ASSESSING THE PERFORMANCE OF THE JUDGES IN INDIA SEARCH FOR YARDSTICKS

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ABSTRACT

In the words of Justice J.B. Thomas of Australia: "Some standards can be prescribed by law, but the spirit of, and the quality of the service rendered by; a profession depends far more on its observance of ethical standards. These are far more rigorous than legal standards.... They are learnt not by precept but by the example and influence of respected peers. Judicial standards are acquired, so to speak, by professional osmosis. They are enforced immediately by conscience." A society may bestow upon itself judges of high capacity and integrity only if it possesses the ability to secure and adhere to the following touchstones simultaneously: requisite and appropriate education in law, strict compliance to standards laid down regarding training and selection criteria of judges and most importantly, assessment and evaluation of the appointed judges (assessment and evaluation to be done by means of comparison and other methods). In short, the quality of judges can be colossally improved by upgrading the conditions in which they work so that not only the judges but also the judicial system prevailing within the territory of a country achieves the required perceived levels. Evaluation and assessment of judges and courts is an aspect of the normal functioning of judicial systems prevailing in any country. Valuation of the work of judges is an estimate of their knowledge in the arena of law and conscientiousness in the exercise of the judicial function. Both selection of judges and assessment of their work require clearly defined and objectivized criteria and their reliable and comparable measurement standards. The judiciary is always under an obligation which is more of an ethical nature. The obligations include attributes which are far beyond the basic essentials of honesty, impartiality, and fairness. While our

judiciary has done well in meeting its ethical obligations, improvement is still needed. The best assurance for high ethical performance comes from insistence upon outstanding integrity from those selected for judicial office. This research paper will categorically focus on the last above-mentioned touchstone i.e. assessment and evaluation of the appointed judges while performing their judicial duty (with a reflection on an appropriate applicable system of measuring their performance). Our purpose is to suggest possible yardsticks with the help of which the present judicial system can be evaluated, with a view of improving the performance of various courts.

Keywords: perceived, judicial ethics, integrity, yardstick, evaluation

INTRODUCTION

"When you judge another, you do not define them, you define yourself."

-Wayne Dyer

The Code of Hammurabi, promulgated by the King of Babylon around 2250 BC, is one of the first examples of the codification of law, presented to the public and applying to the acts of the ruler.[1] Then the history of Law takes us back to 449 BC in Rome where the Law of the Twelve Tables[2] was promulgated. These were the first time that a codified version of some set of rules was prepared and the justice delivery system was followed accordingly in the manner of the set rules by the Emperor or the Kings of various state, group or community. Ancient Indian law was much influenced by the Arthshastra around 400 BC and the Manusmirti around 100 AD, the treatises and the text which were considered as the authoritative legal guidance.

The laws during the reign of King were formulated by the King of the emperors or the philosophers working under the influence of such King, following the theory of *Rex non potest peccare*, i.e. King can do no wrong, hence the law so evolved was more favourable to the emperor and therefore the adjudicator, adjudicating the law always used to have a positive decline towards the King and it restrained the people from receiving proper righteousness and hindering a development of a proper justice delivery system. The legal system from that time developed with chain of events of wars, colonization etc and the concept of Democracy came into being with the American Constitution of 1887. The Law evolved during those times to take it present form. And in between was the time where the importance of each aspect of legal system was felt and that was the time where individual's right was on a high roar and the Law as justice deliberation developed along with the development of approach towards adjudication.

In today's presidential or parliamentary form of government, the majority of Democratic states follow the doctrine of Separation of Powers. The Legislature, the Executive and the Judiciary are the three wings of Separation of Powers. The judiciary is now whole separate entity. It is not the President or the Prime minister who controls the adjudication as well other economic and social affairs of the state unlike the King who is indulge in controlling all the matters in relation to his emperor. Today the government working is divided among ministers and various

[1] 21 Charles Foster Kent, The Recently Discovered Civil Code of Hammurabi The Biblical World, 175-190 (March 1903), available at http://www.jstor.org/stable/3141207.
[2] Law of Twelve Tables was an ancient legislation of Roman Emperor where each table set some rules for the right of the people as well as for the working of the kingdom.

departments, with each having its own authority to perform the duties in relation to the well-being of a country, state of community. Hence it is the Judge who has the highest authority in Judiciary. He is the one who adjudicates, interprets the law. The doctrine of Rule of law developed by A.V. Dicey is the prevailing doctrine today. Hence the section dealing with such Rule of Law becomes important. The Judiciary as a separate wing works on its own free will with some checks and balances from Executive and Legislation, which is an important factor of federalist state.

