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Individuality of Judges *vis-a-vis* Dispensation of Justice

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ABSTRACT

Judicial system existed in every state has much importance in that society. Contributions of the judiciary played a major role in the development of the society. In this circumstance, the persons who are in the helm of judiciary are duty bound to protect legal and social norms of the society. The modus operandi of judicial interpretations, the quality of persons selected, the religious, ethical and philosophy of the judges of the higher judiciary are great concerns of the society. Different leways used by the judges in the law making process, the need of highly qualified judges, the philosophy and the nature of appointment of judges of higher judiciary are analysed in a nutshell. And in the conclusion, suggested the need for thorough change in the appointment criteria of Judges of High Courts and Supreme Court in India.

Key Words : Law , Deductive and inductive methods of reasoning, Categories of illusory references, Philosophy of a judge , Personal experience, Educational qualifications, Prejudices, Activism, Appointment of Judges, Conclusion

INTRODUCTION

> "Justice without power is inefficient; power without justice is tyranny. Justice without power is opposed, because, there are always wicked men. Power without justice is soon questioned. Justice and power must therefore be brought together, so that whatever is just may be powerful, and whatever is powerful is may be just"
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> - *Blaise Pascal*[1]

Austin, the ardent positivist, defines "law" as the aggregate of rules set by men as politically superior, or sovereign, to men as politically subject."[2] On the other hand, to Savigny, the founder of Historical School, "law" is "a product of times, the germ of which like the germ of State exists in the nature of men as being made for society and which develops from this germ various forms, according to the environing influences which play upon it. Law grows with the growth and strengthens with the strength of the people, and finally dies away as the nation loses its nationality."[3] However, these definitions have failed to establish the relationship between law and justice. Hence, the definition of law as "the body of principles recognised and applied by the State for the administration of justice" given by Salmond[4] offers a good starting point for a fruitful discussion on the present topic. In India, all the sacred texts interpreted the word 'justice' in terms of 'Dharma' which is the core and centre of Hindu legal theory. It is not a creed or religion, but a mode of life on

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1. Justice V.R Krishna Iyer, *Off The Bench* (Universal Law Publishing, 2006, p.54
2. Austin, *The Province of Jurisprudence Determined* (1954)
3. Rahmatian, A., *Friederich Carl von Savigny'sBeruf and Voksgeistlehre*, 28(1) *J. Legal History* 8 (2007)
4. Fitzgerald, (ed.), *Salmond on Jurisprudence* (12thedn, Sweet & Maxwell, 1979)

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a code of conduct, which regulated a man's activities as a member of society and was intended to enable him to reach the full height of his stature, the goal of human existence.[5]

In a democratic State established on the basis of the doctrine of separation of powers, the legislature, executive and judiciary are the three pillars. Each department has its own supremacy; and act according to "rule of law" and other Constitutional principles. The most important function of the court is to impart justice to the population. Judiciary is the last resort of a common man to get relief against violations of legal rights. Courts are the guardian of the Constitution. The controversial question as to whether the judges are making law or simply interpreting law is being raised frequently. The interpretation of what law is and what law ought to be is another delicate area in the judicial process. Judges are also bound by law. Their accountability to the society must be judged by the conscience and oath to their office- "to defend and uphold Constitution and the laws without fear and favour."[6]

Is the most powerful court, free from criticism? Are they bound to the public? Whether the judges have social responsibility? These are the main concerns of the society. Lord Denning observed that, "it is the right of every man, in Parliament or out of it, in the press or over broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with that are done in a court of Justice. They can say that we are mistaken, and our decisions are erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy still less into political controversy. We must rely on our conduct itself to be its own vindication." [7]

When the law is silent on a topic, it is the duty of the judge to interpret the law. The present article is an attempt to identify the factors which affect the mind of a judge while deciding a case before him. Further, it explores how far the social and psychological factors; and the philosophy of an individual judge, as a human being affect his judgments. What are the leeways used by judge for making the judgment as a reasonable one? Is the selection of judges free from criticism?

