

7 SCOB [2016] AD 1

APPELLATE DIVISION

PRESENT:

Mr. Justice Surendra Kumar Sinha,
Chief Justice
Mrs. Justice Nazmun Ara Sultana
Mr. Justice Syed Mahmud Hossain
Mr. Justice Hasan Foez Siddique

CIVIL APPEAL NO.145 OF 2005.

WITH

CIVIL PETITION FOR LEAVE TO APPEAL NO.405 OF 2005.

(From the judgment and order dated 02.02.2005 passed by the High Court Division in Writ Petition No.2454 of 2004.)

Md. Idrisur Rahman : Appellant.
(In C.A. No.145 of 2005)
Government of Bangladesh : Petitioners.
and others : (In C. P. No.405 of 2005)

=Versus=

Syed Shahidur Rahman and others : Respondents.
(In both the cases)

For the Appellant : Dr. Kamal Hossain, Senior Advocate, (with Mr. Idrisur Rahman, Advocate), instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.

For the Petitioner : Mr. Murad Reza, Additional Attorney General (with SK. Saifuzzaman, Deputy Attorney General) instructed by Mr. Haridas Paul, Advocate-on-Record.

For the Respondents : Mr. Shahidur Rahman, (In Person) instructed by Mr. Nurul Islam Bhuiyan Advocate-on-Record.

For the Respondents : N. R.
(In C. P. No.405 of 2005)

Date of hearing : 5th and 18th August, 2015.

Date of Judgment : 16th September, 2015.

Constitution of Bangladesh

Article 152:

There are set of customs and usages which are being followed by the Judges in this sub-continent for over a century and those customs and usages have the force of law. Thus,

if a Judge violates any of the established conduct, usage or custom, he will not only commit gross-misconduct but also violates his oath, the Constitution and the law.

...(Para 6)

An ordinary offender and a Judge cannot be equated at par while finding them guilty of the charges:

The question is whether the conclusion arrived at by the Council in forming the opinion by the President to remove Mr. Syed Shahidur Rahman from the office of a Judge on the ground of gross misconduct was in conformity with the provisions of the constitution. The conclusion of the Council is that the materials on record are sufficient to come to the conclusion that the allegations made against Mr. Syed Shahidur Rahman have substance. It merely disbelieved the receipt of Tk.50,000/- in the absence of corroborative evidence but it has totally believed the entire episode. What more else is required to prove about the misconduct of a sitting Judge of the highest Court by a woman? These findings and observations are sufficient to come to the conclusion that the Judge had not only violated the 'Code of Conduct' but also judicial ethics and norms which are sufficient to remove him from the office of a Judge. It is to be borne in mind that in adjudicating a disciplinary proceeding against a Judge of the highest court and holding trial of an offender in a criminal case, one cannot claim similar principle to be followed. For proving an offence against an offender, the prosecution must prove the offence against him beyond reasonable doubt but this doctrine cannot be applicable in respect of a Judge while hearing a disciplinary proceeding for removal of a Judge on the ground of gross misconduct. In the alternative, it may be said that an ordinary offender and a Judge cannot be equated at par while finding them guilty of the charges.

...(Para 55)

A Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others.

...(Para 60)

Constitution of Bangladesh

Article 102:

The High Court Division cannot sit over the opinion of the Council as an appellate forum:

Judicial review against such removal is not available in this particular case in the facts of the given case, inasmuch as, judicial review is available against such order on limited grounds. The High Court Division cannot sit over the opinion of the Council as an appellate forum or from the Order of the President pursuant to the recommendation of the Council. The High Court Division has apparently equated a proceedings taken by a sitting Additional Judge against an order of removal on the ground of misconduct with an ordinary litigant which seeks judicial review against an administrative action. There is no doubt that judicial review is a basic feature of our constitution so also the rule of law but that does not mean that the same doctrine will be applicable in all cases. ... (Para 76)

There is no Rules providing the procedure to be followed for removal of a Judge of the highest Court. The Supreme Judicial Council enjoins the power as per provision of clause (4) of Article 96 to prescribe the 'Code of Conduct' of the Judges. Similarly for

the purpose of inquiry also, there is no Rules or Regulations framed by the government. It is left with the discretion of the Council to follow the procedure. The Council on following conduct rules and after affording Mr. Syed Shahidur Rahman sufficient opportunity to explain his conduct and upon hearing the parties held that Mr. Syed Shahidur Rahman should not remain in the judiciary because of his conduct. This opinion having been made by the highest body authorized by the constitution and the President having taken the decision relying upon the recommendation of the Council, the judicial review is not permissible against such decision. ... (Para 82)

When judicial review is permissible:

It is only in exceptional cases when the principles of *audi alteram partem* have not been followed or the affected Judge has not been afforded sufficient opportunity to examine witnesses or cross-examine the witnesses, judicial review against his removal is permissible but otherwise not. ... (Para 84)

The High Court Division cannot sit over the judgment of the Council. It has totally ignored that aspect of the matter and opined that the President did not apply his judicial mind in passing the order of removal of Mr. Syed Shahidur Rahman. As per provisions of the constitution after the recommendation of the Supreme Judicial Council the President is left with no discretion other than to accord the recommendation. It is not correct to hold the view that the Council's opinion is expressly beyond the scope of article 96(5) of the constitution, and that such portion of the opinion contained in the report is without jurisdiction, inasmuch as, in the absence of proof of alleged payment of money to the writ petitioner by Ms. Kona the allegations against the writ petitioner is baseless. This view of the High Court Division is totally misconceived one. The High Court Division has exceeded its jurisdiction in making such observation. As observed above, even if the payment of Tk.50,000/- has not been proved, that does not disprove the allegations made by Ms. Kona. Mr. Syed Shahidur Rahman being a sitting Judge could not entertain Ms. Kona with two of her relations at his residence for fixation of a bail matter and also he could not maintain liasion with his previous junior Ms. Jesmin Akther Keya relating to conducting cases. ... (Para 85)

Our conclusion is as under:

.....

- (6) A Judge should dispose of promptly the business of the court including avoiding inordinate delay in delivering judgments/orders. In no case a judgment shall be signed not later than six months of the date of delivery of judgment in exceptional cases.

.....

- (21) No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

... (Para 87)

J U D G M E N T

Surendra Kumar Sinha, CJ:

1. A constitutional point of law is involved in this appeal, which has public importance. The point is directly related to the Code of Conduct of the Judges of the higher echelons.

2. Article 96 of the constitution prescribes the tenure of the office of the Judges, formulation of their Code of Conduct, their removal, inquiry and the procedure to be followed in that regard. This appeal relates to the removal of Mr. Syed Shahidur Rahman, an additional Judge of the High Court Division. The provision for removal of a Judge is so much importance that it is set out in extenso for arriving at a correct conclusion on the question:

“96. (1) Subject to the other provisions of this article, a Judge shall hold office until he attains the age of sixty-seven years.

(2) A Judge shall not be removed from his office except in accordance with the following provisions of this article.

(3) There shall be a Supreme Judicial Council, in this article referred to as the Council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges:

Provided that if, at any time, the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member.

(4) The function of the Council shall be –

- (a) to prescribe a Code of Conduct to be observed by the Judges: and
- (b) to inquire into the capacity or conduct of a Judge or of any other functionary who is not removable from office except in like manner as a Judge.

(5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge –

- (a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or
- (b) may have been guilty of gross misconduct, the President may direct the Council to inquire into the matter and report its finding.

(6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order, remove the Judge from office.

(7) For the purpose of an inquiry under this article, the Council shall regulate its procedure and shall have, in respect of issue and execution of processes, the same power as the Supreme Court.

(8) A Judge may resign his office by writing under his hand addressed to the President.”

3. The Article has provided a comprehensive and complete procedure regarding the Judges' tenure and removal. The proviso to clause (3) in particular makes certain that if a member of the Supreme Judicial Council is not capable of inquiring into the conduct of the Judge, the Judge who is next in seniority shall act as such member. A look at these provisions

manifest that for removal of a Judge there should be a Supreme Judicial Council consisting of the Chief Justice and next two senior Judges and the functions of the Council have been clearly detailed in clause (4) of article 96, that is to say, the Council shall prescribe a Code of Conduct which shall be observed by the Judges. The reference may be made to the Council in any of the following manner.

