

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ARTIFICIAL INTELLIGENCE AND **CENTRE FOR RESEARCH AND** **PLANNING**

Authored By: **Paras Chaudhary**

Designation: Research Scholar

Institution: University of Delhi, Delhi

Educational qualification: Ph.D. (Pursuing), LL.M., B.A.LL.B.

E-mail id: pchaudhary@law.du.ac.in

Address: #455, Sector-7, Karnal, Haryana (132001)

Mobile no.: 9991119964

Abstract:

The article aims to propose a crafty solution to one of the most stubborn problem at hand, in judicial appointments to the courts of records. It is one such problem that still eludes a workable solution for reasons more than one. The present mechanism in place for judicial appointments to Supreme Court and High Court is facing some strong criticism and had it not been the refusal to change by the Supreme Court this collegium system of appointments would have long gone. In this maze, one strong argument for change is the absence of a Secretariat, which can not only scrutinizes the name of candidates for appointment but also, proposes the names to collegium. The Centre for research and planning will go a long way in meeting this need of the hour.

The Collegium system of appointments adopts a method for a crucial task and if it does not promote nepotism it certainly adopts a method of “pick and choose” in the judicial appointments. It inter-alia has adverse effects on judicial independence. The sentinel built to watch and protect judicial independence is failing to do the needful.

The fact of the matter is that judiciary is over-burdened in its judicial affairs. The latest status of pending cases presented by Law minister in Rajya Sabha states that the Supreme Court has 71,114

cases pending. With 10,491 cases are pending disposal for over a decade. However, it is not even a hidden fact that this combined with administrative functions leaves little to no scope for analyzing the candidature of a name proposed before it. So, the idea of CRP to do the needful has merit.

But the work of researcher in the field has suggested that judiciary has serious reservations against not only giving up the present system but also to the idea of Secretariat to analyse and propose the name to the panel of judges. Implementing CRP is a leap ahead of the stagnant situation. The premise of the argument thought of and revealed in research of author is that they fear the babus or officials coming under the influence of candidates. The chances of corruption are too great. Corruption may be of money or ideological or anything which should not have been there. There is also fear of officials becoming too powerful and influencing the outcome of the process. These fears are not ill-founded. So what seems as a ray of hope in this technological age is use of artificial intelligence for scrutiny and analyzing the works of a candidate.

The researcher proposes to give way to the untapped field in the present appointment regime. But we are also aware of the chances of danger of using technology in the field. However, there is no field that is left untouched by the advent of technology and artificial intelligence can solve many problems at the same time eliminating the threat of corruption in the field.

Even it may seem, difficult to accept what the researcher propose and harder by the judiciary to allow the change but we should remember that necessity is mother of invention and if a pilot project in this regard is successful then we surely can adopt the process. However, the idea can be implemented by the experts in the field of artificial intelligence under close monitoring of the judiciary with the help from resources of state. Only then this idea can succeed.

Key words: Collegium, judicial appointments, Secretariat, CRP, artificial intelligence.

Introduction:

In every civilized state the judiciary is regarded as an institution independent of the legislature and the executive. Indeed, the legislature, the executive and the judiciary are regarded as three organs of the state which are functioning as independent of each other. Our Constitution adopts this scheme. The framework of the state in India is based on three pillars, namely, legislature, executive and judiciary, and each of them has been treated as separate and independent of others. This is an additional reason why judiciary has to be regarded as independent.

The Constitution was framed on the foundation of a century old tradition of the independence of judiciary already established in India. All that was needed to continue the independence of judiciary. Thus independence of judiciary was assumed as a reality and also as desirability without question.

The Constituent Assembly discussed several aspects of this independence out of these, it is necessary for the purpose of this paper to consider the method of appointment of High Court and Supreme Court judges and how this process can be facilitated by use of artificial intelligence.

With paucity of space and necessity of focusing on the task at hand this research article seeks to deal with two things. First that whether the appointment process in place is justified and if it is, how the changes can be made within the system itself to deal with shortcomings of the process? Amongst the proposed changes in the system, the article narrows on the need of CRP for the short listing of candidates or responding to the inputs provided by collegium and assisting the collegium to make informed decision.