Categories of illusory references:

The controversy of whether judges are making law or interpreting law has begun with the evolution of jurisprudence. There are many factors affecting the psychology of the judge while deciding a case. Julius Stone explained different types of illusory references made by a judge, mainly English Judges while deciding a case. [8] He endorsed the observations of Lord Wright that, "judging is an act of will and that notwithstanding all the apparatus of authority, the judge has nearly always some degree of choice."[9] He further explained that the kind of logical deduction and demonstration which is frequently found in the operation of the judicial process is the 'major premises' (rule of law granted by the judge) and conclusion is the 'minor premises' (conclusion on the basis of the facts).

For every judgment there are two parts, first one is the reasons given by judge to reach a conclusion and second part is the final decision. The final decision is binding upon the parties to the dispute. The reason given is the *ratio decidendi* of the case and binding upon lower courts. It amounts as the precedent of the case. The factors which influence the mind of a judge are illusory; what is visibleis the reasons given by the judge. Julius Stone analysed the following six major illusory references commonly used by the English judges to substantiate reasons given by them in a particular case:(i) Categories of competing references; (ii) Single category with two competing versions of reference; (iii) Category of circular reference; (iv) Category of meaningless reference; (v) Category of indeterminate reference; and (vi) Legal category of concealed multiple reference. Through these categories of illusory references, a judge unravels to reach a conclusion.

In *Haseldine v. C.A Daw and Sons* Ltd,[10] the court analysed the two competing claims and decided the issue

5. Gokulesh Sharma, *An Introduction to Jurisprudence* (Deep & Deep Publication, 2008), p.55
6. *Saxena v. Hon'ble Chief Justice of India*, AIR 1996 SC 2481
7. *Supra* n. 1 at p.21
8. Julius Stone, *Legal System and Lawyers' Reasoning* (Universal Law Pub. 1999) p.235
9. *Ibid.* at p.241
10. (1941) 1 All E.R 525

on the basis of a strict liability for the common carrier. In the single category with competing versions, the single verbal entity covers only one factual situation, but offers more than one version for governing it, which may in a given situation yield opposed results.[11] The category of circular reference was explained in *Sinclair v. Brougham.*[12] In circular reference, the court depends on certain factors which are not directly connected with the cause of action. In the absence of express law suitable to the situation, the court makes a circular reference and answers in such a manner, not directly connected with the proposition, by using new rules.

The category of meaningless reference was referred by the courtin *Jefferson v. Derbyshire Farmers.*[13] To the question about who can file 'public interest' litigation, the answer was a person having 'sufficient interest;' to the question who had 'sufficient interest,' the answer seems to be "one who can file public interest litigation." In category of indeterminate reference**,** the courts are required to apply such standards as fairness, reasonableness, non- arbitrariness, clean hands, just cause or excuse, sufficient cause, due care, adequacy or hardship; then the judgment cannot turn on logical formulations and deductions, but must include a decision as to what justice requires in the context of the instant case.[14] In *Re Polemis,*[15] the English judge used the test of 'directness' to fix the responsibility for the consequences of a wrongful act. The same was replaced with "reasonable foreseeability" test in *Overseas Tankship(UK) Co v. Moris Dock.*[16] The category of concealed multiple reference was explained in *Phillip v. Eyre.*[17]

Deductive and inductive methods of reasoning:

According to Rupert Cross,[18] judicial reasoning about law can be properly explained as deductive or inductive method. The main justification for describing any aspect of judicial reasoning as deductive, general to particular, is the appropriateness of one type of syllogism at a certain stage of the argument. The presence of a common factor in various situations can be taken as a reason for the decision. Example, 'all men are mortal, Socrates is a man, therefore Socrates is mortal', such type of syllogism is applicable in deductive reasoning.

