



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

A STUDY ON REVIEW OF LITERATURE IN LEGAL RESEARCH: A LOOK

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Introduction

For the purpose of partial fulfillment of Ph.D Course work the legal literature on the proposed Topic i.e. A Critical Analysis of Judicial Appointments in India, was carefully reviewed. In order to obtain relevant information, books and articles of various eminent authors have been reviewed. The report of review of literature is as follows first of all it is convenient to note the list of articles referred in this regard and then it is good to mention the list of books which have reviewed thoroughly to find out the areas left. Though the authors of valuable literary work might be from a high cadre but as a research scholar it's permitted to criticize the work of any scholar and which is done in good faith. The constitution itself permits for fair criticism. Review of literature helps to understand current trends in the concerned literature project. A careful analysis of relevant literature can help to overcome various problems in the research endeavor. About importance of review of literature it has been observed that, frequently, an expletory study is concerned with an area of subject- matter in which explicit hypotheses have not been formulated. The researcher's task is to review the available material with an eye of developing hypotheses from it. To review works of such genius person is a challenging task. Since the aim of experience survey is to obtain insights into the nature of the problem and useful leads or clues to possible hypotheses and since the experience surveyor is looking for provocative ideas and useful insides, the cases are chosen on the basis of likelihood that that they will be able to contribute such ideas and insights.

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Definition and Meaning of Justice and Judiciary

Justice: the virtue by which we give to every man what his due, opposed to injury or wrong. It is either distributive, belonging to magistrate or commutative, respecting common transaction among men (WHARTON'S LAW LEXICON 1976 Reprint, Page,552)

- (i) The act of rendering what is right and equitable towards one who has suffered a wrong
- (ii) Ordinary prefix to a person who is a judge of a High Court.

Justice is the dictate of right, according to the conscience of mankind generally, or the ideas of those who may be governed by the same principles of morals (Singhal's jurisprudence, P.12)

In a judicial sense 'justice' is in exact conformity to some obligatory law all human actions are just or unjust as they are in conformity with or in opposition to the law.

Judiciary: Name given to the judicial system of a country as whole

Importance

The three wings of any governments are: the Executive, the Legislative, and the Judiciary. The Legislature makes laws for the country the executive enforces those laws and administers the country the law courts punish the law breakers and the act as the guardian angel of constitution. The Judiciary Guarantees fairness and justice and protects the individuals from the despotism of the Government. It is difficult to imagine a civilized state without an efficient judicial system. Law saves the society from becoming anarchic or lawless. In the absence of an impartial judiciary the citizens are as much exposed to danger from the public servants as from the outlaws. The constitution of free India envisages a federal government for the country. The Supreme Court has been invested with the important task of settling disputes between the union and the states and interpreting the ambiguous clauses of the constitution. Another duty of the Supreme Court is to prevent state's enforcement on the Fundamental Rights of the citizens.

Under the Act, of 1935 for the first time an all India Court was set up. The name of this All India Court was 'Federal Court of India'. With the coming into force of the Indian Constitution the Federal Court of India was substituted by the Supreme Court.

The constitution provides that a judge of the Supreme Court will be appointed by the president in consultation with such of the judges of the Supreme Court and of the high court in the states as the President may deem necessary for the purpose. In the case of appointment of a judge other than the chief justice, the chief justice of India must be consulted. In practice, the appointment of the chief justice of India as well as of the other judges of the Supreme Court is recommended by the home ministry and after the matter has been examined by the appointments committee of the Indian cabinet and the decision received the blessings of the prime minister it is formalized by the Indian president.

For nearly two decades now, the judiciary has been embroiled in the controversy over who should appoint or transfer judges. The issue seemed settled in 1993 when a nine-judge Bench of the supreme court said that the chief justice of India held the key in all such matters. The judgment still left a patch of grey area on whether the CJI could override his senior 'brothers' or was merely the first among equals.

The relation between Review of Literature and the proposed research topic

The present research work mainly based on the existing judicial appointment process provided under the India constitution and implications of judicial reforms resulted to recommendations by the law commission for the enactment of NJAC to abolish the collegium system which was introduced by the supreme court in a landmarks judgment furthermore the review of literature has been under taken by the research scholar to review the existing legal literature pertaining to judicial appointments and consequences including the public opinion.

Various articles and Books have been reviewed by the research scholar to obtain the relevant information to connect for the proposed topic.

In addition to the above various attempts have made by the research scholar to gather the relevant information from various sources to validate the proposed research and the review of literature is very helpful for the purpose of fulfilling the initial of the research it is noted that well known information is gathered and including case laws, judgments, principles and theories for the purpose of meeting the requirement of the research work. Though the available literature feels too inadequate and the researcher surely undertakes the latest developments took place after the decision of the Supreme Court in NJAC Act.

Advantages

There are various advantages with regard to the review of literature. The advantages are as follows.

1. Review of Literature helps the research scholar to acquaint with relevant facts and principles
2. It also helps to get accurate information regarding the area of research
3. It lays emphasis on the intellectual work and critical enquiry of various eminent scholars
4. The legal literature which may change time to time hence review of literature acts as a means or medium to reach the expected result.
5. It lessens the burden of the research scholar and provides vast information about the subject

1. Articles Reviewed:-**Judicial Independence and the Appointment of Judges to the Higher Judiciary in India: A Conceptual Enquiry**- By *Arghya Sengupta*.

The author of this article has mainly focused on conceptual enquiry into judicial independence with a view to outlining its precise relevance to the process of judicial appointments in India. Neither this article has analyzed seminal cases relating to judicial appointments decided by the neither Supreme Court nor does this article concentrated each of the senses in which the term has been used by judges, politicians and academicians in the last 60 years. Strictly speaking this article might be useful for ascertaining only conceptual enquiry rather than considering it as a complete source. Further the proposed topic requires the present states of NJAC and other relevant material hence this article serves inadequate information.