4. If the Chief Justice gets any information from various sources regarding the misconduct of a Judge, and if he is satisfied on perusal of the information that a Judge has been guilty of gross misconduct or is incapable of properly performing the functions of his office due to physical or mental incapacity, he may bring to the notice of the President intimating about the information collected regarding the conduct of the Judge. If the President is satisfied with the materials placed before him which are sufficient to remove a Judge, he shall refer the matter to the Supreme Judicial Council for inquiry and report. Or if the President is satisfied from information received from other sources that an inquiry should be held by the Council for removal of a Judge, he may refer the matter to the Council for inquiry and report for his satisfaction that the Judge may be removed for any of the eventualities mentioned in clause (5) of article 96. If the Council after holding inquiry is of the opinion that the conduct of the concerned Judge is such that he should be removed from the office for physical and mental incapacity or guilty of conduct, the President shall order for removal of the Judge.

5. There is no hard and first rule for conducting such inquiry by the Council and it is the Council which shall regulate its procedure. In exercise of the powers conferred under clause (4) of article 96, the Council promulgated on 7th May, 2000, the 'Code of Conduct'. In the preamble of the 'Code of Conduct', it is stated that the Judges should be alive to the oath prescribed in the Third Schedule of the constitution. It reminds the Judges that they are under obligation to discharge the constitutional responsibilities in order to maintain, follow and interpret the constitution and the law for the maintenance of the rule of law over the whole range of human activities within the nation. As per 'Third Schedule', a Judge takes oath to 'preserve, protect and defend the constitution and the laws of Bangladesh.' So, it is imperative for a Judge to follow the oath and reflect it in his conduct, behaviour and in every aspect of his life.

6. 'Law' as per definition in article 152 means, 'any Act, ordinance, order, rule, regulation, bye-law, notification or other legal instrument, and any custom or usage, having the force of law in Bangladesh'. Since the 'Code of Conduct' has been promulgated by the Council in exercise of Powers under clause (4)(a) of article 96, it has force of law in view of the above definition, which includes 'other legal instrument', and any 'custom or usage'. The 'Code of Conduct' is definitely a legal instrument. Besides, the custom and usage being followed by the Judges is also a law as per constitution. There are set of customs and usages which are being followed by the Judges in this sub-continent for over a century and those customs and usages have the force of law. Thus, if a Judge violates any of the established conduct, usage or custom, he will not only commit gross-misconduct but also violates his oath, the Constitution and the law.

7. The noble objectives of the 'Code of Conduct' have been mentioned in its preamble. In Craies on Statutory Law, Seventh Edition, while describing the 'Object of Preamble' it is stated that preambles, especially in the earlier Acts, have been regarded as of great importance as guides to construction. They were used to set out the facts or state of law for which it was proposed to legislate by the statute. Coke said 'The Preamble of the statute is a

good means to find out the meaning of the statute, and as it were a key to open the understanding thereof.' Lord Thring said, 'The proper function of a preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood.' Pollock in *Salkeld V. Johnson*, (1848) 2 Ex. 256. 283 said 'The preamble is undoubtedly part of the Act.'

8. The first clause of the 'Code of Conduct' relates to upholding the integrity and independence of judiciary. It reminds a Judge to maintain 'high standards of conduct' so that the integrity and independence of judiciary' are preserved. Clause 2 proscribed impropriety in all activities such as:

- A. A Judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A Judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit others to convey the impression that they are in a special position to influence the Judge.

9. Clause 11 is also relevant for our consideration which read:

"11 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 his office."

10. Finally it has been reminded that the 'Code of Conduct is only restatement of values of judicial life and is not meant to be exhaustive but illustrative of what is expected of a Judge.' So, a Judge should abide by norms and ethics which are being followed by the Judges for many centuries. That area is covered by the sense of propriety of the Judge himself. It is expected that a Judge is guided by self imposed restrictions. P.Ramanatha Aiyer, in his 'Law Lexicon' Edition 1987, at page 821, has collected from several decisions the meaning of the word 'misconduct' and arrived at the conclusion that the expression is vague. Literally, it means wrong conduct or improper conduct. It is to be constructed with reference to the subject-matter and the context wherein the term occurs having regard to the scope of the Act or the statute under consideration. 'Misconduct' on the part of an arbitrator was construed to mean that misconduct does not necessarily comprehend or include misconduct of a fraudulent or improper character but it does comprehend and include action on the part of the arbitrator which is, upon the face of it, opposed to all rational and reasonable principles that should govern the procedure of any person who is called upon to decide upon questions in difference and dispute referred to him by the parties.

11. In clause 5(b) of article 96, the President may direct to hold inquiry by the Council if there is information regarding the allegation of 'gross misconduct' of a Judge. Similarly in clause (6) it is provided that on perusal of the inquiry report, if the President is satisfied that a Judge is guilty of 'gross misconduct' he shall make an order of removal. In the constitution no definition or explanation has been given of the expression 'gross misconduct'. In the absence of any explanation or definition, the Court is required to consider the 'Code of Conduct' of the Judges. If there is allegation against a Judge who violates the 'Code of Conduct' and on inquiry the Council finds that the Judge has violated the norms and 'Code of Conduct' he will be deemed that he has committed 'gross misconduct', otherwise the formulation and circulation of 'Code of Conduct' will be meaningless. It will be illusory to

formulate the conduct rules. In that case there will hardly be any difference in the conduct of a Judge and an ordinary person. A Judge should maintain the 'Code of Conduct' in all aspects of his life. He should not mix with any person other than his close relatives not to speak of keeping liaison with his previous clientele. Aloofness is virtue of a Judge.

12. On perusal of the 'Code of Conduct, it is obligatory on the part of a Judge, who is oath bound to preserve, protect and defend the constitution and the laws, to maintain the dignity and follow it. If a Judge violates the 'Code of Conduct' it may be said that he has violated his oath and such violation may be taken as 'gross misconduct'.

13. In *Corpus Juris Secundum*, Vol-48A, referring to the standards of Conduct, Disabilities and Privileges of Judges Guidelines for judicial conduct are found both in codes of judicial conduct and in general moral and ethical standards expected of judicial officers by the community. Canons or codes are intended as a statement of general principles setting forth a wholesome standard of conduct for Judges which will reflect the credit and dignity on the profession and insofar as they prescribe conduct which is *malum in se* as opposed to *malum prohibitum* they operate to restate those general principles that have always governed judicial conduct. 'Although these canons have been held to be binding on Judges and may have the force of law where promulgated by the courts, except as legislatively enacted or judicially adopted they do not of themselves have the force and effect of law.'

14. On the nature of proscribed conduct it is stated:

"A judge's official conduct should be free from impropriety and the appearance of impropriety and generally, he should refrain from participation in activities which may tend to lessen public respect for his judicial office.

It is a basic requirement, under general guidelines and canons of judicial conduct, that a Judge's official conduct be free from impropriety and the appearance of impropriety and that both his official and personal behaviour be in accordance with the highest standard society can expect. The standard of conduct is higher than that expected of lay people and also higher than that expected of attorneys. The ultimate standard must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office and Judges must so comport themselves as to dignify the administration of justice and deserve the confidence and respect of the public. It is immaterial that the conduct deemed objectionable is probably lawful albeit unjudicial or that it is perceived as low humored horseplay.

In particular, a Judge should refrain from participation in activities which may tend to lessen public respect for his judicial office and avoid conduct which may give rise to a reasonable belief that he has so participated. In fact even in his private life a Judge must adhere to standards of probity and propriety higher than those deemed acceptable for others. While a Judge does have the right to entertain his personal views on controversial issues and is not required to surrender his rights or opinions as a citizen his right of free speech and free association are limited from time to time by his official duties and he must be most careful to avoid becoming involved in public controversies."

15. R.C. Lahoti, CJ. in an article 'Canons of Judicial Ethics' stated as under:

'Principles' are fundamental truth, the axioms, the code of right conduct. Much of these remain confined to theory or hidden in books. Canons are the type or the rules perfected by the principles put to practice. Principles may be a faculty of the mind, a source of action which are a pleasure to preach or read. 'Canons' are principles put into practice so as to be

recognized as rules of conduct commanding acceptability akin to religion or firm faith, the departure wherefrom would be not a pardonable mistake but an unpardonable sin. Let us bear this distinction in our mind while embarking upon a voyage into the dreamland called the 'Canons of Judicial Ethics'.

