Hon'ble Mr Justice M M Kumar

# SENSITISATION OF JUDICIAL OFFICERS IN DISPENSATION OF JUSTICE WITH A FOCUS ON COURT CRAFT AND COURT CONDUCT AND BENCH AND BAR RELATIONSHIP*

*by*

Justice M.M. Kumar†

I am indeed very happy to have the privilege of interacting with distinguished fellow judicial officers who belong to the superior judicial services of the State, namely, the Additional District and Sessions Judges, drawn from the States of Punjab and Haryana and the Union Territory of Chandigarh. I shall be addressing on the given theme of "Sensitisation of Judicial Officers in Dispensation of Justice with a Focus on Court Craft and Court Conduct and Bench and Bar Relationship". However, for providing the requisite perspective to this theme, it would be profitable first to have a peep into the developmental history of the District and Sub-Divisional Courts of which you all happened to be an integral part. This would instantly enable us to know and comprehend the juxtaposition of the District and Sub-Divisional Courts in the organisation of judicial system in India.

For having the requisite historical and constitutional perspective, let me turn to the classical work of B. Shiva Rao, *The Framing of India's Constitution — A Study*. While tracing the evolution and development of judicial system in India, the constitutional master stated that the organisation of judiciary in India at the time of framing of our Constitution was beset with numerous anomalies.[1] The Indian Statutory (Simon) Commission in 1930 and the Joint Select Committee on Indian Constitutional Reform in 1934 had emphasised the importance of an independent, competent and fair-minded judiciary which should enjoy the confidence of the people. However, it remained doubtful whether the aforesaid objectives could be achieved and fructified although their significance was never in doubt.

The basic reason for strengthening the judicial institution at the district and sub-divisional level was, and still remains valid, that it is the judiciary at that level which comes into direct contact with the people. For augmenting people's faith and confidence in the judiciary, it was felt necessary that independence of judiciary be ensured and placed beyond any shadow of doubt.

* Abstracted from the lecture delivered at Chandigarh Judicial Academy to the various groups of Additional District and Sessions Judges as a part of the Refresher-cum-Orientation Course, commencing from 21-2-2010. However, for maintaining the spirit of proximity with the distinguished fellow judicial officers, the narration of first person has been retained in this abstraction.

† LLM (Birmingham, UK), Judge, Punjab and Haryana High Court.

1 *See*, B. Shiva Rao, "The Judiciary", *The Framing of India's Constitution — A Study*, Ch. 17 at pp. 506-10.

The District and Sessions Judges exercise both civil and criminal jurisdiction. They used to be appointed, constitutional history reveals, by the Governor of the Province, exercising his individual judgment. The only meagre requirement was that the High Court was to be consulted. Here I am tempted to cite an instance based upon a historical document, which is of personal and highly privileged in nature! My reference is to the exchange of personal letters between Hon'ble Mr Justice Tikka Jagjit Singh Bedi and the then Governor of Punjab, showing how the former was appointed as the District and Sessions Judge by the latter in a highly informal and enchanting manner. In this respect, I wish to reproduce the privileged communication that took place between the two in the year 1943 and making Tikka Jagjit Singh Bedi within a short span of five-six months as the distinguished District and Sessions Judge. I reproduce here the two letters, bearing the dates of 17-4-1943 and 15-9-1943, which are self-speaking (a copy of both these letters adorn the showcases of our High Court museum):

"34, Bungalow
Jullendur Cantt,
17th April, 1943

Dear Tikka Sahib,

Thanks very much for your letter of 14th which I received here where I am staying with my son who is in the Dogras. It is good of you to offer to contribute your mite to the Hogg Memorial. I did not expect much from you as you have already given us a good sum. You are now in the same position as myself. You are a life patron and have given ₹1000 to the Scouts. I have given ₹100 for this memorial and I suggest you do the same and then we contribute to be equal.

I am going next Saturday to our Scout Estate at Tara Devi and will remain there for two months I expect. We are having many boys' camps there and there is also a large building programme to look after so I will be pretty busy. I hope to go home about September. Please remember me to your family and give them my salaams.