Though the working of a judge in a judiciary has always been followed by the maxim *Est Boni Judis Jus Dictre Non Dare* i.e. judicial function is to discover law and not to make law. But Judicial Legislation is more in action today where the judges other than interpreting the law, make a whole new law. The present day adjudicating system has proved to be a great success in providing for justice. The judges play an important role. Followed by adversarial and inquisitorial system the judges put forward the truth of any case after hearing by the parties or investigating the case by themselves.

Judges are in charge of trials and make sure that they are fair. They resolve differences between lawyers. They read the law to decide what lawyers can and can't do. Judges often decide whether a case should go to trial. They also tell juries about the law. To make their decisions, judges research legal issues. Judges also write about their decisions and legal opinions. If a person is convicted of a crime, judges decide if they will go to prison and for how long. In civil cases, which involve money but no crime, judges often decide how much money one person must pay another. Judges' duties vary. Some judges deal with cases involving a serious crime, like murder. Other judges decide cases about traffic rules, families, and small amounts of money. Some oversee cases about Social Security benefits, the environment, and many other issues.

Hence the position of a Judge in adjudicating is a very significant one and it is important that any person sitting as a judge is a person of high imperative value, a person who is able to take decision in his free well, a person who has knowledge of law, has experience. Therefore it is important that a right person is involved in the job of high dignity.

NEED FOR PERFORMANCE EVALUATION OF A JUDGE

Judging a Judge, a good judge, a bad judge are terms which cannot be defined. A Delhi based news magazine tried to evaluate the judges but faced serious consequence of its act. 'Wah India' a Delhi based news magazine in 2001 in one of its issue had published a survey rating of Judges on the points of integrity, the quality of judgement and their conduct in court. The high court, taking objection to the published survey, not only issued notice to the editor and staff of the magazine asking them to show cause "why they should not be punished for contempt of court", and directed the police to seize and confiscate copies of that particular issue of the magazine, but also ordered that "no one shall publish….any article, news, letter or any material which tends to lower the authority, dignity and prestige of the members of the judiciary."[3] The high court with its judgement on 26 April, 2001 set the precedent that any criticism or comment about the performance of the judges is a criminal conduct, contempt of court.

For justice to reach to the common man, it is important that the judges performing the task to delivering justice are best in their job and any exception in their quality of performance is not acceptable. But the question arises is how to segregate a good or bad judge? With the high court order in Wah India case, it is clear that the Indian Judiciary follows the formula of "Once a judge is always a judge", though every judge cannot go to the highest level of its hierarchy but he will be judging in any of the lower courts. And any criticism on their performance is a criminal conduct and there is no statutory provision to evaluate the performance of the judge so once a person holds the important position in the Judiciary i.e. of a judge, he has its way to move upwards in the hierarchy, and the only two ways to remove him from his post is by impeachment proceedings and the other is that he attain the age of seniority and thus retires.

Everyone knows that neither the behavior nor the verdicts of judges are sacrosanct. The same judge of the lower court who threatens to take action against anyone criticizing his judgement has to reluctantly accept strictures on the same judgement from his superiors in the higher courts. Everyone knows that a judgement delivered by judges in the lower courts, or the high courts, can be reversed by the apex court - as often happens. Hence a judgement given by a judge of a lower court cannot be said to be correct every time as it can be reversed by a higher

[3] 37 Sumanta Banerjee, Judging The Judges, EPW, 919-921 (March 9-15, 2002).

court and same applies to the apex court judgment as many a times it happened that the Supreme Court over ruled its own previous judgment.