In *R v. Bourne*[19] Dr. Brourne was charged for an offence of' unlawful use of instrument with intent to procure a woman's miscarriage under Section 58 of the Offence against the Person Act, 1861. Macnaghten J, reasoned analogically the provisions of the Infant Life Preservation Act, 1929, which deals with the crime of child destruction, and stated that, for the purpose of the definition, it is not unlawful to take the life of a child before it has an existence independent of its mother, provided the accused acted in order to preserve the mother's life. He used the syllogism of 'protecting the life of the mother' to define the term 'unlawful'. The

11. *Ibid. Home Office v. Dorset Yatch Co.,* (1970) A.C 1004, Borstal boys escaped from custody due to lack of supervision and caused damage to a yatch. The owner of the yatch brought an action against the Home Office. Liability of the Home Office depended on whether a duty of care was owed to the plaintiff. Two pleas were raised by Home Office against the imposition of such a duty. (1) No person could be liable for a wrong done by another who was of full age and capacity and who was not the servant or acting on behalf of that person and (2) Public policy required that he Home Office should be immune. The House of Lords held that the Home office owed to the plaintiff a duty to take such care as was reasonable in all the circumstances to prevent damage. It was also held that the public policy did not require any immunity in this regard.
12. (1914)A.C 398; a building society acquired money unjustifiably, without any written contract and the money could not traceable also. The existing law of the country could not do anything in this case. In such situations, the court may use the term 'ultra vires' and held that any unlawful enrichment of the society is 'ultra vires' to the function of the society .Words like 'implied', 'ultra vires' etc. are commonly used in the category of circular reference to decide a dispute.
13. (1921) 2 K.B 281
14. Julius Stone, *Legal System and Lawyers' Reasoning*, (Universal Law Publishing , 1999), p. 263
15. (1921) 3 K,B 560
16. (1961) A.C 388
17. (1870) 6 Q.B 1; Court laid down that for an action on a foreign tort to lie in England it must inter alia be 'not justifiable' by the *lex loci commissi*.
18. Rupert Cross, *Precedent of English Law*, p. 175
19. [1939] 1 K.B

general rule in this case is that the child has no independent existence before birth and what the defendant did was to preserve the life of the mother. The particular rule is, whatever did for preserving the life of mother cannot be consider as unlawful.

In the inductive method, particular to general, the judicial reasoning about law can be properly described as inductive stems from the fact that a judge often extracts a rule for the decision of the case before him from one or more previous decisions.[20] For example, crow is a bird having wings, pigeon is also a bird having wings, eagle yet another bird have wings; from these particular propositions one can say that all birds have wings. In science, a proposition is formulated first and the proposition is tested with individual circumstance to prove the veracity. If all the tests are positive, it is easy to reach a general conclusion.

Other factors affecting judgments:

As said earlier, a judge unravels through leeways for finding best reasons for his judgment. In this process factors like philosophy, personal aspects like educational wisdom, bias, activism and selection process have decisive role.

Philosophy of a judge:

Law is nothing but an analogy of reasons. The reasons given by a judge seems to be true in the mind of the people. Wrong doer shall not be benefited with his own act is the logic behind punishment. Therefore every judgment shall be logically satisfied with the reasons given by the judge. Benjamin N. Cardozo observed that, the judicial process is there in microcosm. Judges go forward with logic, with their analogies and philosophies till they reach a certain point. At first judges have no trouble; then they begin to diverge and must make a choice between conflicting interests. History or custom or social utility or some compelling sentiment of justice or sometimes perhaps a semi-intuitive apprehension of the pervading spirit of our law must come to the rescue of the anxious judge, and tell to them where to go.[21] According to him judge made laws are philosophical reasons adopted by a judge.

Personal experiences:

Lord Radcliff once observed: "I am afraid that what I am saying is that the making of law is not a subject which is capable of anything like scientific demonstration, and there are some disadvantages in dressing it up to look as if it were. It is the unexpressed assumptions, which are nevertheless very much present, that are often the real hinges of decision. After all, what a judgment seeks to do is to persuade or convince, and there are sometimes cogent considerations that achieve this without having any resort to deductive reasoning. Arrangement, by which an illuminating spark is generated from the skilful combination of certain facts and considerations, is one of them."[22]

