

**WHO JUDGES JUDGES? –THE NEED FOR JUDICIAL REFORM IN
INDIA**

BINOOSHA BENOY K
ADVOCATE (BA LLB)

ABSTRACT

In almost every democratic nation, the judiciary has the paramount power in securing justice to all. The Indian judiciary has been regarded as one of the most powerful ones in the world. However, there are large numbers of obstacles which are being faced by the judiciary. The existing method of performance assessment of the lower judiciary is not being done appropriately and moreover, the higher judiciary in India is not controlled by any sort of evaluation. The paper focuses about the deficiencies in the system of Performance Evaluation of judges and also about the system of recusal. There is an absence of a standard code that tackles issues of professional conduct on the matter of recusal. It needs to be addressed properly; otherwise the judge will take advantage of their judicial discretion to neglect their judicial duty. The whole of judicial system needs reform. In the name of independence, judges cannot have judicial absolutism and tyranny.

KEYWORDS: *judiciary, performance, recusal, accountability, reform*

INTRODUCTION

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

In almost every democratic nation, the judiciary has the paramount power in securing justice to all. The Indian judiciary has been regarded as one of the most powerful ones in the world. With the appointment of Hon'ble Mr. Justice N.V. Ramana as Chief Justice of India, the judiciary has seen major transformations. His recent landmark decisions are highly remarkable and he is indeed an example of how the head of a judicial system should be like. However, there are other large numbers of obstacles faced by the judiciary. The existing method of performance assessment of the lower judiciary is not being done appropriately and moreover, the higher judiciary in India is not controlled by any sort of evaluation. Arbitrary power will corrupt even the best of persons completely. Judges with class partisanship are misfits in a socialist republic. A bunch of recent prejudiced judgments audibly show why there is a desperate need for reforming the prevailing judicial system and the method of performance evaluation of judges at all ranks of the judiciary in India. All bearers of power should be subject to a system that can guide them in or deprive away their power if misused.

THE NEED FOR JUDICIAL REFORM

A judge is an elected office-bearer who directs court proceedings. Judges must be unbiased and endeavor to clearly elucidate the meaning, importance, and implications of law. Judges must also show that justice means more than just interpreting the law — they must also exhibit compassion and discernment for the people on both sides of the case. Apart from these qualities, a judge should be judicially competent. Conversely, they are of, for and by the people and should accept any criticism, if it is just and intelligent.

The plan for revising the existing methods of judge's performance evaluation was introduced in 2013, when the Law Ministry recognized the need for a new scientific system for the same. The Ministry confessed that there was an absence of regularity of judicial performance evaluation across States. Surveys propose that such evaluation would steer towards more significant accountability, transparency and much more orderly performance of judges. But no significant alterations have been implemented, since these observations were made.

Lower court judges in India are assessed by a system of Annual Confidential Reports¹, which are completed by the senior-most judges of the lower court, and reviewed by the State High Court. But ACRs are neither filled up routinely, nor is the assessment system transparent. Judges in India usually are nominated and appointed through examination processes and not elected as in the U.S. wherein the sitting judge is assessed and the voters are advised about the judge's performance record for 'retention elections'. Retention elections let the public to vote for or against the continuing tenure of judges. In the European Union, the European Commission for the Efficiency of Justice runs a regular performance review of court systems of its different member states. This study gathers data on numerous parameters such as the effectiveness of courts in justice distribution, the fees per case, and the budget of courts. The result of this practice is the "EU Justice Scoreboard", issued yearly, grading the functioning of judicial systems across member states.¹

In India, the options as to what standard and directions are being implemented, what level of inspection is done, before a Judge of the High Court is raised to the Supreme Court, are made apparently according to the judges who comprise the Collegium and moreover there is no examination into the social life, academic caliber, judicial performance, and other conditions that should aid in revealing the class prejudice of those who are selected.

RECUSAL OF JUDGES

When there is a conflict of interest, a judge can pull back from attending to a case, to avert the formation of a perception that he/she showed partiality while pronouncing the verdict of the dispute.² This is known as recusal. Any interest or conflict of interest would be a cause to pull back from a case since a judge has an obligation to be unbiased. In the famous case of *Ayodhya-Ramjanmabhoomi*³, Justice U U Lalit recused himself when the parties put forward that he had come before the court as an advocate in a criminal case of the same case.

¹ Hereinafter ACR

² *Ashok kumar yadav vs state of Haryana* 1987 AIR 454, 1985 SCR Supl. (1) 657

³ Review petition (civil) no. of 2019 in civil appeal nos. 10866-10867 of 2010

The action of recusal originates from a principle of due process of law that no man can be a judge in his or her own case. Section 479 of The Code of Criminal Procedure, 1973, states that *“No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself”*. This section is observed by High Courts and the Supreme Court judges also, regardless of the fact that they are not legally tied up by it. One of the main issues of recusal is judicial discretion and it is practiced by the judges very freely. The grounds for recusal are not provided by the judges in writing to the parties and only some of them reveal the grounds in open court. Therefore transparency is hampered.

Another problem is that advocates have prejudicially taken benefit of this, by appealing judges to recuse from cases, if they think that they are not going to get a advantageous judgment. Recusal can also usher to occasions where disputes pending in court get hauled leading to hold up in conveyance of justice. This is also the opposite side of judges exercising their choice to recuse from the case and not performing their judicial obligation. Therefore it is big time that the absence of a standard code that tackle issues of professional conduct on the matter of recusal is addressed properly since the judgments alone are not sufficient.

CONCLUSION

Overall, the whole of judicial system needs reform. A Performance Commission is an essential instrument to evaluate the competency of judges who are proposed for promotion or for addition of tenure or for ad hoc appointment. Parliament must pass a clear law regarding the process of selection of judges, as has been done by many jurisdictions. The Judicial Performance Commission could serve an important purpose in these respects. Litigants should be able to refer complaints to the Commission about any wrongful conduct of a judge. In the name of independence, judges cannot have judicial absolutism and tyranny. A regular review of judicial performance ensures that, once appointed, judges are conscious of their responsibility to the system of the judiciary. But even while evaluating judicial performance, an intricate equilibrium needs to be laid down.

A joint consultation could be held with the stakeholders, including judges, lawyers, academics and members of civil society to recognize how to commence such a system in India. Any codified system that arises from these deliberations, say, in the form of instructions or directives, must be reviewed to make sure minimum prejudice and maximum transparency. All these steps would help India move towards higher standards and greater accountability in judicial performance.

ⁱ Shruthi Naik, *What Parameters Should We Use to Judge Our Judges?*, THE WIRE (July 31, 2021, 10:04 AM), <https://thewire.in/law/niti-aayog-judges-evaluation>