2. **The NJAC Act- is it the perfect remedy:** By *Ameya Vikram Mishra & S. Ananth Balaji*

As we know that the system of appointment of judges has always remained as a area of conflict and controversy which is full of ambiguity and confusion. But the author of the above stated article has laid emphasis only on *NJAC* but failed to recognize contain important issues involved in the process of judicial appointments. Namely opinion of authors of various books pertaining to judicial appointments. Secondly the author has failed

to refer case laws which are indeed breath for passing of NJAC and the author had failed arriving for a conclusion with pertaining to NJAC.

3. National Judicial Appointment Commission an Analysis of NJAC's effects on Judicial Independence in India: By *Satya Rathore & Ankita Rituraj*

This article mainly based on establishment of NJAC and further deals with need for judicial reforms and implementation through in the form of establishment of judicial commission in India, and laid emphasis on comparative analysis of process of judicial appointments in India and U.S.

This article lacks critical analysis and enquiry which is the main thrust of present research scholars proposed area of research.

Though comparative analysis forms part of proposed research design but other validating factors must be focused thereby extending the literary work towards the comparative analysis with other nations and precedents of such nations would have seen required in this regard.

4. Judicial Appointments in India contemporary Developments: By *Soaham Bajpai*

This article is completely a version of a Bare Act instead of having the qualities of an article the author failed to recognize case laws which one of prime concern for passing of NJAC this article lacks comparative analyses historical background of judicial appointments and pragmatic approach by the executive in certain occasions.

Books Review:

1. Constitutional Amendments in India IInd Edn: By M.V.Pylee

It is an vast and comprehensive work of the author which definitely helps in the prepared research but still recent changes that took place regarding the introduction and repealing of NJAC was not focused the requirement of the present proposed research is not fulfilled

2. Constitution of India 11th Edn By Mahendra P. Singh

Since the research topic seems to be traditional concept but due to drastic changes the topic has got multi dimensional perspective which requires Description, analysis, evaluation and prescription have a dilemma relationship. Overtly relying on any one is often a reason for criticism of an academic work. A purely descriptive work is accused of adding no value to existing knowledge or even being political by pretending to be apolitical. An analytical work based on inadequate, or worse still, an erroneous description would be a sitting duck at best for critics. Prof. V.N. Shukla stated his purpose clearly in the preface to the first edition of his book Constitution of India in 1950. It was "an attempt ...to comment upon and explain the Constitution of India". He chose to explain each article of the constitution drawing from the Constituent Assembly debates, the few decided cases and introducing a comparative point of view wherever relevant. The task chosen, at once became tilted towards description and analysis. The short history of the constitution could not commission a work which made description quantitatively a demanding task and thus a good mix of analysis was inevitable for the purpose of 'explanation'. Evaluation was on his mind but seemingly unwarranted and premature *Prof. V.N. Shukla* stated his purpose clearly in the preface to the first edition of his book Constitution of India in 1950. It was "an attempt

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3. Sarbani Sen, Popular Sovereignty and Democratic Transformation: The Constitution of India; By Rajeev Dhavan

There are numerous books on constitution contributed by eminent scholars and jurist for legal field.

As far as the process of constitution making is concerned, the repeated re-publication of the Constituent Assembly Debates have made them more and more accessible to those willing to read. The late *Jagan Nath Khosla* did a great service to scholarship in putting together a project on the documents of the Constituent Assembly which were then crafted into place by B. Shiva Rao under the title: *The Framing of India's Constitution* (1968), which consists of a study volume and four volumes of documents to which some untidy additions have been made in the 2007 edition by *Subhash Kashyap*. Fortunately – Granville Austin's *The Indian Constitution: Cornerstone of a Nation* was published in 1966. This had an important effect on scholars of constitution making. Austin had scoured through the records, which nobody had bothered to look at earlier. The politicians thought that they knew it all because many belonged to the era of the Constituent Assembly. This is equally true of other scholars and lawyers who cite accounts of the debates before the Supreme Court as aids to constitutional interpretation this is equally true scholars who cite accounts of the debates before the Supreme Court as aids to constitutional interpretation.

4. Landmark Judgments of Supreme Court: By N.K.Acharya 3rd Edn,1950-2011

The work of the author deals with the efforts of Supreme Court to dominate the executive and legislature in its anxiety to correct them. This literary work covered important judgments relating to all kinds of subject matter but the present research work is focused on appointment of judges especially critical analysis therefore this book alone will not be sufficient for the present research work.

The subject of landmark judgments of the Supreme Court is fascinating one it takes us over the crust of an illuminating aura of judicial wisdom spread over half century since its inception great chief justices and judges who occupied the seats of the court who made a distinct and remarkable contribution to jurisprudence and law the supreme court has made itself most popular and reliable institution for protecting the rights of the citizen in this regard precedent play a vital role in judicial practice.

5. The Constitutional law of India: By Dr.J.N.Pandey 50th Edn,2013

The basic law of land is constitution and all other laws which derives its validity and sanctity from the constitution itself the literary work of author can be highly appreciable but certain areas are not focused this book being in a commentary style and fail to give coherent and integrated clear picture about certain aspects

6. Legal Constitution History of India: Justice M.Ramajois

This book covered concept of law and its supremacy substantive civil laws rules of interpretation foreign policy organization administration of department of Government etc.. a brief account of practical working of *Rajadharm* is also given but this work has not covered the process and procedure of judicial appointments which is major concern of r