Hence there is a need to segregate a good judge and a bad judge on the basis of their performance, so that a good judge can be elevated to higher level to serve the society through his greater talent in the field. In India, in recent past there has been cases of Judges indulging in corrupt activities, fixing their judgment in favour of a party, being influenced from political decisions etc. Judges are the sole identity of providing justice and it is needed that they are free from any sort of political influence or corruption which may hinder the justice delivery system. Therefore there is a requirement to evaluate the performance of the judges with some suitable yardsticks to keep the judges on their track to provide justice and bringing up the right.

YARDSTICK 1: TIME FRAME

The Preamble of the Constitution of India reflects the quest and aspiration of the mankind for justice in all its forms: social, economic and political. "Those who have suffered physically, mentally or economically, approach the Courts, with great hope for redressal of their grievances. They refrain from taking law into their own hands, as they believe that one day or the other, they will get justice from the Courts. Justice Delivery System, therefore, is under an obligation to deliver prompt and inexpensive justice to its consumers, without in any manner compromising on the quality of justice or the elements of fairness, equality and impartiality."[4] Indian Judiciary has succeeded in enlarging and enforcing human rights which is widely appreciated by various jurists around the globe. Many countries world over are facing problem of delay in dispensation of justice. It is a major problem being faced by Indian Judicial system. 'Delay' in the context of justice denotes the time consumed in the disposal of case, in excess of the time within which a case can be reasonably expected to be decided by the Court.

[4] Hon'ble Shri Y.K. Sabharwal, Justice Sobhag Mal Jain Memorial Lecture On Delayed Justice (JULY 25 2006), available at: http://supremecourtofindia.nic.in/speeches/speeches_2006/delayed%20justice.pdf.

Table below shows the number of pending cases in Indian Courts[5]:

Civil and Criminal Cases in High Courts

Year	Total Institution	Total Disposal	Pendency at the end of the year
1999	1122430	980474	2757806
2000	116622	1019001	2835078
2001	1215426	1093598	2835078
2002	1334202	1186546	3087048
2003	1385318	1349723	3122643
2004	1448726	1239203	3424459
2005	1542890	1338245	3521283

Civil and Criminal Cases in Lower Courts

Year	Total Institution	Total Disposal	Pendency at the end of the year
1999	12731275	12394760	20498400
2000	12813919	12638523	20264367
2001	13438170	12494911	21414572
2002	14545711	13519907	22440376
2003	14805881	13996651	23249606
2004	15585717	14584613	24667010
2005	17263362	16309907	25654251

The above tables show the number of cases pending during various years. The number of cases instituted and pending has increased during the year. For such large number of cases Judiciary requires judges in large number in various courts. It is important that such judges are able to perform their duties in a manner which will help to reduce the backlog of Indian Judiciary.

[5] *Id.*

Thus, comes a yardstick for performance evaluation of a judge. A country where Justice delivery system is not much powerful and number of pending cases is increasing, a judge who is able to tackle the problem of pending cases will be considered as a good judge. At one hand more and more people are approaching the courts to seek remedy for their problems, which is considered a good thing in a country like India, on the other hand it takes lot of time to deliver remedy to them because of the large number of cases and work load on the courts. To improvise this condition, judiciary needs to extend their hands and judiciary has been in a way successful by introducing Fast Track courts, but a lot has to be done for a smooth functioning of the judiciary and justice delivery system in the country. The condition is such that more than half of the prisoners in the prison in India are under trials. This so much depends on the judge. Comparing two judges, one who is able to decide the case in a lesser time than the other judge who takes more time, the judge deciding the case in less time is more able and can serve in a better way to the Indian Judiciary. Thus the time frame in which a judge hears the case and delivers the judgement should be tried to keep at minimum for better justice delivery, which depends on the ability of a judge to hear a case and his knowledge and understanding about the particular case.