16. 'Canons are the first verse of the first chapter of a book whose pages are infinite. The life of a Judge i.e. the judicial living is not an easy thing. Things in judicial life do not always run smoothly. Performing the functions of a judicial office, an occupant at times rises towards the heights and at times all will seem to reverse itself. Living by canons of judicial ethics enables the occupant of judicial office to draw a line of life with an upward trend travelling through the middle of peaks and valleys. In legal circles, people are often inclined to remember the past as glorious and describing the present as full of setbacks and reverses. There is dark period of trial and fusion. History bears testimony to the fact that there has never been an age that did not applaud the past and lament the present. The thought process shall ever continue. Henry George said- "Generations, succeeding to the gain of their predecessors, gradually elevate the status of mankind as coral polyps, building one generation upon the work of the other, gradually elevate themselves from the bottom of the sea." Progress is the law of nature. Setbacks and reverses are countered by courage, endurance and resolve. World always corrects itself and the mankind moves ahead again. "Life must be measured by thought and action, not by time" –said Sir John Lubbock.

17. Observance of Canons of Judicial Ethics enables the judiciary to struggle with confidence; to chasten oneself and be wise and to learn by themselves the true values of judicial life. The discharge of judicial function is an act of divinity. Perfection in performance of judicial functions is not achieved solely by logic or reason. There is a mystic power which drives the Earth and the Sun, every breeze on a flower and every smile on a child and every breath which we take. It is this endurance and consciousness which enables the participation of the infinite forces which command us in our thought and action, which, expressed in simple terms and concisely put, is called the 'Canons of Judicial Ethics'.

18. Judicial Ethics

"Judicial ethics is an expression which defies definition. In the literature, wherever there is a reference to judicial ethics, mostly it is not defined but attempted to be conceptualized. According to Mr. Justice Thomas of the Supreme Court of Queensland, there are two key issues that must be addressed: (i) the identification of standard to which members of the judiciary must be held; and (ii) a mechanism, formal or informal, to ensure that these standards are adhered to. A reference to various dictionaries would enable framing of a definition, if it must be framed. Simply put, it can be said that judicial ethics are the basic principles of right action of the Judges. It consists of or relates to moral action, conduct, motive or character of Judges; what is right or befitting for them. It can also be said that judicial ethics consist of such values as belong to the realm of judiciary without regard to the time or place and are referable to justice dispensation.

19. 'In all democratic constitutions, or even those societies which are not necessarily democratic or not governed by any constitution, the need for competent, independent and impartial judiciary as an institution has been recognized and accepted. It will not be an exaggeration to say that in modern times the availability of such judiciary is synonymous with the existence of civilization in society. There are constitutional rights, statutory rights, human rights and natural rights which need to be protected and implemented. Such protection and implementation depend on the proper administration of justice which in its turn depends

on the existence and availability of an independent judiciary. Courts of Law are essential to act and assume their role as guardians of the Rule of Law and a means of assuring good governance. Though it can be said that source of judicial power is the law but, in reality, the effective exercise of judicial power originates from two sources. Externally, the source is the public acceptance of the authority of the judiciary. Internally and more importantly, the source is the integrity of the judiciary. The very existence of justice-delivery system depends on the Judges who, for the time being, constitute the system. The Judges have to honour the judicial office which they hold as a public trust. Their every action and their every word-spoken or written-must show and reflect correctly that they hold the office as a public trust and they are determined to strive continuously to enhance and maintain the people's confidence in the judicial system.

20. In *Krishna Swami V. Union of India*, (1992) 4 SCC 605 it was observed:

'Every act or even error of judgment or negligent acts by higher judiciary *per se* does not amount to misbehaviour. Wilful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of *mens rea* by the doer. Judicial finding of guilt of grave crime is misconduct persistent failure to perform the judicial duties of the Judge or willful abuse of the office *dolus malus* would be misbehaviour. Misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial office. Even administrative action or omissions too need accompaniment of *mens rea*.'

21. It is pointed out that the 'Code of Conduct' should be maintained and observed by a Judge and he should not do anything 'which erodes the credibility'. Of the said conducts, clause 2B above is very pertinent, that is to say, it proscribed a Judge not to allow family, social and other relationship to influence judicial conduct or judgment. 'A Judge should not lend the prestige of the judicial office to advance the private interests of others'.

22. Conduct of Judge in private

'When a Judge sits on trial, he himself is on trial. The trust and confidence of 'we the people' in judiciary stands on the bedrock of its ability to dispense fearless and impartial justice. Any action which may shake that foundation is just not permitted. Once having assumed the judicial office, the Judge is a Judge for 24 hours. It is a mistaken assumption for any holder of judicial office to say that I am a Judge from 10 to 5 and from 5 to 10 it is my private life. A Judge is constantly under public gaze. "Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process.

23. 'Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is

higher than that expected of a layman and also higher than that expected of an Advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society”.

24. In an article “Ethics of Justices & Judicial Accountability’ V.G.Ranganath, working as Faculty of Law, IFHE University, Hyderabad, noted the following:

Code of Ethics of a Judge:

It is, therefore, absolutely essential that in order that the Judge’s life is full of public confidence in their role in the society, the judicial decision is to be honest and fair.

25. Lord Denning M.R. in his book has observed as follows:-

“When a Judge sits to try a case, he is himself on trial-before his fellow country men. It is on his behaviour that they will form their opinion on our system of justice. He must be robed in the scarlet of the red Judge-so as to show that he represents the majesty of law. He must be dignified – so as to earn respect to all who appear before him. He must be alert to follow, all that case on. He must be understanding-to show that he is aware of the temptation that beset any one. He must be merciful so as to show that he too has that quality which dropeth as gentle rain from heaven upon the place beneath.”

26. Thus, the great guarantee of justice is not law but the personality of the Judge and the way he discharges his duties and functions. The warranty of appointment of a Judge does not confer on him a degree of wisdom, larger than he has. But it certainly places him under an obligation to dispose justice without fear or favour, affection or ill-will in consequence of his oath of office and not to go out of his way to be on the right side of the establishment which is the biggest litigant in any country. Therefore, if the element of the fear, favour, affection or ill-will come to play any role in the formation of judicial opinion or affect the judicial behaviour of a Judge, the judgment though unimpeachable by the judge at the time of holding the office of a Judge.

27. ‘Judges do require a degree of detachment and objectivity in judicial dispensation. They being duty bound by the oath of office taken by them in adjudicating the disputes brought before the court in accordance therewith, Judges must remain impartial, should be known by all people to be impartial. ‘A Judge should not allow either reasons of State or political consequences, however, formidable they might be to influence his decision. He should guard against intimidation of powerful outside interests, which often threatened the impartial administration of justice and keep himself free from application of crude pressure, which may result in manipulation of the law for political purposes at the behest of the government in power or anybody else. Lord Mansfield’s observation in this context in the celebrated case of John Wilkes is worth noting. John Wilkes had published a seditious libel in a paper called the North Briton. He had fled abroad and been outlawed. He returned and himself asked for the outlawry to be reversed, but he was cast into prison meanwhile. He was a popular hero and many supported him and urges his release. Numerous crowds thronged in or around West Minister Hall. Pamphlets were issued in the name of the people dictating the Judges the way they should decide. Reasons of policy were urged emphasizing the danger to the Kingdom by commotions and general confusion. This is how Lord Manfield answered them when he came to give Judgment:

“Give me leave to take the opportunity of this great and respectable audience, to let the whole world know, all such attempts are in vain. Unless we have been able to find

an error, which will bear us out, to reverse the outlawry, it must be affirmed. The Constitution does not allow reasons of State to influence our judgments: God forbid it should. We must not regard political consequences, we are bound to say “fiat justitia, ruat caelum”. The Constitution trusts the King with reasons of State and policy; he may stop prosecutions; he may pardon offences; it is his, to judge whether the law or the criminal should yield. We have no election. We are to say, what we take the law to be; if we do not speak our real opinions, we prevaricate with God and our consciences. Once for all, let it be understood, that no endeavours of this kind will influence any man who at present sits here.”

“Distances may be maintained from the relations and acquaintances, parties to the dispute and their lawyers. Judges should be cautious in their outlook and approach. They should neither provide supportive stool to their sons and daughters, close relations and acquaintances in order that they may succeed in the profession nor recognize chosen ones in that sphere.”