Yours sincerely,
sd/-

P.S.
Any chance of the D&S.J ship?

sd/-"

"D.O. No. 3035-sg-43/9128-S
Punjab Civil Secretariat,
Shimla E
15th September, 1943

My dear Tikka Sahib

I am desired to inform you that the Governor of Punjab has decided to appoint to an existing vacancy in one of the listed posts on the cadre

of the District and Sessions Judges which is reserved for the Bar. Will you kindly inform me on what date it will be convenient to you to join. At the same time I should be obliged if you would let me know the district in which you have or in which you have relations are resident. Your actual posting will be a matter for the Honourable Judges of the High Court, and they will take the question up after the vacation; but it will save time if you will let me have the information asked for without delay.

Yours sincerely,

sd/-

Tikka Jagjit Singh Sahib,

Knowlswood

Shimla E"

The Civil Judges used to be appointed by the Public Service Commission under the 1935 Act and the High Court was entrusted with the postings and promotions. However, the Magistrates on the criminal side used to be appointed by the Provincial Government under the provisions of CrPC without any obligation to consult the High Court nor the High Court was given any control over these officers. The District Magistrate used to be also the Collector and Principal Officer and the Chief Revenue Officer.

In the initial stages of Constitution making, no specific attention was paid to the subordinate judiciary. It is extremely surprising to note that there was no provision in the Draft Constitution prepared by the Constitutional Adviser in 1947 nor any provision was made by the Drafting Committee in 1948. This glaring omission was prominently highlighted by the Conference of the Judges of the Federal Court and the Chief Justices of High Courts held in March 1948. Their memorandum observed:

> *So long as the subordinate judiciary, including the District Judges, have to depend on the provincial executive for their appointment, posting, promotion and leave, they cannot remain entirely free from the influence of members of the party in power and cannot be expected to act impartially and independently in the discharge of their duties.* It is therefore recommended that provision be made placing exclusively in the hands of the High Courts the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including the District Judges.

The seminal suggestions made at the Judges' Conference prompted the Drafting Committee to consider and accept their recommendations for assimilating the two branches—both civil and criminal and placing them equally under the control of the High Court. The provision for 7 years' practice for appointment as Additional District and Sessions Judge was made and such a person was required not to be in the service of the Union or of a State. He could be appointed on the recommendation by the High Court for such appointment.

In respect of the subordinate judiciary, the Governor was required to make rules defining the standard of qualification after consultation with the High Court and the Public Service Commission. The examinations for recruitment were also required to be held by the Public Service Commission. The whole control of the District Court and the courts subordinate thereto including postings, promotion and grant of leave to the District Judges and all persons belonging to the Subordinate Judicial Service was to vest in the High Court. This is what we see today and found reflected, with some changes of course, in Articles 233 to 237 of our Constitution.

Thus, we see that liberalisation of judiciary at the sub-divisional level and the district level from the control of its executive masters, who in turn are influenced by political bosses, was achieved through the continual process of discussion and dialogue. What eventually emerges is that after the enforcement of our Constitution on 26-1-1950, the judiciary at the district level and sub-divisional level is controlled only by the High Court in every conceivable aspect. Therefore, in your work and conduct, you are completely independent from any influence of the local executives or the district administration.

The position of the judiciary was precarious, as I have just mentioned to you a little while ago, when the Conference of the Judges of the Federal Court and Chief Justices was held in March 1948 at Allahabad. The members of the party in power could have influenced them and they could not have acted impartially and independently. There is further development that the appointments of the Civil Judges at the sub-divisional level should also be made by the High Court and not by the Public Service Commission, particularly after complete liquidation of prestigious agencies which have roots in the Constitution like the Public Service Commission and the Subordinate Services Selection Boards.[2] The Punjab and Haryana High Court has been making appointments of Civil Judges now for the past quite a few years and hopefully this trend would continue.

In the aforesaid backdrop, I may now take up the issue and attempt to show how court craft and court conduct are indispensable elements of dispensation of justice.