A judge acquires knowledge from his experience and reflections; in brief, from life itself. The choice of methods, the appraisement of values, must in the end be guided by like considerations for the one as for the other. Each indeed is legislating within the limits of his competence. No doubt the limits for the judge are narrower. He legislates only between gaps. He fills the open spaces in the law. How far he may go without travelling beyond walls of the interstices cannot be staked out for him upon a chart. He must learn it for himself as he gains the sense of fitness and proportion that comes with years of habitude in the practice of an art.[23]

Educational qualifications:

English judges are drawn from a relatively narrow social class. It is hardly surprising that they mainly come from the class that sends their sons and daughters to public schools and to Oxbridge. In England, the House of Commons Home Affairs Select Committee in its report on Judicial Appointment Procedures stated that the proportion of those holding higher judicial office, who were educated at an independent school had risen from 70% in 1987 to 80% in 1994 and that the proportion educated at Oxford and Cambridge had risen from 80% to 87%.[24]

20. Rupert Cross, *Precedent Of English Law*, p. 180
21. Benjamin N. Cardozo, *The Nature of the Judicial Process,* (Universal Law Publishing, 2004), p .43
22. Michael Zander, *The Law Making Process* (6thed.,Cambridge University Press , 2004), p.330
23. *Ibid.* at p.333
24. *Ibid.* at p.338

Prejudices:

Senator Jeff Sessions, in announcing his vote against Sonia Sotomayor, a nominee to the U.S Supreme Court, complained that she was the kind of judge who "believes it is acceptable for a judge to allow their personal background, gender, prejudices, or sympathies to sway their decision in favour of, or against, parties before the court."[25] The controversial statement reflects the anxiety of a common man about the process of imparting justice by a judge.

In *O'Driscoll (a minor) v. Hurley*[26] Dunne J. stated that, the established test for objective or perceived bias is whether a reasonable person, in all the circumstances of the case, would have a reasonable apprehension that there would not be a fair trial from an impartial judge. As it is an objective test, it does not invoke the apprehension of a judge, or any party; it invokes the reasonable apprehension of a reasonable person, who is in possession of all the relevant facts.

The Bangalore Principles[27] ascertain that, integrity is essential to the proper discharge of the judicial office. A judge shall ensure that his conduct is above reproach in the view of a reasonable observer. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done. 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.

In India, stray incidents of judicial bias are reported in news papers and Law Reports:[28] in 1949, Justice P. Sinha of Allahabad High Court was removed under Government of India Act, 1935. The C.B.I filed a case of disproportionate wealth against Chief Justice of Madras High Court,Mr.Justce K. Veeraswami in 1979. In 1991, Supreme Court Justice, V.Ramaswami was found guilty in nine charges. Justice A.M Bhattacharjee was also forced to retire in 1995 for misuse of his position. Allegation of sexual harassment was raised against Justice ArunMadan in 2002. In 2002, the then Law Minister Shanti Bhushan moved a petition accusing eight former Chief Justices of India. In 2012, a charge of sexual harassment was raised against Justice A.K Gangualy; and very recently, a similar allegation was raised against the present Chief Justice of India.

Activism:

Indian judges take an activist approach in social issues. In umpteen cases the Indian judiciary has taken the role of a legislature though not in the strict sense. Some of the land mark decisions are, *Vishaka v. State of Rajasthan,*[29] *M.C Mehta v. Union of India,*[30] *D.K Basu v. State of West Bengal,*[31] *Bangalore Water Supply v. Rajappa,*[32] *ParmanandKatara v. Union of India*[33] and*Delhi Working Women's Forum v. Union of India.*[34]

According to Lord Denning,[35] "The truth is that the law is uncertain. It does not cover all the situations that may arise. Time and again practitioners are faced with new situations, where the decision may go either way. No one can tell what the law is until the court decides it.

25. *https://scholar.harvard.edu*
26. *https://www.lexology.com*
27. 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) *https://www.unodc.org*
28. file:///C:/Users/User/Desktop/57imguf_ResearchPaperonCorruptioninIndianJudiciary%E2%80%93NationalandInternational perspective_HariRamAnthala.o.pdf
29. AIR 1997 SC 3011
30. (1987) 4 SCC 463
31. AIR 1997 SC 610
32. AIR 1978 SC 548
33. AIR 1989 SC 2039
34. (1995) 1 SCC14
35. Michael Zander, *The Law Making Process* (6th ed., Cambridge University, 2004), p.361

The judges do every day make law, though it is almost heresy to say so. If the truth is recognised then we may hope to escape from the dead hand of the past and consciously mould new principles to meet the needs of the present."