28. In India on 7th May 1997, a 16 point ‘Code of Conduct’, for ensuring proper conduct among members of the higher judiciary was adopted by the Judges of the Supreme Court and the High Courts with the Gujarat High Court as the sole dissenter, reportedly. The 16 points code which the Judges prefer to describe as “The Restatement of Values of Judicial Life” is believed to have become effective since then. It was drafted by a Committee of five Judges, headed by Justice Dr. A.S.Anand, and the other members were Justice S.P. Barucha, Justice K.S. Paripoornan, Justice M. Srinivasan and Justice D.P.Mohapatra. The 16 point code stipulates:

‘(1) Justice must not merely be done but it must also be seen as done. The behaviour and conduct of members of the higher judiciary must reaffirm the people’s faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of the perception has to be avoided.

(2) A Judge should not contest the election of any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.

(3) Close association with individual members of the Bar, particularly those who practice in the same court shall be eschewed.

(4) A Judge shall not permit any member of his immediate family to, such as spouse, son, or daughter, son-in-law, or daughter-in-law, or any other close relative, if as member of the Bar, to appear before him or even be associated in any manner with a case to be dealt with by him.

(5) No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

(6) A Judge should practice a degree of aloofness consistent with the dignity of his office.

(7) A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.

(8) A Judge shall not enter into a public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

(9) A Judge is expected to let his judgment speak for themselves. He shall not give interview to the media.

(10) A Judge shall not accept gifts or hospitality except from his family, close relations and friends.

(11) A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.

(12) A Judge shall not speculate in shares, stocks or the like.

(13) A Judge should not engage directly or indirectly trade or business, either by himself or in association with any other person. (publication of a legal treaties or any activity in the mature of a hobby shall not be constructed as trade business).

(14) A Judge should not ask for accept, contribute or otherwise actively associate himself with the raising of any fund for any purpose.

(15) A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this behalf must be got resolved and clarified through the Chief Justice.

(16) 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 high office he occupies and the public esteem in which the office is held.

29. These are only the “Restatement of the Values of Judicial Life” and are not meant to be exhaustive but illustrative of what is expected of a Judge.’

30. The Code of Conduct for United States Judges was initially adopted by the Judicial Conference on April 5, 1973 is as follows.

CANON 1: A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

- A. Respect for Law. A Judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. Outside Influence. A Judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A Judge should neither lend the prestige of the judicial office to advance the private interests of the Judge or others nor convey or permit others to convey the impression that they are in a special position to influence the Judge. A Judge should not testify voluntarily as a character witness.
- C. Nondiscriminatory Membership. A Judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

CANON 3: A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY.

The duties of judicial office take precedence over all other activities. In performing the duties prescribed by law, the Judge should adhere to the following standards:

A. Adjudicative Responsibilities.

- (1) A Judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.
- (2) A Judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.
- (3) 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 of those subject to the Judge's control, including lawyers to the extent consistent with their role in the adversary process.
- (4) 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. Except as set out below, a Judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a Judge receives an unauthorized ex parte communication bearing on the substance of a matter, the Judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. A Judge may:
 - (a) initiate, permit, or consider ex parte communications as authorized by law;
 - (b) when circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the Judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication;
 - (c) obtain the written advice of a disinterested expert on the law, but only after giving advance notice to the parties of the person to be consulted and the subject matter of the advice and affording the parties reasonable opportunity to object and respond to the notice and to the advice received; or
 - (d) with the consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.
- (5) A Judge should dispose promptly of the business of the court.
- (6) A Judge should not make public comment on the merits of a matter pending or impending in any court. A Judge should require similar restraint by court personnel subject to the Judge's direction and control. The prohibition on public comment on the merits does not extend to public statements made in the course of the Judge's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.

C. Disqualification:

- (1) A Judge shall disqualify himself or herself in a proceeding in which the Judge's impartiality might reasonably be questioned, including but not limited to instances in which:
 - (a) the Judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (b) the Judge served as a lawyer in the matter in controversy, or a lawyer with whom the Judge previously practiced law served during such association as a

- lawyer concerning the matter, or the Judge or lawyer has been a material witness;
- (c) the Judge knows that the Judge, individually or as a fiduciary, or the Judge's spouse or minor child residing in the Judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;
 - (d) the Judge or the Judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:
 - (i) a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) acting as a lawyer in the proceeding;
 - (iii) known by the Judge to have an interest that could be substantially affected by the outcome of the proceeding; or
 - (iv) to the Judge's knowledge likely to be a material witness in the proceeding;
 - (e) the Judge has served in governmental employment and in that capacity participated as a Judge (in a previous judicial position) counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.
- (2) A Judge should keep informed about the Judge's personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests and make a reasonable effort to keep informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.
- (3) For the purposes of this section:
- (a) the degree of relationship is calculated according to the civil law system; the following relatives are within the third degree or relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece and nephew; the listed relatives include whole and half blood relatives and most step relatives;
 - (b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
 - (c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that:
 - (i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
 - (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
 - (iii) the proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
 - (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;
 - (d) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation.
- (4) Notwithstanding the preceding provisions of this Canon, if a Judge would be disqualified because of a financial interest in a party (other than an interest that

could be substantially affected by the outcome), disqualification is not required if the Judge (or the Judge's spouse or minor child) divests the interest that provides the grounds for disqualification.

- D. Remittal of Disqualification, instead of withdrawing from the proceeding, a Judge disqualified by Canon 3C (1) may, except in the circumstances specifically set out in subsections (a) through (e) disclose on the record the basis of disqualification. The judge may participate in the proceeding if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding.

CANON 4: A JUDGE MAY ENGAGE IN EXTRAJUDICIAL ACTIVITIES THAT ARE CONSISTENT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

A judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects. However, a Judge should not participate in extrajudicial activities that detract from the dignity of the Judge's office, interfere with the performance of the Judge's official duties, reflect adversely on the Judge's impartiality, lead to frequent disqualification or violate the limitations set forth below.

- A. Law-related Activities.
- (1) Speaking, Writing, and Teaching. A Judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
 - (2) Consultation. A Judge may consult with or appear at a public hearing before an executive or legislative body or official:
 - (a) on matters concerning the law, the legal system, or the administration of justice.
 - (b) to the extent that it would generally be perceived that a Judge's judicial experience provides special expertise in the area; or
 - (c) when the Judge is acting pro se in a matter involving the Judge or the Judge's interest.
 - (3) Organizations. A Judge may participate in and serve as a member, officer, director, trustee, or nonlegal advisor of a nonprofit organization devoted to the law, the legal system, or the administration of justice and may assist such an organization in the management and investment of funds. A Judge may make recommendations to public and private fund-granting agencies about projects and programs concerning the law, the legal system, and the administration of justice.
 - (4) Arbitration and Mediation. A Judge should not act as an arbitrator or mediator or otherwise perform judicial functions apart from the Judge's official duties unless expressly authorized by law.
 - (5) Practice of Law. A Judge should not practice law and should not serve as a family member's lawyer in any forum. A Judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

B. Civic and Charitable Activities. A Judge may participate in and serve as an officer, director, trustee, or nonlegal advisor of a nonprofit civic, charitable, educational, religious, or social organization, subject to the following limitations:

(1) A Judge should not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the Judge or be regularly engaged in adversary proceedings in any court.

(2) A Judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. Fund Raising.....

D. Financial Activities.

(1)

(2)

(3)

(4)

(5)

E. Fiduciary Activities. A judge may serve as the executor, administrator, trustee, guardian, or other fiduciary only for the estate, trust, or person of a member of the judge's family as defined in Canon 4D(4). As a family fiduciary a judge is subject to the following restrictions:

(1)

(2)

F. Governmental Appointments.

G. Chambers, Resources, and Staff. A Judge should not to any substantial degree use judicial chambers, resources, or staff to engage in extrajudicial activities permitted by this Canon.

H. Compensation, Reimbursement, and Financial Report.

(1)

(2)

(3)

31. Alexander Hamilton once said- "The judiciary ... has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will but merely judgment". The greatest strength of the judiciary is the faith of the people in it. Faith, confidence and acceptability cannot be commanded; they have to be earned. And that can be done only by developing the inner strength of morality and ethics.

32. The Bangalore Draft Principles

The values of judicial ethics which the Bangalore Principles crystallises are: (i) independence, (ii) impartiality, (iii) integrity, (iv) propriety, (v) equality and (vi) competence & diligence.

33. The above values have been further developed in the Bangalore Principles as under:-

1. 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.

2. 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.