Justice Warran Burger, former Chief Justice of the American Supreme Court observed in the American context:

"…… The notion – that ordinary people want black-robed judges, well dressed lawyers, fine paneled courtrooms as the setting to resolve their disputes, is not correct. People with legal problems, like people with pain, want relief and they want it as quickly and inexpensively, as possible,"

YARDSTICK 2: ELEVATION OF JUDGES

Judiciary is one of the three wings of the State. Though under the Constitution the polity is dual the judiciary is integrated which can interpret and adjudicate upon both the Central and State laws. The structure of the judiciary in the country is pyramidical in nature. At the apex, is the Supreme Court. Most of the States have a High Court of their own. Some States have a common High Court. The appointment of Judges of the Supreme Court and their removal are governed by Article 124 of the Constitution of India. The appointment and removal of the Judges of the High Courts are governed by Article 217. Article 222 provides for transfer of

Judges from one High Court to another. So far as the subordinate judiciary is concerned, the constitutional provisions relating thereto are contained in Articles 233 to 237. These provisions are, of course, supplemented by the rules made by the respective Governors of the States under the proviso to Article 309 of the Constitution.

Closely associated with the term elevation of judges is the term seniority. When a person is more senior in position than another (in whatever field), it is indicative of several things - the first of which is experience. Other things are then assumed, like intelligence, wisdom, efficiency, diligence, cooperation with other practitioners in that field, etc (basically good traits) because the line of thought that follows so is unless the senior person was so qualified enough he wouldn't have succeeded in his field of work. This is a fair assumption to make.

Seniority was therefore equated with all these good traits, and that is why seniority became a barometer for all these good traits. But this is where the entire lacunae of the entire system falls into place. After a point of time when the custom of seniority had settled in the judges that followed started taking things for granted and hence it can be concluded that seniority no longer stands as a test for a ideal judge. Seniority in the legal profession as an indicator of a good judge is entirely fallible. Faulty at the basic premise that seniority can judge how good a lawyer is. For a little while, one comes to realise that seniority is a very outmoded, overrated and crude way of judging how good a judge is at their work.

Hence the time has come for evaluation of a judge on the basis of merit and not on the basis of seniority. Judges elevated on the basis of merit will indirectly be an asset for the society as it can be safely assumed that in case of promotion based on merit the judge will actually do proper justice and not commit a blunder.

YARDSTICK 3: DEVISING NEW WAYS TO ACCESS JUSTICE

"India is rightly acclaimed for achieving a flourishing constitutional order, presided over by an inventive and activist judiciary, aided by a proficient bar, supported by the state and cherished by the public. At the same time, the courts and tribunals where ordinary Indians might go for remedy and protection are beset with massive problems of delay, cost, and ineffectiveness."[6]

[6] Marc Galanter & Jayanth K. Krishnan, Bread for the Poor: Access to Justice and the Rights of the Needy in India, Hasting Law Review, available at *www.gsdrc.org/docs/open/SSAJ115.pdf.*

Potential users avoid the courts; in spite of a longstanding reputation for litigiousness, existing evidence suggests that Indians avail themselves of the courts at a low rate and the rate seems to be falling, and still the court remains gridlocked.[7] To provide easy justice in India, reforms are required that would enable ordinary people to invoke the remedies and protections of the law.

"In the early 1980s a small number of judges and lawyers, seeking ways to actualize the Constitution's promises of justice—promises that were so starkly unrealized in practice—embarked on a series of unprecedented and electrifying initiatives. These included relaxation of requirements of standing, appointment of investigative commissions, appointment of lawyers as representatives of client groups, and a so called "epistolary jurisdiction" in which judges took the initiative to respond proactively to grievances brought to their attention by third parties, letters, or newspaper accounts."[8]

A Judge of high eminence is one, who makes the justice delivery system easier for the people in need for the justice. Thus devising new ways to access justice is the quality of a judge which segregates him from other judges. In a report on legal aid in 1971, Justice Bhagwati observed 'even while retaining the adversary system, some changes may be effected whereby the judge is given greater participatory role in the trial so as to place the poor, as far as possible, on a footing of equality with rich in administration of justice'.[9] In his 1976 report, Justice Bhagwati, proposed one-day forums to settle pending cases.[10] Thus a judge's duty is not only to judge the cases but also find ways to make the justice delivery system easier and faster. Justice Bhagwati talking of one day forum to settle a big pile of pending cases is the step towards this thought.