Appointment of Judges:

The Peach report (UK)[36] published in 1999 stated that after a review of procedures in 1993 the appointment system had become more orthodox in personal terms with the creation of job descriptions and personal specifications, open advertisements, application forms, a short listing scrutiny and interviews. In the year 1945, the Sapru Committee Report[37] recommended that Justices of the Supreme Court and the High Courts should be appointed by the head of State in consultation with the Chief Justice of Supreme Court and in the case of High Court Judges, in consultation additionally with the High Court Chief Justice and the head of the unit concerned.

The Constituent Assembly appointed a high-powered *ad hoc* committee for recommending the best method of selecting Judges for the Supreme Court. The committee submitted a unanimous report opining that it would not be desirable to leave the power of appointing Judges of the Supreme Court with the President alone. It recommended two alternative methods in that behalf, namely, (i) the President should, in consultation with the Chief Justice of the Supreme Court , nominate a person whom he considers fit to be appointed as Judge of the Supreme Court and the nomination should be confirmed by a majority of at least seven out of a panel of eleven (composed of some of the Chief Justices of the High Courts, some members of both the Houses of Central legislature and some of the law officers of the Union); (ii) the said panel of eleven should recommend three names out of which the President, in consultation with the Chief Justice, may select a Judge for appointment. The same procedure should be followed for the appointment of Chief Justice of the Supreme Court except of course that in this case there should be no consultation with the Chief Justice.

In *S. P. Gupta v. Union of India*[38] (the first Judge Case), Supreme Court of India observed, court system would be an empty structure unless judges independent, efficient, competent intelligent and capable of discharging their duties are selected and appointed for manning these courts. Justice Bhagwati stated that "It would therefore be open to the Central Government to override the opinion given by the constitutional functionaries required to be consulted and to arrive at its own decision in regard to the appointment of a Judge in the High Court or the Supreme Court so long as such decision is based on relevant considerations and is not otherwise *mala fide*. Even if the opinion given by all the constitutional functionaries consulted by it is identical, the Central Government is not bound to act in accordance with such opinion though being a unanimous opinion of all the three constitutional functionaries it would have great weight and if an appointment is made by the Central. Government in defiance of such unanimous opinion, it may prima facie be vulnerable to attack on the ground that it is mala fide or based on irrelevant grounds. The same position would obtain if an appointment is made by the Central Government contrary to the unanimous opinion of the Chief Justice of the High Court and the Chief Justice of India.

In *Supreme Court Advocates-on-Record Association v. Union of India*[39] (Second judge case), the judgment in the first judge case was overruled and stated that, in the event of a conflict between the President and the CJI with regard to appointments of Judges, the opinion of Chief Justice of India would have primacy. The system of collegium was introduced in the second judge case. For the appointment of judges of the Supreme Court, the collegium would consist of CJI and two senior most judges and for the appointment of judges of High Courts, the collegium would consist of Chief justice of High Court along with two senior-most judges of the High Court.

In the Third judge case on appointment, *Re Presidential Reference*[40] the Court upholding the judgment of the Second Judge expanded the collegium

36. An independent scrutiny of the appointment process of Judges and Queens Council in England and Wales
37. *https://cadindia.clpr.org.in*
38. AIR 1982 SC 149
39. (1993) 4 SCC 441
40. AIR 1999 SC 1

to include four senior-most judges along with the Chief Justice. The Constitution (Ninety-Ninth Amendment) Act, 2014 brought an amendment to replace the collegium system with the National Judicial Appointments Commission (NJAC). But the apex court in *Supreme Court Advocates-on-Record Association v. Union of India*[41] (Fourth judge case) declared the amendment act as unconstitutional with a majority 4-1 judgment.