34. Integrity is essential to the proper discharge of the judicial office.

35. Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a Judge.

36. Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

37. Competence and diligence are prerequisites to the due performance of judicial office.

38. Implementation – By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

39. The preamble to the Bangalore Principles of Judicial Conduct states inter alia that the principles are intended to establish standards for ethical conduct of Judges. They are designed to provide guidance to Judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that Judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the Judge. There are a few interesting facts relating to the Bangalore Principles. The first meeting to prepare the Draft Principles was held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with several other institutions concerned with justice administration.

40. In preparing the draft Code of Judicial Conduct, the core considerations which recur in such codes were kept in view. Several existing codes and international instruments more than three in number including the Restatement of Values of Judicial Life adopted by the Indian judiciary in 1999 were taken into consideration. At the second meeting held in Bangalore in February 2001, the draft was given a shape developed by Judges drawn principally from Common Law countries. It was thought essential that it will be scrutinized by Judges of all other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct. The Bangalore Draft was widely disseminated amongst Judges of both common law and civil law systems and discussed at several judicial conferences. The draft underwent a few revisions and was finally approved by a Round Table Meeting of Chief Justices (or their representatives) from several law system, held in Peace Palace in The Hague, Netherlands, in November 2002.

41. 'Accountability' as one of the principles which was included in the original draft was dropped in the final draft. It is apparently for two reasons, firstly, it was thought that the principles enshrined in the Bangalore Principles presuppose the 'accountability' on the part of the Judges and are inherent in those principles and secondly, the mechanism and methodology of 'accountability' may differ from country to country and therefore left to be taken care of individually by the participating jurisdictions.

42. “The judiciary has been trusted and hence entrusted with the task of upholding the Constitution and zealously and watchfully guarding the constitutional values. The oath administered to a Judge ordains him to uphold the Office as a citadel of public justice and public security to fulfil the constitutional role assigned to the judiciary.

43. “The concept of independence of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rested the edifice of the democratic polity. If there is one principle which runs through the entire fabric of the constitution, it is the principle of the rule of law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon the judiciary and it is by exercising this power which constitutes one of the most potent weapons in armoury of the law, that the judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers.” This is the principle of independence of judiciary which Judges must keep in mind while upholding the Constitution and administering the laws.

44. A Judge must bear not only faith but ‘true faith’ and ‘allegiance’ to the Constitution. The oath demands of a Judge not only belief in constitutional principles but a loyalty and a devotion akin to complete surrender to the constitution beliefs. The Bangalore Principles of judicial conduct were initiated by the United Nations in 2001 and, after wide consultation, were endorsed at the 59th session of the United Nations Rights commission at Geneva in 2003. Their stated intention is:

“To establish standards for ethical conduct of Judges. They are designed to provide guidance to Judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the Executive and Legislature, and lawyers and the public, in general to better understand and support the judiciary.’

45. According to Justice V.R. Krishna Iyer, the Judges who do not pronounce judgment in time commit turpitude. He notes with a sense of sorrow-

“It has become these days, for the highest to the lowest courts’ Judges, after the arguments are closed, take months and years to pronounce judgments even in interlocutory matters – a sin which cannot be forgiven, a practice which must be forbidden, a wrong which calls for censure or worse”.

46. Lord Denning puts it mildly by way of tendering good advice for a new Judge. He says that when judgment was clear and obvious it was for the benefit of the parties and the Judge himself that judgment should be delivered forthwith and without more ado. Though, the art is difficult and requires great skills but practice can enable perfection. However, not all judgments can be delivered *ex tempore*; there are cases in which doubts are to be cleared, law has to be settled and conflicts are to be resolved either by performing the difficult task of reconciling or the unpleasant task of overruling. Such judgments need calm and cool thinking and need deliberations. Such judgments must be reserved but not for an unreasonable length of time.

47. It is seen, all these principles, Code of Conduct, Judicial ethics etc. are almost identical. All these values, conducts are not meant to be exhaustive but illustrative of what is expected of a Judge. In the above context, it is to be looked into whether the respondent has

committed 'gross misconduct' as a Judge of the High Court Division. The allegations against the respondent are that the former President of the Supreme Court Bar Association in an address at a meeting of the lawyers alleged that inefficient persons have been elevated to the Bench and one of the Judges violating the 'Code of Conduct' received Tk.50,000/- from a client fixing bail. This having published in the media, the Chief Justice noticed the allegation, who by letter dated 14th October, 2003, requested the President of the Bar to address him in writing the complaint giving the name of the Judge and in reply, the President of the Bar on 16th October, 2003, informed that the allegation related to the conduct of Mr. Syed Shahidur Rahman.

48. Upon receipt of the reply of the President of the Bar, the Chief Justice in accordance with Article 96(5) of the constitution brought the matter to the notice of the President by letter dated 20th October, 2003. The President directed the Supreme Judicial Council to inquire into the matter and pursuant thereto, the Supreme Judicial Council held inquiry and submitted report stating, inter alia, that "though the allegations against Mr. Justice Syed Shahidur Rahman are not proved beyond doubt but on consideration of the facts and circumstances and the materials on record in their entirety it cannot be said that there is total absence of material in support of the allegations nor can it be said that the allegations are without any basis. Therefore, in our opinion Mr. Justice Syed Shahidur Rahman should not continue as an Additional Judge of the High Court Division of the Supreme Court of Bangladesh." On receipt of the aforesaid inquiry report, the President removed Mr. Syed Shahidur Rahman by order dated 20th April, 2004.

49. The High Court Division was of the view that since the statements of fact having not been controverted, it should be looked into whether the removal of Mr. Syed Shahidur Rahman was made in accordance with article 96 of the constitution. This very approach of the High Court Division is wrong and this wrong approach has reflected in its subsequent decision. It ignored fundamental fact that most of the allegations made against Mr. Syed Shahidur Rahman have been admitted and found to be true in the inquiry except that of receipt of Tk.50,000/-. It is alleged by Ms. Nasima Sultana Kona that she paid Tk.50,000/- to Mr. Syed Shahidur Rahman for arranging an anticipatory bail for her husband's relation Aktheruzzaman Babu in Nari-O-Shishu-Nirjatan Daman Tribunal Case No.305 of 2003 through a friend (sitting Judge) of Mr. Syed Shahidur Rahman. Before the Supreme Judicial Council, Mr. Syed Shahidur Rahman admitted about his acquaintance and visitation of Mrs. Nasima Sultana Kona at his residence with two other persons and that he advised Mrs. Kona to approach Advocate Jesmin Aktar Keya, an associate of his previous chamber.

50. Admittedly Mrs. Nasima Sultana Kona had acquaintance with Mr. Syed Shahidur Rahman from the time he was practising as an Advocate. After elevation to the Bench, she maintained visiting terms with him and on the fateful day, Mrs. Kona with her two relations visited the residence of Mr. Syed Shahidur Rahman with prior consent of the latter. Again we noticed that Mr. Syed Shahidur Rahman also maintained liaison with Advocate Jesmin Aktar Keya, who had worked as junior of Mr. Syed Shahidur Rahman, and after his elevation, his law chamber was entrusted to her and she had been maintaining the chamber.

51. These admitted facts sufficiently suggest that despite being elevated to the Bench, Mr. Syed Shahidur Rahman had been maintaining his law chamber indirectly through Jesmin Aktar Keya and sometimes he entertained some of his previous clientele which is evident from the fact of allowing Mrs. Kona to visit his residence for a bail fixation matter. The Council though disbelieved the receipt of Tk.50,000/- as fees for bail from Mrs. Kona in the

absence for corroborative evidence, believed from the admission of Mr. Syed Shahidur Rahman that he did not give up his previous professional relationship altogether. It observed that ‘but admitted about their acquaintance and visit to his (Syed Shahidur Rahman) residence by Mrs. Kona and others and his advice to Mrs. Kona to approach Advocate Jesmine Akter Keya.’

52. After evaluation of the evidence of Mrs. Kona, the Council believed the incident preceding to the rejection of the prayer for bail. It has narrated the incident as under: ‘After the prayer for bail was refused and the petition was dismissed as not pressed, Mrs. Kona on 26.08.2003 went to the chamber of Advocate Keya and wanted back the file. The latter replied that she would not hand over the file, as she had not received the fees, to which Mrs. Kona informed that she had paid the fees to Mr. Justice Rahman. Whereupon there was serious altercations and use of abusive words between them. This happened in the presence of many lawyers including one Helaluddin, Advocate, who asked Mrs. Kona to meet the Bar President Barrister Rokanuddin. On 26.08.2003 she tried to meet Mr. Mahmud but could not. She met Mr. Mahmud on 3.09.2003 in his chamber and narrated the incident who asked her to give the same in writing.’