Perhaps the most significant aspect of court craft and court conduct is sound knowledge of law and facts on the file which you are going to deal with instantly. To Lord over the court, it would, therefore, be necessary that everyone of you has fair knowledge of cases listed before you on the following day. You must be aware of the facts of each case broadly. It may not be imperative for you to study in all possible details the whole relevant case law, but still you should be aware of the basic rudimentary principles of law, relevant statutory provisions and their requirement. This alone would enable you to have complete control over the cause-list and thereby the court over which you are presiding. With a fair comprehension and rounded view

2 See, *Malik Mazhar Sultan (3)* v. *U.P. Public Service Commission*, (2008) 17 SCC 703 : (2010) 1 SCC (L&S) 942.

of the relevant law, you would develop the capacity of sifting the "substance" from the "frivolous". It would augment your power to deal with the cases, parties and their lawyers effectively. The adjournment culture, infested with "tricks of the trade", would vanish sooner than later.

There are certain other elements which are axiomatically linked with "dispensation of justice" by the Judge. The attributes of honesty, integrity and independence of the Judge are inalienably linked with the entire justice process. Here these attributes are used not in restricted sense but with wider connotation. Honesty, for instance, does not merely mean rendering a decision without any monetary consideration. It would also include and mean any other extraneous consideration in your decision-making.

You must be intellectually honest and pure. Your friendship with a party to litigation may not be known to the other party or even their lawyers, but if you decide the case in favour of your friend irrespective of the merit of his case, then you would be intellectually dishonest. You may not be detected by anyone for such a decision but you cannot escape the wrath of your own conscience which would keep haunting you. Therefore, think and ponder over your own thoughts and actions. There would always be, as you will realise, a duel between two thoughts of good and evil. Let the good thought overpower the evil thought.

You must be free from prejudices of all kinds. You must think and reflect whether you suffer from any gender bias, caste considerations, regional preferences, or religious bigotry. Any bias, consideration, preference or dogmatism affecting your mind must be shed completely, failing which your judicial acumen and judgment would be adversely affected.

I must share with you the seminal thought that courtroom is microcosm of the society and peoples' lives are affected day in and day out immediately and instantly in most fundamental ways by judicial decision-making. A just judgment given by you, say, may lead to admission of a deserving student to medical college, whereas an unjust judgment in the same case might change the course of his life and play havoc. A declaration made by you may enrich a person by crores and the contrary view may make him penniless or a pauper. Therefore, you must be completely independent in your decision-making, free from all such shackles as that of caste, creed or religion.

It is truism to say that in a multiracial society like ours, where people of different castes and religions live together, one has to have one caste or the other. Then, what one should do in this predicament? My advice on this count to you is: "You must be cast in the mould of a Judge according to your oath". A Judge has no caste as such because a caste-driven Judge can never discharge the pious duty of his or her office. A witness belonging to the caste of the Presiding Officer should meet the same treatment which is given to other witnesses. There is no question of believing the statement of such a witness more readily and easily, merely because the witness belongs to your caste or community. Likewise, judges should not be affected by the caste of

the lawyer or the caste of the litigant. I hardly need to say any more on this count! These factors remain seated at your sub-conscious level and act as a reflex action sometimes without letting you know of your lapse. The singular purpose, therefore, of my sharing is to sensitise you all that such prejudices must be shunned completely. For this I would urge you to have a peep into your own inner self and ask whether you suffer from any such prejudices that are unbecoming of a Judge in terms of his oath. I am sure, through this simple exercise, you will experience at sub-conscious level a feeling of rejuvenating purity and piety.

I must also share with you that in the dispensation of justice, law does not operate in a vacuum or void. It draws substance and sustenance from the social world, its operational jurisdiction. This makes it imperative for you to have a fair knowledge of the society that you are called upon to serve. The inside view of the society and the social order would be extremely helpful, say, to marshal facts, analyse statements, draw proper inferences, and thereby reach right conclusions in the task of dispensation of justice.