The researcher has been in the process of conducting interviews of judges to gain insights about the working of collegium and understanding the need for change, if required? In one of the interview a retired Supreme Court Judge suggested that there is always the possibility of para-legal staff becoming too powerful. The Hon'ble judge without mentioning the name of the Chief Justice of High Court suggested that the personal secretary of the Chief had become too influential. The Personal secretary and the protocol officer's are too difficult to deal with at times. And the risk of over-powering increases with one moving lower the judiciary.

In an unequivocal voice all the judges said no to greater say to executive in the process of appointments. In an equally strong note all refused the idea of secretariat to be implemented for recommending the names to the collegium. Even if the executive goes ahead with the idea of secretariat, like N.J.A.C. there is little to no chance that it will see light of the day. Yet implementing and forming a Centre for research and planning is a welcome move from the top of the brass by all means. Only CRP can be further facilitated by artificial intelligence assisted mechanism. The CRP will be more helpful if idea of artificial intelligence assisting CRP can be thought of without interference from extraneous considerations and artificial intelligence can efficiently assist the judiciary in assessing the value of inputs from the judiciary if not recommending the names to it for appointment.

The Collegium- Is it theoretically justified?

It is necessary to understand in some depth the meaning of the article of constitution governing appointments, in the background in which it was enacted and in the spirit it is to be implemented. The background for centuries before the enactment of the Constitution was that of the independence of judiciary as an absolute necessity. After independence the spirit in which the article was framed was the implementation of the constitutional value of justice. It is for this reason that appointment of judges right from those of the Supreme to those of the subordinate courts is dealt with by separate provisions in the Constitution.

The judges are not regarded as civil servants. Indeed, part XIV of the Constitution which deals with services under the Union and the states deliberately excludes appointment of judges from its scope. A sharp distinction is, therefore, maintained between appointment of civil servants and appointment of judges. The impartiality in appointment of civil servants is ensured by consultation with the Union Public Service Commission (U.P.S.C.) under article 320 of the Constitution. It is true that such consultation has been held to be directory and not mandatory. But this does not mean that even civil servants can be appointed arbitrarily by the executive. Indeed, the annual report of the U.P.S.C. is placed before Parliament and the views expressed therein by the Commission are respected by Parliament. No government can afford to depart from the advice of the Commission in the matter of appointment of civil servants and any exceptional case in which such departure is made is always explained by the government at the bar of Parliament. Therefore, it is not the letter of the law that consultation is directory and not mandatory but the spirit of the law which is acted upon even with regard to appointment of civil servants.

This is even more so with regard to appointment of High Court and Supreme Court judges. Unlike the appointment of a civil servant which is made by an ordinary order, even if in the name of the President, the appointment of a judge of court of records is made by the President by warrant under his hand and seal. The appointment of a civil servant is not signed by the President.

The President acts under article 53 of the Constitution in exercise of his executive power through officers subordinate to him. Under article 73, rules of business are framed. Under these rules, the authorized civil servants act for the President and this is regarded as the act of the President. But the independence of judiciary from executive is different from its very inception, it is secured by the appointment of a High Court and Supreme Court judge being made under the signature of the President himself.

- Advice by the President

It is well known that the real meaning of article 74(1) under which there shall be a Council of Ministers with the Prime Minister at the head "to aid and advise the President" is that the President has the power to advice and warn the government. That is to say, even though the real power is exercised by the government, it has to listen respectfully to the advice of the President. For, the President is directly elected. He is above the government and is free from alignment with parties. It is this position of impartiality of the President which is invoked in the appointment of a High Court and Supreme Court judge. The spirit of such appointment is that judges are appointed impartially and are independent of the government.

- The meaning of "consultation"

Another safeguard to ensure independence of High Court and Supreme Court judges in the appointment process is that appointment by the President of a Supreme Court judge is made "after consultation" with the Chief Justice of India and two senior most judges and additionally two more senior most judges, the governor of the state and the collegium of High Court for appointment to the High Court. Why? The reason is also rooted in tradition and in reality. Traditionally, judges in all civilized states are appointed by the head of the state in consultation with the head of the judiciary. The Queen hears the Lord Chancellor in England. The President of the United States hears the Chief Justice of the U.S. Supreme Court. The purpose of such consultation is to ensure impartiality in the selection of judges. What is impartiality after all? It boils down to selection on merit and suitability. The appointment of High Court judges is made either from the bar or from among the district judges. The quality and character of members of the bar is best known to chief justices as well as judges of the Supreme Court and the High Court before whom the members practise. Similarly, the quality and character of district judges is known to judges of the Supreme Court and the High Courts because the judgment and orders of the district judges go in appeal to these higher courts. Judges of the superior courts alone are, therefore, qualified to assess the merits of members of the bar or of the district judiciary for being selected for appointment to the High Courts. Indeed, the government would have no knowledge at all of the merits of members of the bar and of the bench for being appointed to the High Courts. It is true that the law minister may be a member of the bar, but he does not have the impartial position which is enjoyed by judges of the superior courts. His assessment cannot, therefore,