53. In this regard, the Council observed, ‘Mr. Asaduzzaman Advocate and Barrister Mustafizur Rahman Khan have made statements to the above effect before the Council that they were sitting at that chamber while Mrs. Kona visited Barrister Rokanuddin at his chamber.’ The Council on evaluation of the statement of Mr. Asaduzzaman observed: “Mr. Asaduzzaman advocate further stated that Mrs. Kona stated to him that as some senior Advocates refused to accept the brief because of their workload, she approached Mr. Justice Rahman over telephone as she was acquainted with him from before. Justice Rahman asked her to visit him with the file. Accordingly she visited the Lalmatia residence of Mr. Justice Rahman, accompanied by the brother of accused Aktaruzzaman and another.”

54. After perusal of the statement of Mr. Mostafizur Rahman, the Council observed that “The aforesaid statements lead to show that these two learned advocates were present at the chamber of the Bar President and that Mrs. Kona has narrated the incident to Mr. Rokanuddin Mahmud.” After perusal of the statement of Mr. Shahidur Rahman and his witnesses, the Council has then observed that “it is admitted that Mrs. Kona had conducted few cases through Mr. Justice Rahman’s chamber, while he was a Deputy Attorney General, the cases were conducted by Justice Rahman’s junior Mrs. Keya Advocate.” The Council observed that in an inquiry though the ordinary procedure of admitting as accepting particular facts or statement into evidence is not strictly applicable, rule of procedure demands that the allegation before the inquiry should be supported by some amount of reliable statements. It then concluded its opinion holding that “it cannot be said that there is total absence of material in support of the allegations nor can it be said that the allegations are without any basis. Therefore, in our opinion Mr. Justice Syed Shahidur Rahman should not continue as an Additional Judge of the High Court Division of the Supreme Court of Bangladesh.”

55. The question is whether the conclusion arrived at by the Council in forming the opinion by the President to remove Mr. Syed Shahidur Rahman from the office of a Judge on the ground of gross misconduct was in conformity with the provisions of the constitution. The conclusion of the Council is that the materials on record are sufficient to come to the conclusion that the allegations made against Mr. Syed Shahidur Rahman have substance. It merely disbelieved the receipt of Tk.50,000/- in the absence of corroborative evidence but it has totally believed the entire episode. What more else is required to prove about the

misconduct of a sitting Judge of the highest Court by a woman? These findings and observations are sufficient to come to the conclusion that the Judge had not only violated the 'Code of Conduct' but also judicial ethics and norms which are sufficient to remove him from the office of a Judge. It is to be borne in mind that in adjudicating a disciplinary proceeding against a Judge of the highest court and holding trial of an offender in a criminal case, one cannot claim similar principle to be followed. For proving an offence against an offender, the prosecution must prove the offence against him beyond reasonable doubt but this doctrine cannot be applicable in respect of a Judge while hearing a disciplinary proceeding for removal of a Judge on the ground of gross misconduct. In the alternative, it may be said that an ordinary offender and a Judge cannot be equated at par while finding them guilty of the charges.

56. It is because in a democracy it is expected from the Judges of higher echelons that they are the protectors of the constitution and the law. The rights of the citizens either fundamental or statutory are to be protected by the Judges. Such implementation and protection depend on the proper administration of justice which in its turn depends on the existence and availability of an independent judiciary. Judges have to honour judicial office which they hold as public trust. Independent of judiciary is indispensable to justice in our society and elsewhere in the world. So, it is sufficient if it is found by the Council or the body which is entrusted to decide the conduct of the Judges that the conduct of the Judge is such that his continuing in the judiciary is detrimental to the administration of justice and the public perception towards the judiciary will be eroded. Because in such eventuality the Judge is found to have abused the trust of the society has in him.

57. Independence of judiciary is an essential attribute to the rule of law. The notion of independence of judiciary is not limited to the independence from the executive pressure or influence-it is a wider concept which takes within its sweep independence from any other pressure or prejudices. If the judiciary manned by the Judges are not independent how the independence of judiciary can be secured. It is observed in *C. Ravichandran Iyer V. Justice A.M. Bhattacharjee*, (1995) 5 SCC 457 as under:

“Independent judiciary is, therefore, most essential when liberty of citizen is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived) undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. Judicial individualism, in the language of Justice Powell of the Supreme Court of United States in his address to the American bar Association, Labour Law Section on 11-8-1976, is ‘perhaps one of the last citadels of jealously preserved individualism’”

58. Douglas, J. in his dissenting opinion in *Stephen S. Chandler V. Judicial Council of the Tenth Circuit of the United States*, 398 US 74; 26 L ED 2d 100, observed “No matter how strong an individual judge’s spine, the threat of punishment-the greatest peril to judicial independence- would project as dark a shadow whether cast by political strangers or by judicial colleagues. A federal judge must be independent of every other judge Neither one alone nor any member banded together can act as censor and place sanctions on him. It is vital to preserve the opportunities for judicial individualism.”

59. It has further been observed that “Judicial office is essentially a public trust. Society, is therefore, entitled to expect that a Judge must be a man of high integrity, honesty and

required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large from judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself (emphasis supplied).

60. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

61. The conduct that tends to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of a Judge to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities. A Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the constitution itself. The behaviour of a Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law. It is, therefore, needed for a Judge to uphold good behaviour as a constitutional tautology. The preservation of public confidence in the honesty and impartiality of a Judge which depends with the personal reputation of a Judge.

62. According to the provisions, the inquiry is conducted by a highest body, the Chief Justice and the two next senior Judges of the Court. The constitution empowers the Council to formulate the 'Code of Conduct' for the Judges and also entrust it a wide discretion to regulate its inquiry procedure. The Council formulated the 'Code of Conduct' and circulated to the Judges. It is an established custom prevalent in our system that as soon as a Judge subscribes an oath after elevation, he is served with a copy of the 'Code of Conduct', and he is under obligation to meet the Chief Justice and other senior Judges to seek advice. At such meetings, the senior Judges appraise him of the conduct, usage, custom, ethics and decorum to be followed and maintained by him throughout the tenure. This is why at the end of the 'Code of Conduct' it is specifically pointed out that those conducts are 'only restatement of values of judicial life and is not meant to be exhaustive but illustrative of what is expected of a Judge.' The Council on consideration of the inquiry report vis-a-vis the evidence adduced by the parties clearly observed that though the payment of Tk.50,000/- could not have been proved in the absence of corroborative evidence, the allegations made against Mr. Syed Shahidur Rahman could not be said to have no basis at all or that it could not be said that there was total absence of materials in support of the allegations. Thereby the Council opined that he had violated the 'Code of Conduct' for which he should not continue as a Judge. The Council was of the firm view that Mr. Syed Shahidur Rahman's conduct amounts to misconduct although in so many words it has not expressly observed but the ultimate recommendation that he should not continue as a Judge is tantamount that his misconduct and behaviour is sufficient to come to the conclusion that he has committed 'gross misconduct'.

63. In *Corpus Juri Secundum Vol.48A* prescribes the question of the manner of inquiry for removal of a Judge it is stated:

“Investigations may be conducted into matters relating to judicial conduct as a preliminary to formal disciplinary proceedings.”

64. A judiciary commission may conduct an investigation into matters relating to judicial conduct as a preliminary to formal disciplinary proceedings, and a court may, under its general powers over inferior courts, appoint a special commissioner to preside over a preliminary investigation. A court rule providing that a Judge charged with misconduct should be given a reasonable opportunity in the course of a preliminary investigation to present such matters as he may choose, affords him more protection than is required by constitutional provisions.”

65. It further observed that:

“The State which creates a judicial office may set appropriate standards of conduct for a Judge who holds that office, and in many jurisdictions, courts acting within express or implied powers have adopted or have followed certain canons or codes of judicial conduct. The power of a particular court in matters of ethical supervision and the maintenance of standards for the judiciary may be exclusive.”

66. The International Bar Association at its 19th Biennial Conference held at New Delhi in October 1982 adopted Minimum Standards of Judicial Independence. Paras 27 to 32 relating to ‘*Judicial Removal and Discipline*’ are as under:

“27. The proceedings for discipline and removal of judges should ensure fairness to the judge, and adequate opportunity for hearing.