The post emergency period in India saw emergent of new ways to provide justice. Notably two justices of the Supreme Court, Justice V. R. Krishna Iyer and P.N. Bhagwati recognized the possibility of providing access to justice to the poor and the exploited people by relaxing the rules of standing. The report of the committee on Legal Aid presided by Justice Krishna Iyer in 1973 dealt with the nexus between law and poverty and spoke of PIL in this context. It

[7] *Id.*
[8] *Id*.
[9] Ashok H. Desai & S. Muralidhar, Public Interest Litigation: Potential And Problems, available in B.N. Kirpal, Supreme But Not Infalliable, 159 (2000), also available at http://www.ielrc.org/content/a0003.pdf.
[10] P.N. Bhagwati, Report on National Juridicare: Equal Justice-Social Justice, Ministry of Law, Justice & Company Affairs (1976).

emphasized the need for an active and widespread legal aid system that enabled law to reach the people, rather than requiring people to reach the law.[11] Thus developed the concept of Public Interest Litigation, which was for a long time hanging for its survival in the Indian context. In PIL, any citizen or any consumer groups or social action groups can approach the apex court of the country seeking legal remedies in all cases where the interests of the general public or a section of public are at stake. The petitioner need not be the aggrieved party in PIL. The wide range of PIL is best demonstrated by reference to some areas in which courts have made particularly significant pronouncements. The practice of PIL is widely seen in Human rights matters. The landmark cases such as *S.P. Gupta vs Union of India*[12] was a PIL by a senior advocate. The case dealt with the question of appointment and transfer of judges. The area in which PIL's contribution has been the significant is environment law, where most of the cases were filed in the form of PIL, landmark cases of which are *Oleum Gas Leak case*[13], *Vellore Citizens Welfare Forum vs Union of India*[14] etc.

PIL has been a great success in providing for justice for poorer sections of the society. The initiative by Justice Iyer and Justice Bhagwati has proved to be of great means to provide for justice. Hence this new method for the common people to access justice is one of the important yardsticks which filter the performance of a judge.

YARDSTICK 4: PUBLIC PERCEPTION

While judicial conduct is important in ensuring that judge's act impartially, public perception of the judiciary is also fundamental in creating an effective system of justice and a legitimate government. Public perception is in itself a form of reality and to the extent that each of the criticisms is some way affects the public's conception of the judiciary and in turn the stability of our institutions. The preamble to the Bangalore Principles[15] asserts that "*public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic state*". According to Justice John Evans of the Canadian

[11] *Supra* note 9.
[12] Supp. SCC 87 at 210.
[13] (1987) 1 SCC 395.
[14] (1996) 5 SCC 647.
[15] THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT 2002
(The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002).

Federal Court of Appeal, independence "*is a necessary condition for obtaining and maintaining this confidence, without which the courts' legitimacy … will rapidly erode*"[16] and with it human rights and the rule of law."

The priority of judges is to protect the people against any sort of illegal action by the executive or legislature; if people do not believe that the judges are independent, they will not trust courts' pronouncements about the validity of government action and may thus lose faith in the system as a whole. If the public does not have confidence in the judges of the courts, the legitimacy of the entire government will be called into question.

Moreover, if people doubt the impartiality of judges or view the judiciary as representative or supportive of a certain segment of society, individuals may stop turning to the courts for dispute resolution or may fail to respect court decisions, with a negative impact on efforts to establish the rule of law and the ability of courts to fulfill their functions.