be as independent and impartial as that of judges of the superior courts. It is for this obvious reason that the opinion of only the Chief Justice of India and chief justices of the High Court is made the overwhelming consideration for selection of a person for appointment as a High Court judge.

Just as the appointment of a High Court judge is to be made after such consultation the appointment of a district judge has also to be made "in consultation" with the High Court under article 233(1) of the Constitution. Similarly, appointment of persons other than district judges to the judicial service of a state has to be made "after consultation with the State Public Service Commission and with the High Court" under article 234 of the Constitution. Articles 233 and 234 have come up for construction before the Supreme Court and the court has held that such consultation is virtually mandatory. In *Chandra Mohan v. State of Uttar Pradesh*¹, the court pointed out that the rules which limited the selection to a list prepared by a selection committee from which the High Court alone had to recommend the names for appointment of judges were illegal because article 233(1) and (2) was contravened by these rules. Because of these rules the governor in effect and substance neither consulted the High Court nor acted on its recommendation. This was not permissible.

If the governor has to consult the High Court and also to act on its recommendations, the meaning of "consultation" is that it is mandatory and also binding on the government in making the appointment of district judges.

In *State of Assam v. Ranga Muhammad*,² the Supreme Court reiterated that consultation is mandatory and directory. It pointed out that if what the High Court has to say is received by the government with ill-grace or rejected outright, consultation would lose all its meaning. Again in *A. Pandurangam Rao v. State of Andhra Pradesh*³ the Supreme Court held that the consideration for the purpose of appointment of judges by the governor was confined to the list of such persons as recommended by the High Court. If the governor cannot go outside the names recommended by the High Court, the meaning of consultation becomes clear. The consultation is made with a view to being accepted, and the advice given by the High Court would be binding on the government. The value of these precedents given in relation to articles 233 and 234 of the Constitution is obvious.

These decisions were given precisely on appointment of judges by the government in consultation with the High Court. The important point is that consultation by the government for appointment of

¹ A.I.R. 1966 S.C. 1987

² A.I.R. 1967 S.C. 903

³ A.I.R. 1975 S.C. 1922

judges was to be in a different category from consultation by the government with the public service commission for appointment of civil servants. The reason is that judiciary was to be truly independent. It is true that even civil service should be independent, but its independence does not have the same meaning or at any rate the same degree which the independence of judiciary has. Even in regard to consultation with the public service commission, the advice of the commission has to be considered sincerely by the government. If the government is not bound to do so, then its decision would be open to the charge of being mala fide.⁴ If consultation with the public service commission regarding appointment and discipline of civil servants has to be considered fully and sincerely by the government, a fortiori, the advice given by judges of the superior courts to the President in the appointment of a High Court judge would have to be considered even more respectfully. If the advice given by the High Court for the appointment of a district judge is binding on the government, how can it be that the advice given by judges of superior courts in the appointment of a High Court judge is not binding? How can the principle of accepting the advice of the High Court in the appointment of a district judge be distinguished from the principle of the advice given by judges of superior courts to the government in making the appointment of a High Court judge?

What is artificial intelligence?

Artificial intelligence given in right hands is a potent tool to manage and expedite process of appointment to courts of records. It may even help and analyse the judgments of the candidate whose name is proposed by the judiciary or it can be used to help manage and evaluate the inputs from high court judges proposed to be elevated to the Courts of records.

To know about its application, first we need to know what artificial intelligence actually is. Artificial intelligence in lay man terms means imitation of human reasoning and judgment by machines or the process by which machines react to information and situations similar to the way humans react and reach to a conclusion. Here the mention of machine learning is important. Machine learning is a part of artificial intelligence that can interpret data and help make informed decisions. It is this branch of artificial intelligence that can facilitate the appointment process.

⁴ Ram Chandra Chaudhuri v. Secretary to Govt. of West Bengal, A.I.R. 1964 Cal. 265 and Ishwar Chandra v. State of Orissa, A.L.R. 1966 Orissa 173.