There could be umpteen illustrations when the same statement could lead us to a different conclusion until and unless the nature of the witnesses and the habit of the community to which they belong is known. There is every possibility then that the judicial officer concerned could seek clarification by asking court question. Therefore, it is essential to arm yourself with the social composition of the State where you are to apply the law.[3]

I may also share with you that sometimes the law available on statute books, if applied in its literal sense, may not render justice. It may rather cause injustice. The law, therefore, is to be applied creatively, and not merely mechanically. In other words, in order to administer justice you may have to interpret law to achieve the ends of justice rather than deciding a case as per the letters of the statute. It is for this reason that many a time it is said that law is not what Parliament has enacted, but the law is what judges interpret it to be. I may, therefore, emphasise again that you must have full knowledge of the social context in which you are obligated to apply law.

The books are full of illustrations when courts have interpreted law to bring it in tune with the requirement of our society so as to advance justice. Section 32(1) of the Evidence Act would illustrate this issue. A dying declaration has been defined to include the statement of its maker when he was anticipating death. It also includes a statement of a dead man as to cause of his death although the statement was not made in expectation of death. Broadly speaking, dying declaration as per Section 32(1) would include the statement made by a person as to cause of his death who was anticipating death and the other one who was not anticipating death but has died. In England, dying declaration is considered to be the statement made by a

3 *See* the keynote address by Hon'ble Mr Justice Anthony Smellie, Chief Justice of the Cayman Islands, at the Second Biennial Meeting of Commonwealth Judicial Educators, Sandals Grande, St. Lucia Spa and Beach Resort, 30-11-2003 to 1-12-2003.

person in anticipation of his death. The rationale is that when a man has such a state of mind when he is anticipating death then he is likely to speak the truth because the apprehended danger of death would guide him to speak the truth. Such a person is likely to leave this world without any interest left behind. The state of mind of the maker of the statement has been compared with the oath, which sanctifies and authenticates the statement. However, the Indian courts have interpreted the provision in such a way so as to achieve the same results which are available in England. It has now been laid down that a statement made by a dying man in anticipation of death alone can constitute a basis for conviction whereas a statement made by a dead person without anticipation of death alone cannot constitute a basis for conviction, for it requires corroboration in all material particulars, that is, with regard to time, place, identity of the accused, etc.[4] Therefore, if you are fully aware about the facts of the case, the law applicable and the social context in which those facts and law have originated, then you are in the proximity of doing complete justice.

It hardly needs any emphasis to say that you should be aware of latest statutes and their provisions. You should also be aware of the standard textbooks, commentaries on such laws which are applied by you in everyday work. All this would generate and increase your self-confidence in accomplishing your duty as a Judge, with fullest control over your court. This would also eliminate the possibility of your being misguided either by the attending counsel of the parties or by appearing witnesses.

By following these precepts, you would soon realise that your disposal rate has gone up manifold. Besides, a competent judicial decision given by the trial court would drastically reduce the appellate work. Concomitantly, delay caused in deciding cases would also be reduced to the minimum. Such are the advantages of effectively equipping yourself with all these judicial tools.

I may also add that the conduct of a Judge in the court should be pleasant and cheerful. He should be reticent in making observations. However, if required he should not hesitate to make observation, but still staying within the discipline of law. Any loose, casual and out of context observation may lead to unnecessary embarrassment which is not complimentary to the dignity of the court. I have the occasion to inspect the Court of an Additional District Judge who was in the habit of cutting jokes in the open court with his Secretary, Reader and even the lawyers. Eventually, owing to this habit he landed himself in trouble and lost his job. Therefore, the golden principle which could be observed by all of you is "say only as much as you could put in writing if necessity arises".

You are also required to maintain punctuality because that would enable to transact the business of the court efficiently and effectively. You must remember that the lawyers appearing before you finalise their schedule of

4 *See*, M. Monir, *Law of Evidence* (1986 Edn.) at pp. 423-49.

appearance by keeping in view the cause-list and their item numbers. If you are unable to maintain punctuality then the schedule of such counsel would be disturbed. As a result, there would be requests of passover and adjournments. The whole list would be cramped and at the end of the day the result would be discouraging and disturbing.

These are some of my random thoughts or ideas that I wished to share with you. If you care to follow some of the suggestions flowing from these thoughts or ideas, I sincerely believe and do hope, we would be able to usher in more efficient, judicious, fair and transparent justice delivery system.

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