

Judges' Use of Social Media

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The worthy Registrar of the Lahore High Court has instructed¹ the judges of the subordinate judiciary in Punjab that “a judicial officer is supposed to lead to a reserved social life, therefore, he should avoid using of Facebook, Twitter, Instagram and such other social media applications etc.” The instructions also caution that “Inclusion in all kinds of un-official Whatsapp groups and social media modes, unauthorized sharing of any kind of privileged information through any media mode and usage of mobile phones during court hours (except interval) is strictly prohibited.” The language of these instructions is strict, strongly cautionary, and discouraging the use of social media by judges as any violation of these instructions can be considered as “misconduct” and lead to “strict disciplinary action”. The only solace is the use of the word “avoid” which in all good understanding of the English diction cannot be equated to as an absolute bar or restraint.

Spin the globe and we see Federal Court of Australia affirming that a judge may use electronic social media, but in doing so he or she shall have regard to the guiding principles of impartiality, judicial independence, and integrity and personal behavior. The Council of Notables, Costa Rica Judicial System recommended that adequate use of social media is a useful tool for the dissemination of institutional and personal content, whenever the judge complies with the Code of Conduct. The Americans seem to be the most liberal on this issue: The Code of Judicial Conduct, of the state of Idaho states that while judges are not prohibited from participating in online social networks, such as Facebook, Instagram or Snapchat, they should exercise restraint and caution in doing so. The Commission on Judicial Ethics, State Bar of Texas quoting Court of Appeals, Fifth District, in the case of *Youkers v The State of Texas*, 15 May 2013 allows judges to use Facebook and other social media as it is also consistent with the premise that judges do not “forfeit [their] right to associate with [their] friends and acquaintances nor [are they] condemned to live the life of a hermit. In fact, such a regime would [. . .] lessen the effectiveness of the judicial officer.” A phrase worth the ponder. The Code of Judicial Conduct coming from West Virginia simplifies this modern day issue by stating that the same rules of the Code of Judicial Conduct that govern a judicial officer’s ability to socialize and communicate in person, on paper, or over the telephone also apply to the Internet and social networking sites like Facebook. The Ethics Committee of the Kentucky Judiciary endorses that

¹ No.264/RHC/C-1 dated 08.07.2021

judges may join social networking sites such as Facebook, LinkedIn, and Twitter, and may be friends with lawyers, law enforcement officers and others who appear before them, with limitations.²

In Pakistan, judges are guaranteed freedom of association and expression like any other ordinary citizen of the state. There is no exclusion to their extent in Articles 17 and 19 of the Constitution of Pakistan, 1973. And likewise all reasonable restrictions which the freedoms are subject to qua ordinary citizens are also attracted to the judges. Any restrictions on the use of social media and being part of an online group by judges must also be weighed in light of these constitutional guarantees. Such freedoms act as a barometer which measures the democratic quality of a government. Endeavours in safeguarding these freedoms, and the way their use against possible abuse is restricted, is an index of cultural refinement. The degree of tolerance that a society encourages on the part of its members to enable everyone to be associated with someone or say what they have to say and wherever they want to say, and for the rest to show sensitivity in receiving it, is not just a question of legal finesse but reflects the liberality and latitude of a society's collective conscience. Only in a secure and tolerant atmosphere where thoughtful contribution and constructive criticism are gracefully received and appreciated, can such contributions be positively encouraged and utilized.

While the significance of the freedom of association or expression hold their strength, in the context of the topic, several questions arise: Should judges identify themselves on social media platforms with real names and use their professional title? Does it depend on the type of social media in question? For example, some social media such as LinkedIn are based on the premise of sharing professional details, while other media like, Facebook, Snapchat, Instagram, Pinterest etc. focus more on personal life and preferences and the use of real names is of less importance. How relevant is the fact of how 'public' a certain social media profile is? It may be one thing to have a profile (with personal/professional details) visible to your close family, and it may be another thing to have a public profile with hundreds (or more) followers. Which personal information could be shared, and which personal information should rather not be disclosed? e.g. full name, date of birth, location, family relationships, contact information such as emails and telephone numbers, etc. What behaviour is acceptable or unacceptable for judges on social media in terms of liking, sharing, reacting, reposting information, etc? Which topics and content of judges' social media activities might not be appropriate? e.g. controversial issues, politics, issues related to the judiciary, legal opinions,

² https://www.venice.coe.int/files/un_social_media/unodc.pdf

advertising or promotion of goods or services, etc.? What content might not be appropriate to share with regard to court administration, hearings, cases, etc.? Which behaviour of judges on social media could possibly erode public trust and confidence in the judiciary or could possibly be misinterpreted or misrepresented by followers, friends, social media groups? Which views shared could be seen to cast reasonable doubts on judges' ability to try an issue with an objective judicial mind? If judges have 'private' accounts open only to their family and friends, what restrictions, if any, should apply? If judges have 'public accounts', what restrictions, if any, should apply? Should judges respond to negative comments or criticism? Should they allow or disallow the comments section under their posts? Which restrictions should judges apply in terms of preserving their privacy and safety? Can judges express their opinions on social media on judicial issues when these are related to the defence of judicial values? Which connections on social media are disallowed? e.g. family, friends, fellow judges, court personnel, lawyers, law enforcement agencies, parties to cases, witnesses, experts, government officials. Should 'online' friendships and connections be treated the same way as real-life friendships when it comes to disclosures or disqualifications or recusals? If a judge presses a "Like" button or shares a Tweet on social media, is he expressing his opinion?

While the Lahore High Court's instructions regarding use of social media by judges of subordinate judiciary in Punjab is the first step in the right direction, regulating this not so new area anymore, more work is required in the form of detailed guidelines; otherwise many questions will remain unanswered.

"Occupying as he does an exalted position in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, a judge must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. It is essential that judges, like *Caesar's* wife, should be above suspicion."³

³ *Mercado v. Salcedo* A.M. No. RTJ-03, October 16, 2009, Supreme Court, Philippines https://lawphil.net/judjuris/juri2009/oct2009/am_rtj-03-1781_2009.html