28. The procedure for discipline should be held in camera. The judge may however request that the hearing be held in public, subject to final and reasoned disposition of this request by the Disciplinary Tribunal. Judgments in disciplinary proceedings whether held in camera or in public, may be published.

29.(a) The grounds for removal of judges should be fixed by law and shall be clearly defined.

(b) All disciplinary action shall be based upon standards of judicial conduct promulgated by law or in established rules of court.

30. A judge shall not be subject to removal unless, by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge.

31. In systems where the power to discipline and remove judges is vested in an institution other than the legislature, the tribunal for discipline and removal of judges shall be permanent and be composed predominantly of members of the Judiciary.

32. The head of the court may legitimately have supervisory powers to control judges on administrative matters.”

67. In the First World Conference on the Independence of Justice held at Montreal on June 10, 1983, adopted a Universal Declaration on the Independence of Justice. It relates to international judges as well as national Judges. On the question of ‘*Discipline and Removal*’ it is recommended as under:

“2.32 A complaint against a judge shall be processed expeditiously and fairly under an appropriate practice, and the judge shall have the opportunity to comment on the complaint at the initial stage. The examination of the complaint at its initial stage shall be kept confidential, unless otherwise requested by the judge.

2.33(a) The proceedings for judicial removal or discipline, when such are initiated, shall be held before a court or a board predominantly composed of members of the judiciary and selected by the judiciary.

(b) However, the power of removal may be vested in the legislature by impeachment or joint address, preferably upon a recommendation of a court or board as referred to in 2.33(a).

2.34 All disciplinary action shall be based upon established standards of judicial conduct.

2.35 The proceedings for discipline of judges shall ensure fairness to the judge and the opportunity of a full hearing.

2.36 With the exception of proceedings before the legislature, the proceedings for discipline and removal shall be held in camera. The judge, may, however, request that the hearing be held in public, subject to a final and reasoned disposition of this request by the disciplinary Tribunal. Judgments in disciplinary proceedings, whether held in camera or in public, may be published.

2.37 With the exception of proceedings before the legislature or in connection with them, the decision of a disciplinary Tribunal shall be subject to appeal to a court.

2.38 A judge shall not be subject to removal except on proved grounds of incapacity or misbehaviour, rendering him unfit to continue in office.

2.39 In the event that a court is abolished, judges serving in this court shall not be affected, except for their transfer to another court of the same status.”

68. On the same issue in Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from August 26 to September 6, 1985, adopted the Basic principles are as under:

“17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachments or similar proceedings.”

69. Article 124 of the Indian constitution prescribes the manner and procedure for removal of a Judge of the High Courts or Supreme Court. Under the constitutional dispensation of India, every Judge of the Supreme Court and a High Court on his appointment is irremovable from the office during his tenure except in the manner provided in Clause (4) Article 124 of the Constitution of India. Besides it has promulgated the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969 framed thereunder. Clause (4) provides or removal of a Judge as under:

“(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.”

70. As to the remedy available to a Judge and his right against any disciplinary action taken against him, it is said in *Corpus Juris Secundum* as under:

“The general rule is that before a Judge may be disciplined, as by removal, he is entitled to notice and an opportunity to defend even though there is no statute so requiring. Ordinarily, the right to defend is exercised in a trial or hearing, as considered *infra* 51. More specifically the Judge is entitled to notice of the particular charges against him. In addition, notice of the charge should be given sufficiently in advance of the time for presenting a defence to permit proper preparation of a showing in opposition.”

71. The law enacted under article 124(5) (India) provides that any accusation made against a sitting Judge to initiate the process of his removal from office has to be by not less than the minimum number of members of Parliament specified in the Act, all other methods being excluded. If the motion for removal of the Judge is adopted by the requisition majority by Parliament culminating in the order of removal by the President of India under article 124(4) of the constitution, then only the Judge concerned would have the remedy of judicial review available on the permissible grounds against the order of removal. The inquiry committee is statutory character but is not a tribunal for the purpose of article 136 of the constitution.

72. The expression ‘misbehaviour’ of a Judge postulates an act or conduct or even an error or negligence act by a Judge of the higher judiciary. It includes wilful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude. ‘Misconduct’ implies actuation of some degree of *mens rea* by the actor. Misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial office. The holder of the office of a Judge be it in the higher echelons or not, should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behaviour both on and off the Bench are normally high. Any conduct that tends to undermine the public confidence on the part of a Judge should be avoided. Society expects higher standards of conduct and behaviour from a Judge. Apart from the ‘Code of Conduct’ as observed above, the unwritten ‘Code of Conduct’ which is being taught to the Judges are to be observed, followed in rigour.

73. It is a writ large for the newly appointed Judges to emulate high moral and ethical standards expected of a Judge of higher judiciary. He must show a standard of conduct which is much higher than expected of a layman and an Advocate. The society, therefore, is entitled to expect higher degree of propriety and probity in the judicial conduct from higher judiciary. There cannot be any fixed or set principles, but an unwritten ‘Code of Conduct’ of well-established traditions are the guidelines for judicial conduct. The conduct that tends to undermine the public confidence in the character, integrity and impartiality of a Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities. Even the private life of a Judge must adhere to standards of probity and propriety, acceptable to others. They alone would receive confidence and respect from the public.

74. The High Court Division has totally ignored the ‘Code of Conduct’ and the ethical values to be followed by the Judges which have been prepared by the Supreme Judicial Council in exercise of powers under article 96(4)(a). On perusal of the allegations, the inquiry report and clauses (4)(a), (5)(b) and (6) of article 96, the Council has arrived at the conclusion

that the allegations against Mr. Syed Shahidur Rahman have substance and basis. This conclusion of the Council is sufficient on the Part of the President to form his opinion that the Judge should not continue as a Judge of the High Court Division.

75. The conduct shown by Mr. Syed Shahidur Rahman is totally unfit to remain a Judge, inasmuch as, he had violated the 'Code of Conduct' as discussed above and if any sitting Judge violates the 'Code of Conduct' that amounts to 'gross misconduct'. Assuming that the Council did not give any definite finding that Mr. Syed Shahidur Rahman was guilty of gross misconduct, but the ultimate opinion of the Council that he should not continue as an Additional Judge of the High Court Division meaning thereby he has exceeded the norms of a Judge and thereby he has misconducted for being a Judge of the High Court Division. The President having accepted the recommendation, removed him from the office.

76. Now the question is whether judicial review against the order of removal is available in the manner the High Court Division has exercised its power. There is no denial to the fact that the Council, which is the highest body has recommended for removal of Mr. Syed Shahidur Rahman. We are of the view that Judicial review against such removal is not available in this particular case in the facts of the given case, inasmuch as, judicial review is available against such order on limited grounds. The High Court Division cannot sit over the opinion of the Council as an appellate forum or from the Order of the President pursuant to the recommendation of the Council. The High Court Division has apparently equated a proceedings taken by a sitting Additional Judge against an order of removal on the ground of misconduct with an ordinary litigant which seeks judicial review against an administrative action. There is no doubt that judicial review is a basic feature of our constitution so also the rule of law but that does not mean that the same doctrine will be applicable in all cases.

77. Corpus Juris Secundum, Vol.48-A referring to the nature and purpose of a proceeding for removal of a Judge observed:

“As a general rule, disciplinary or removal proceedings relating to Judges are *sui generis* and are not civil or criminal in nature; and their purpose is to inquire into judicial conduct and thereby maintain standards of judicial fitness.”

78. This observation is in accord with the opinion expressed herein before and I find no cogent ground to depart from the same. The High Court Division has traveled beyond the issue involved in the matter. The Council was requested to examine the allegations and the materials and then to decide as to whether the concerned Judge has violated the norms as well as the 'Code of Conduct'. It has reached at the conclusion that the Judge has violated the established norms and conducts. That's final and it cannot be reopened in the manner it has been examined.

79. In *Sarojini Ramaswami V. Union of India*, (1992) 4 SCC 506 (para 95). Kasliwal, J. while concurring with the majority view observed that “the right of judicial review is not a right emerging under any principle of natural justice. It cannot be equated with the rule of *audi alteram partem*. The right of judicial review is itself a right available only on limited permissible grounds. The right of seeking a judicial review depends on the facts of each individual case and will depend on several factors which would be necessary to be examined before the particular order or action is put under challenge. There cannot be any demand of judicial review as an abstract proposition of law on the premise of violation of any principle of natural justice at this stage in the scheme of the Act and the Rules. Neither in the scheme

of the Act and the Rules nor under any provision of the Constitution it has been shown that such right is available to the Judge concerned.’

