of court appearances as well as court judgments”.

Therefore, it remains our responsibility to protect and preserve the honour and dignity of the justice system through our impeccable conduct and ensure that we hand over a system adorned with public confidence and dignity to the next generation judges.

The importance to protect those rich traditions, practices and rules was echoed by Chief Justice Sir Stanley Fisher at a ceremonial Sitting on 16th April 1930 in following words:

“[Judges] come and judges go but the continuity of these courts is unbroken. The atmosphere remains and I do think that if it were possible for a Judge of fifty years ago to come back actually to these courts, he will at once feel himself at home and recognize the same atmosphere and the same sense of justice animating and inspiring those who worked in these Courts in his own day”.

Thank you!

Jayantha Jayasuriya P.C

Chief Justice of Sri Lanka.