Application of artificial intelligence in judicial appointment process:

The artificial intelligence, particularly machine learning can do in minutes what the humans can do in days or is even better than, what can be done by humans. With huge volume of data being created everyday assimilating let alone accessing it, is a huge task which cannot be done easily. And to do it perfectly requires large office with trained people up for it at all times. On the other hand, artificial intelligence can turn the large volume of data fed into it, to actionable information in minutes.

The pros and cons of the artificial intelligence can easily be understood under following heads:

1. Can assess large amounts of data:

It is common in higher judiciary with contentious issues to be discussed at length to write long judgments which can extend your 100's if not thousands of pages at times. This with 50-60 cases listed for each judges, and active strength in high court always above 500. One can understand the amount of data to be accessed to reach to a informed conclusion for elevation, even if the recruitments from bar and lower judiciary is also not put to list. It is only machine learning using artificial intelligence that can solve the problem.

2. Quick availability of ready results:

The A.I. powered machines not only can do the needful in data heavy fields but also can be quick at doing it. Artificial intelligence works at three levels; learning, reasoning, and auto correction. For artificial intelligence to work flawlessly one should understand that if we can ensure collection of the required data and provide perfect algorithms for the A.I. to work then we have ensured learning of machine to be good enough to reaching findings of the research, quickly. Then the reasoning part must select correct algorithms to reach a perfect conclusion. If this much can be ensured then we are left with only auto correction part of A.I. to keep improving with time unless new algorithms are required to be entered.

3. Reliable outputs:

If all the learning, reasoning and auto correction can be ensured and the A.I. is otherwise also strong then one thing is for sure that we can rely on the outcomes of the process. Weak artificial intelligence can do low and mid level tasks. But to replicate human like thinking capabilities and then provide solutions to the problems require strong A.I. Thus only strong A.I. can assist in appointments regime.

4. Expensive and high technical expertise:

The cost and technical expertise is required for the A.I. to provide reliable information which collegium can act upon. But this will not be an issue for the appointment process, if it is supported by the government. So if government participates cost and technical expertise will not be a hurdle in a quick and effective appointment mechanism.

5. Need to eliminate chances of interference:

The A.I. works on the basis of data that is provided. So it is an absolute necessity that the reliable data from authentic source is provided to the system to ensure that the outcome of the process is genuine and can be relied upon. Moreover, The A.I. generally lacks an ability to generalize the concepts and that weakens the outcome of the process. This needs to be checked therefore only strong A.I. will work in the appointment regime that is credible and effective. Furthermore, other chances of manipulation of the process need to be eliminated, if it is to be used for.

Conclusion:

The collegium is not only theoretically justified but a necessity for fair and unbiased process free from extraneous considerations that need not be there. Though, this is also right that the executive needs to be involved in the process but the judiciary feels in barge of involvement, the executive needs to dominate the process. In words of hon'ble retired judge of Supreme Court who was kind enough to share the views with the author said, 'Suppose a Yadav from Jharkhand is a Minister of Law, what does, he know about a Singh from Punjab. It is the judiciary that is aware about the candidature of the person being considered.'

"Moreover the necessity of consultee judge who is from the High Court from which the person to be nominated is concerned is very useful in the light of awareness about the candidature of a given person." He then explained it with a personal experience, "when the lordship was working as Chief Justice of a High Court, a candidate's name was proposed for appointment from lower judiciary. Hon'ble collegium was impressed by the credentials of the person and was thought fit to be appointed. But the collegium at that time was consisting of judges whose parent High Court was a different one, then the one they were working in.

So as a matter of caution hon'ble Chief Justice thought to take views of a local judge. It proved in the end to be too useful. The local Judge told the collegium that there is a criminal case pending against him. This proved fatal to the candidature of the person considered for appointment to the High Court."

He further said that the Intelligence Bureau has not much substantial to add to the qualification of the candidature and everything about him is known to the collegium. There is mechanism for it. Everything to be known of the candidate is known to the collegium. A judge retired from Delhi High Court suggested that in fact when executive decides to oppose the name of a person, then the I.B. comes up with unfavorable reports. The Centre for research and planning has to maintain a list of names that can be appointed by the collegium and thus use of artificial intelligence can be immensely helpful in providing assistance to the collegium.