80. It has been observed by Verma, J. expressing the majority opinion that judicial review is the exercise of the Court’s inherent power to determine legality of an action and award suitable relief and thereby uphold the rule of law. No further statutory authority is needed for the exercise of this power which is granted by the constitution of India to the superior courts. There is no reason to take the view that an order of removal of a Judge made by the President of India under Article 124(4) of the constitution is immune from judicial review on permissible grounds to examine the legality of the finding of guilty made by the Inquiry Committee during the statutory process for removal which is the condition precedent for commencement of the parliamentary process culminating in the making of order or removal by the President.

81. In India an Act of Parliament and the Rules have been framed providing the procedure for removal of a judge. Under the prevailing law, a right is given to the Judge concerned to refute the charges and his right to contest the disciplinary proceedings. Even then it has been decided that judicial review is permissible only on limited ground. It was held that after the order of removal made by the President, judicial review against such decision is available only on limited grounds.

82. Under our provision as observed above, there is no Rules providing the procedure to be followed for removal of a Judge of the highest Court. The Supreme Judicial Council enjoins the power as per provision of clause (4) of Article 96 to prescribe the ‘Code of Conduct’ of the Judges. Similarly for the purpose of inquiry also, there is no Rules or Regulations framed by the government. It is left with the discretion of the Council to follow the procedure. The Council on following conduct rules and after affording Mr. Syed Shahidur Rahman sufficient opportunity to explain his conduct and upon hearing the parties held that Mr. Syed Shahidur Rahman should not remain in the judiciary because of his conduct. This opinion having been made by the highest body authorized by the constitution and the President having taken the decision relying upon the recommendation of the Council, the judicial review is not permissible against such decision.

83. De Smith’s Judicial Review, Sixth Edn., in para 3-068 the author stated that ‘judicial review may also be possible in relation to disciplinary proceedings which are specifically provided for the legislation, as opposed to being wholly informal or domestic matters. The role of Administrative Court here is analogous to its supervisory jurisdiction over other inferior tribunals.’ Again in para 4-002 it is observed that ‘judicial review of administrative action was founded upon the premise that the inferior tribunal or administrative public authority is entitled to decide wrongly, but is not entitled to exceed the jurisdiction it was given by statute.’

84. As observed above, the President has formally consented to the recommendation of the Council. The Council after consideration of the pros and cons of the matter took the decision of not keeping the concerned Judge in the judiciary. It cannot be said that the opinion formed by the Council is inferior tribunal for which judicial review from its opinion is available. It is only in exceptional cases when the principles of *audi alteram partem* have not been followed or the affected Judge has not been afforded sufficient opportunity to examine witnesses or cross-examine the witnesses, judicial review against his removal is

permissible but otherwise not. In this particular case, sufficient opportunity has been provided to the concerned Judge and he has defended the charge.

85. The High Court Division cannot sit over the judgment of the Council. It has totally ignored that aspect of the matter and opined that the President did not apply his judicial mind in passing the order of removal of Mr. Syed Shahidur Rahman. As per provisions of the constitution after the recommendation of the Supreme Judicial Council the President is left with no discretion other than to accord the recommendation. It is not correct to hold the view that the Council's opinion is expressly beyond the scope of article 96(5) of the constitution, and that such portion of the opinion contained in the report is without jurisdiction, inasmuch as, in the absence of proof of alleged payment of money to the writ petitioner by Ms. Kona the allegations against the writ petitioner is baseless. This view of the High Court Division is totally misconceived one. The High Court Division has exceeded its jurisdiction in making such observation. As observed above, even if the payment of Tk.50,000/- has not been proved, that does not disprove the allegations made by Ms. Kona. Mr. Syed Shahidur Rahman being a sitting Judge could not entertain Ms. Kona with two of her relations at his residence for fixation of a bail matter and also he could not maintain liaison with his previous junior Ms. Jesmin Akther Keya relating to conducting cases.

86. The materials on record sufficiently proved that he was indirectly maintaining his law chamber through his previous junior which itself is a misconduct and by allowing Ms. Kona with her two of her relations for arranging bail for one of her relations is another misconduct. That prompted the Council in holding the view that the conduct of Mr. Syed Shahidur Rahman was not such that he should continue as a Judge of the High Court Division since he had violated the Code of Conduct. There was no violation clause (5) of article 96 either by Supreme Judicial Council or by the President nor there was any violation of 96(3).

87. Our conclusion is as under:

- (1) A Judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary may be preserved.
- (2) A Judge should respect and comply with the constitution and law, and should act at all times in a manner that promotes public confidence in the judiciary.
- (3) A Judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A Judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit others to convey the impression that they are in a special position to influence the Judge.
- (4) A Judge should be faithful to and maintain professional competence in the law, and should not be swayed by partisan interests, public clamor, or fear of criticism.
- (5) A Judge should be patient, dignified, respectful, and courteous to litigants, lawyers, and others with whom the Judge deals in an official capacity, and should require similar conduct of those officers to the Judge's control, including lawyers to the extent consistent with their role in adversarial system.

- (6) A Judge should dispose of promptly the business of the court including avoiding inordinate delay in delivering judgments/orders. In no case a judgment shall be signed not later than six months of the date of delivery of judgment in exceptional cases.
- (7) A Judge should avoid public comment on the merit of a pending or impending Court case.
- (8) A Judge shall disqualify himself or herself in a proceeding in which the Judge's impartiality might reasonably be questioned.
- (9) A Judge shall disqualify to hear a matter/cause where he served as lawyer in the matter in controversy, or a lawyer with whom the Judge previously practiced law served during such association as a lawyer concerning the matter, or the Judge or such lawyer has been a material witness.
- (10) A Judge shall not hear any matter if he knows or if he is aware or if it is brought into his notice that, individually or as a fiduciary, the Judge or the Judge's spouse or minor child residing in the Judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding.
- (11) A Judge requires as degree of detachment and objectivity in judicial dispensation and he is duty bound by the oath of office.
- (12) A Judge should practise a degree of aloofness consistent with the dignity of his office.
- (13) A Judge must not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination before him.
- (14) A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person.
- (15) A 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 his office and the public esteem in which that office is held.
- (16) A Judge should not engage in any political activities, whatsoever in the country and abroad.
- (17) A Judge shall disclose his assets and liabilities if, asked for, by the Chief Justice.
- (18) Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of a member of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a Judge, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.
- (19) Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.

- (20) A Judge should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.
- (21) No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.
- (22) A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.
- (23) A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.
- (24) A Judge is expected to let his judgments speak for themselves. He shall not give interviews to the media.
- (25) 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 the Judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings; the Judge previously served as a lawyer or was a material witness in the matter in controversy; or the Judge, or a member of a Judge's family has an economic interest in the outcome of the matter in controversy.
- (26) A Judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- (27) The behavior and conduct of a Judge must reaffirm the people's faith in the integrity of the judiciary.
- (28) A Judge shall avoid impropriety and the appearance of impropriety in all of the Judge's activities.
- (29) 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.
- (30) A Judge shall, in his or her personal relations with individual members of the legal profession who practice regularly in the Judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.
- (31) 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.
- (32) 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.

- (33) A Judge shall not allow the Judge's family, social or other relationships improperly to influence the Judge's judicial conduct and judgment as a Judge.
- (34) A Judge shall not use or lend the prestige of the judicial office to advance the private interests of the Judge, a member of the Judge's family or of anyone else, nor shall a Judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the Judge in the performance of judicial duties.
- (35) A Judge shall not practice law whilst the holder of judicial office.
- (36) A Judge and members of the Judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favor 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.
- (37) 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 favor in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- (38) A Judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- (39) A Judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, 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.
- (40) A Judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

88. Mr. Syed Shahidur Rahman has violated some of the above 'Code of Conduct' and thereby he has committed gross misconduct. In view of the above, the High Court Division has committed manifestly wrong in declaring the order of removal of Mr. Syed Shahidur Rahman from the office of a Judge of the High Court Division without lawful authority. The appeal, is therefore, allowed without any order as to costs.