Judicial accountability:

Power leads to corruption and absolute power leads to absolute corruption. Mr Kofi Annan[42] stated that, "corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish." Recently, newspaper columns are filled with corruption charges levelled against judges. Calcutta High Court Judge Soumitra Sen, found guilty of misappropriating large sums of money and the Chief Justice of Karnataka High Court, P.D. Dinakaran, alleged for land grabbing and corruption, are few in this category.

Under Indian Constitution, such judges can be removed only by the process of impeachment on the grounds of proven misbehaviour or incapacity. [43] The Judges Inquiry Act, 1968[44] states that a complaint against a judge is to be made through a resolution signed either by 100 members of the Lok Sabha or 50 members of the Rajya Sabha to their respective presiding officers. Article 235[45] of the Indian Constitution provides for 'control' of the High Court over the subordinate judiciary in order to preserve the independence of subordinate judiciary, as it is neither accountable to the executive nor the legislature.

In *K. Veeraswami v. Union of India,*[46] the apex court observed, "any attempt to bring the Judges of the High Courts and the Supreme Court within the purview of the Prevention of Corruption Act by a seemingly constructional exercise of the enactment, appears to me, in all humility, an exercise to fit a square peg in a round hole when the two were never intended to match."

Conclusion:

According to V.R KrishanaIyer, J., judicial responsibility, accountability and independence are in every sense inseparable. They are and must be, embodied in the institution of the judiciary.[47] The only real practical check on the judge is the habitual respect which they all pay to what is called the opinion of the profession.[48] In many cases judges turned more popular through their judgments. Retiring judges are more prone to activist approach. All human beings are egoist; and wish to be remembered forever. Judges are not exceptions. The activist approach should be in accordance with social values. Today, on the one hand, 'live- in-relations' are permitted; and adultery has been decriminalized by judicial pronouncements. On the other hand, prostitution remains punishable. Many a times, the court has taken much liberalised approach and equates Indian position with

41. (2015) AIR S.C.W. 5457
42. *https://www.unodc.org*
43. Article 124 (4) Indian Constitution says, 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 the House and by a majority of not less than two-thirds of the members of the 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.
44. Section 3 (1), The Judges Inquiry Act, 1968
45. Article 235, Constitution of India says, The control over district courts and courts subordinate thereto including the posting and promotion of and the grant of leave to persons belonging to the judicial service of a state and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than I accordance with the conditions of his service prescribed under such law.
46. 1991 SCR (3) 189
47. Dato D Cyrus Das, "Judges and Judicial Accountability" in Soli J Sorabjee, (ed.), *Law & Justice an Anthology* (Universal Law Publishing, 2006), p.265
48. Justice V.R Krishna Iyer, *Access to Justice* (BR Publishing Company, 1993), p.82

western culture. Judicial law making is undemocratic. Our Parliament has enacted legislations to satisfy the needs of the people in Indian perspective. One must respect our culture and tradition. Western countries are still looking for Indian family system. The Indian family system has a social responsibility. This social morality should be protected by the judiciary.

The approval of judges appointment by elected members is a must and whatever method is developed, it must be protected from political corruption and ideological subversion and must also safeguard judicial independence, both decisional independence of individual judges as well as comprehensive institutional frame work of judicial independence, which must also include (a) appropriate institutional relationships between the three branches (b) independence of lawyers and prosecutors and (c) institutional arrangements to protect the integrity of court proceedings and process.[49] Some sort of transparency in the selection of judicial officers to the higher judiciary is mandatory. Grading system on the basis of years of practice, social responsibility, examinations attended, in service training, administrative ability, and other factors should be consider for appointment. Corrupt persons, whoever may be, shall be punished. The present system of impeachment should be changed. The corrupt judges shall be removed by the President of India on the basis of the report of collegium constituted for the purpose of removal. The present system of rule of law prevailing in India gives much importance to judiciary. Whatever connected with judiciary, judiciary plays a superman attitude and takes an omnipotent role. What the judiciary says is correct, because in India there is no other agency *defacto* above it.

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49. Mohan Gopal, "Battles to Control the Constitution" *EPW*, Feb.2, 2019, LIV 5