Many of the provisions in the Bangalore Principles aim to foster public confidence. For instance, a judge must "*ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary*" (section 2.2). Similarly, the UN Principles provides that members of the judiciary are entitled to freedom of expression, belief, association and assembly but includes the caveat that "*judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary*" (section 8). Independence and impartiality, as expressed in court decisions, in the processes by which judges arrive at decisions, and in judges' individual behaviour, underpin public confidence in the legitimacy of the judiciary and thus strengthen democracy as a whole. A court that does not have the trust or confidence of the public cannot expect to function for long as an effective resolver of disputes, a respected issuer of punishments, or a valued deliberative body. This is true regardless of whether we are talking about a trial court or the supreme appellate court.

[16] A common occurrence in common law countries, such as the US and the UK is that judges interpret and apply legal rules. In civil law countries, such as Japan, judges apply comprehensive legal rules that are usually, though not always, codified. Legislation is the primary source of law in civil-law countries, whereas case precedent is the primary source of law in common law countries. Some countries, such as South Africa, have mixed civil and common-law systems.

An excellent example as to how the basic foundation of public trust was rocked was the excellent judgement of Maneka Gandhi's case[17] where the apex court gave a wider meaning to the Right to Liberty and thus formulated the golden triangle which include Article 14,19 and 21. What followed in the years of 1987 and in the year 2002 were laws like TADA (*Terrorist and Disruptive Activities (Prevention) Act*) and POTA (*Prevention of Terrorism Act*) which are openly violative of the underlying principle laid down in the Maneka Gandhi's case. Not only is this but as a matter of fact The Armed Forces Special Powers Act playing havoc in Manipur, Srinagar.[18] Though a number of (*human right*) violations were pointed to the Supreme Court, and this is a matter of record, the Supreme Court has still upheld these laws.

A strong ambivalence clouds the public image of the Indian judiciary. On a superficial level, it reflects the shaky state of India's democracy. Both are basically in place, but both are also seriously troubled. Galanter (1984: 500) summarizes the public's perception as follows:

Courts in India are viewed with a curious ambivalence; they are simultaneously fountains of justice and cesspools of manipulation. Litigation is widely regarded as infested with dishonesty and corruption. But courts, especially High Courts...are among the most respected and trusted institutions.

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. 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. 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*

[17] AIR 1978 SC 597.
[18] Ashok Mitra, The Right to Disinvite – Army cannot interfere in political decisions, available at https://indianmilitarynews.wordpress.com/tag/armed-forces-special-powers-act-1958.

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."[19]

Thereby concluding in the words of Justice Kapadia "*Citizens approach the court only when there is confidence in the system and faith in the wisdom of the judges. The institution stands on public trust."*[20]

YARDSTICK 5: ART OF WRITING THE JUDGMENTS

Good judgment enhances the image and perception associated with the justice delivery process and increases public confidence in the judiciary. Litigant public at all times look forward to just, fair and quality justice. A well written to the point judgement based on comprehensive analysis of facts and law is not only an indication of the intellectual strength of a judge but also is a sign of a worthy judicial system. It is therefore indispensable that judges acquire the skill to write good judgment.

In the midst of swelling litigation, backlog and insufficient research facilities' writing a good quality judgement is an ongoing challenge. Art of writing a judgement depends on the knowledge, proficiency, and aptitude of the judge. Judicial officers, seldom have the occasion to reflect on their approaches to writing judgment. Their experience prior to appointment often does not train them how to write judgments. As a rule, many blindly pursue the usual method followed by their forerunners, their assumptions about what must go in a judgement. Judges spend most of their time reading judgment written by others. Unclear judgments are likely to be long-winded, indistinct, pretentious, and boring. Clear thinking is the key to clear writing.

[19] C. Ravichandran Iyer v. Justice A.M. Bhattacharjee & Ors., (1995) 5 SCC 457.
[20] J. Venkatesan, In action-packed 2011, Supreme Court cleared over 79,000 cases, available at http://www.thehindu.com/news/national/article2764197.ece.

A judicial opinion is above all addressed to the parties in whose favour, or against whom, the judge is pronouncing judgement .The central purpose of a speaking judgement is to make clear the judges' own view. It explains the decision to the parties concerned. The next purpose, though not any less important than the first one, is to make available reasons for an appellate court to consider. A careful judge makes certain that the decision presents a sufficient description of the reasons for use by the appellate court. Judgement should be a self-contained document from which it should appear as to what the facts of the case were and what was the controversy, which was tried to be settled by the Court and in what manner.[21] Basic structure of a judgement should be such that a reader while reading it without difficulty understands the facts delineated in the judgement. Further, a reader must be able to know effortlessly, the reasons given in it in reaching a just, and indeed one might say, often-inevitable conclusion. Judgement must contain everything that needs to be said as to why a decision was reached and nothing more. The Practice of writing lengthy judgement is not appreciated[22]. A plainly spoken judgement reveals the subject matter and the exposition of legal reasoning. Writing complex sentences that may be grammatically correct but difficult to understand should be avoided.

Every case is decided by some underlying principle which is known as *Ratio Decidendi*[23]. A Judge cannot merely say "suit dismissed" or "suit decreed". The whole process of reasoning has to be set out for deciding the case one way or the other. Reasons must be given in a coherent sequence. Even in uncontested cases, court has to write reasoned judgment.

So it is advisable on the part of esteemed judges to avoid writing judgment which lack clarity and are ambiguous in nature.

[21] Balraj Taneja and another v. Sunil Madan and another, AIR 1999 SC 3381.
[22] Amina Ahmed Dossa v. State of Maharashtra, AIR 2001 SC 656.
[23] Black's definition of "ratio decidendi" includes "There are . . . two steps involved in the ascertainment of the ratio decidendi . . . . First, it is necessary to determine all the facts of the case as seen by the judge; secondly, it is necessary to discover which of those facts [the judge] treated as material.", Rupert Cross & J.W. Harris, Precedent in English Law ,65-66 (4th ed. 1991).

YARDSTICK 6: INTERPRETATION OF THE LAW

The judiciary has a special role in our system with respect to con-stitutional interpretation, even though the Constitution does not explicitly provide for judicial review. Yet two centuries later, the judiciary's unique (though not exclusive) competence and authority to interpret the Constitution have become widely accepted *"as a permanent and indispensable feature of our constitutional system."*[24]

Judicial interpretation of the constitution is something which judges are bound to do time and again. The key to this issue lies in interpretation's dualistic nature, i.e. that it has both a backward-looking conserving aspect and a forward-looking creative one. This dualism would seem to indicate that in interpreting the law, judges both seek to capture and be faithful to the content of the law as it currently exists, and to supplement, modify, or bring out something new in the law, in the course of reasoning from the content of the law to a decision in a particular case. In turn, this would seem to indicate that interpretation, because of its dualistic nature, has a role to play in both legal reasoning in sense that the reasoning to establish the existing content of the law on a given issue, and legal reasoning in sense namely reasoning from the existing content of the law to the decision which a court should reach in a case involving that issue which comes before it.

One legal theorist who adopts exactly this approach, and so views interpretation in legal reasoning as 'straddling the divide' between identifying existing law, and developing and modifying the law, is Joseph Raz. According to Joseph Raz the fact that interpretation has a role to play in both of these activities assists in explaining why we do not find a two-stage or clearly bifurcated approach to legal reasoning in judicial decisions. Judges do not first of all engage in legal reasoning in true sense as judges have recourse only to legal materials, and then, having established what the existing law is and determined how far it can take them in resolving the instant case, then move on to a separate stage of legal reasoning as in which requires them to look to extra-legal materials in order to complete the job, because much of their reasoning is interpretive and interpretation straddles the divide between legal reasoning.

[24] Richard Murphy , The Brand X constitution, available at works.bepress.com/context/Richard_murphy/article.

As Joseph Raz himself notes, this *'straddling the divide'* approach may in fact seem to undermine the very ideas that there is a tenable distinction between legal reasoning in senses, and that there are gaps in the law. Interpretation appears to blur or even erase the line between the separate law-finding and law-creating roles which many legal positivists ascribe to judges, and the fact that courts always seem to be able to decide cases by interpreting the law may also seem to cast doubt on the idea that the law is incomplete, and hence that judges sometimes have to reach outside of the law in the adjudication process.

Many provisions of the Constitution, however, are drafted in general terms.This creates flexibility in the face of unforeseen changes, but it creates the possibility of alternative interpretations, and this possibility is an embarrassment for a theory of judicial legitimacy that denies judges have any right to exercise discretion. A choice among semantically plausible interpretations of a text, in circumstances remote from those contemplated by its drafters, requires the exercise of discretion and the weighing of consequences. Reading is not a form of deduction; understanding requires a consideration of consequences.

Constitutional adjudication thus combines both counter majoritarian and majoritarian elements.[25] In interpreting and applying the Constitution, the judiciary must exercise independence from politics and reflect the common will in order to secure the democratic legitimacy of its decisions.

As a practical matter, the voice of the judiciary on constitutional questions must ultimately draw its authority from the public's acceptance of its institutional role, even when its specific decisions are controversial. The Court's judgment must reflect the nation's best understanding of its fundamental values, "[f]or the power of the great constitutional decisions rests upon the accuracy of the Court's perception of this kind of common will and upon the Court's ability, by expressing its perception, ultimately to command a consensus"[26]

[25] Goodwin Liu, Pamela S. Karlan & Christopher H. Schroeder, Keeping faith with the Constitution, Oxford University Press (2010).

CONCLUSION

A judge therefore holds the highest authority in the judiciary and for smooth functioning of judicial system in any country, the judges should be of high eminence. Any person called a Judge is said to be a person who will make rational decisions but in Judiciary and in a country like India where corruption has its seeds deep within the Judiciary, the evaluation of the performance of the judges becomes important. It is the judge who makes the difference in any case, who provides remedy, compensation. A judge is not accountable to anyone for the decisions he has taken on the bench. But it is his responsibility that whatever decision he is taking depends on his rational thinking and with the prevailing law to provide justice to the people. There has to be some tool to segregate between a good judge and a normal judge. Though any person holding the position of a judge is expected and he is the person of great value and perception but not all judges are elevated to the highest office of judiciary. To get the best persons at the top of the head of judiciary, performance evaluation of the judges is necessary.

Justice Social, economic and political is clearly laid down in the preamble as the guiding principle of the constitution. Social justice is the main concept on which our constitution is built. Part III and IV of Indian constitution are significant in the direction of Social Justice and economic development of the citizens. Judiciary can promote social justice through its judgments. In other sense, they are under an obligation to do so. While applying judicial discretion in adjudication, judiciary should be so cautious. And prime importance should be to promote social justice.

Supreme Court had itself suggested in one of the early and landmark case Bandhu Mukti Morcha v Union of India[27] that:-

"*There is a great merit in the court proceedings to decide an issue on the basis of strict legal principle and avoiding carefully the influence of purely emotional appeal. For that alone gives the decision of the court a direction which is certain and unfaltering, and that especial permanence in legal jurisprudence which makes it a base for the next step forward in the further progress of the law. Indeed both certainty of substance and certainty of direction are*

[27] 1984 I SCC 161, 234

indispensable requirement in the development of the law and invest it with credibility which commands public confidence in its legitimacy."

This research paper tried to put forward suitable yardsticks which can be used to evaluate the performance of the judge. A judge needs to update himself with not only the changes in the law but also constantly keep abreast with judicial ethics, which will enhance his performance and which will directly help in the development of the judicial performance.

It is proper to conclude with the note adopted by Justice Ranganatha Misra in the case of *Dr. P. Nalla Thampy Thera v.Union of India*[28] as follows

"We think it proper to conclude our decision by remembering the famous saying of Herry Peter Broughan with certain adaptations:

"It was the boast of Augustus that he found Rome of bricks and left it of Marble

"*But how noble will be the boast of the citizens of free India of today when they shall have it to say that they found law dear and left it cheaper; found it sealed book and left it a living letter; found it the patrimony of the rich and left if the inheritance of the poor; found it the two edged sword of craft and oppression and left it the staff of honesty and the shield of innocence.*

"It is only in a country of that order that the common man will have his voice heard".

[28] 1985 AIR 1133