

# Leveraging Artificial Intelligence to Reform the Indian Judiciary: A Step Towards Smart Justice

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## ABSTRACT

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The paper attempts to contribute to the research pertaining to the use of artificial intelligence in the Indian judiciary. The research aims to discuss the use of artificial intelligence in the judicial system. The paper first discusses the issue of master of roaster followed by the courts for allocation of cases among the judges. The article highlights the inherent problems in this approach and how the artificial intelligence could replace the current practice. The probable advantages of using artificial intelligence includes the reduction in the work load of the judges, allocation of the cases to the judges based on their specialization etc. Similarly, the transfer policy of the judicial members which again is opaque has been discussed with the role of artificial intelligence at the centre. The paper then attempts to dissect the question of elevation of judges in the high court and the supreme court which is often marred in controversy. Such elevation often lacks transparency for closed door meetings and the lack of diversity. This diversity which is lacked is of caste, gender, region etc. The researcher argues that the artificial intelligence might be useful here to clear any kind of misconceptions associated to the gender. It is argued that artificial intelligence can be extremely useful to the judges in terms of elimination of the repetitive work, applying the appropriate legal reasoning to the case laws, identifying the case laws which are relevant to the case etc. The opposition of the artificial intelligence on certain grounds such as confidentiality, artificial intelligence as the substitute of the judges etc. The entire study has been summed up with a suitable conclusion.

**Keywords:** Artificial Intelligence, Confidentiality, Elevation, Judiciary, Master of Roaster.

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## INTRODUCTION

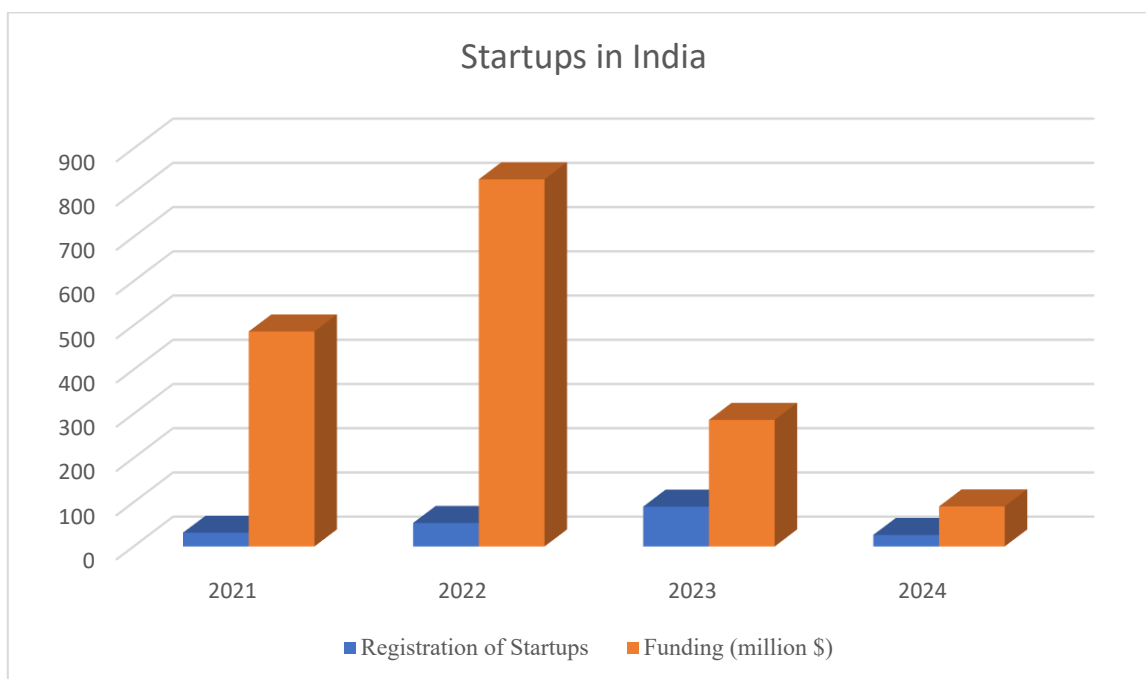
The world has witnessed the rampant growth in the artificial intelligence within a short span of time. The advent of artificial intelligence is considered of recent origin. For artificial intelligence, it is being said that it has the capability to match human intelligence. Here, it is important to ascertain the meaning of artificial intelligence. Artificial intelligence or AI as popularly called can be defined as the science of making machines do the things that would require intelligence if done by man.<sup>1</sup> It is capable of observing its environment, learning and based on the knowledge and experience gained, taking intelligent action or proposing decisions.<sup>2</sup> In essence, it can do anything and everything

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<sup>1</sup> Artificial Intelligence, Deloitte, <https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/deloitte-analytics/deloitte-nl-data-analytics-artificial-intelligence-whitepaper-eng.pdf> (March, 2018).

<sup>2</sup> AI Watch Defining Artificial Intelligence: Towards an operational definition and taxonomy of artificial intelligence, JRC Technical Reports, European Commission, 2020.

which a human is capable of doing. The relevance of artificial intelligence can be understood from the fact that it is often considered as important an invention as fire and wheel which are credited with fuelling the human development. The proponents of artificial intelligence, however are of the opinion that it can bring a huge impact on the lives of human. It can transform the way a human function at the workplace. This in fact is true for every kind of job including that of judge. The judiciary is often considered to be orthodox in its approach especially with relating to the use of modern-day practices. The reluctance and distrust shown by some of the members of the judicial community is often discussed academically. The paper attempts to highlight the use of artificial intelligence for the judiciary and the extent to which it can make a mark. There are areas within the judiciary which are considered as gray areas as they are not often discussed and even if discussed still the ambiguity prevails. The credibility of the judiciary is dependent upon the phrase ‘justice not only to be done but seen to be done.’ The judges have inspired confidence of the local mass and is considered to be one of the most trustworthy government bodies (not technically). However, when it comes to the internal matters of the judiciary; the situation is grim. This includes the manner of appointment of judges, the listing of cases before the court, transfer of judges without any policy with allegations of interference of central government etc. The artificial intelligence in these cases can overhaul the present system. It possesses the human like intelligence and at the same time can give results without any bias or influence. Further, the results arrived at by the machine shall be based on certain evidences or study which shall further ensure credibility and inspire confidence of the mass. The relevance of AI is growing in India with consistency in registration of new startups and the funding they get from the investors. However, the sustainability is one of the issues with these AI startups which is clear for the data presented below:<sup>3</sup>



### THE ISSUE OF MASTER OF ROSTER

The term ‘master of roaster’ is not defined anywhere in the constitution. However, it is considered as the prerogative given to the Chief Justice to allocate cases among his fellow judges.<sup>4</sup> This right is exercised by him although he is equivalent to other judges in the same court. It is important to note here that the concept of master of roster has not arisen out of a legislative framework but as a convention. The master of roster policy is one of the ways of assigning cases to the judges. Apart from it, there are other ways as well which are followed by other nations. This includes the assigning of the cases to the judges on the basis of their expertise or through random drawing which is followed in

<sup>3</sup> AI Markets and Competition in India, ICRIER Prosus: Centre for Internet and Digital Economy, <https://icrier.org/pdf/AI-Markets-and-Competition-in-India.pdf>.

<sup>4</sup> Kamini Jaiswal v. Union of India, AIR 2017 SC 5334.

United States.<sup>5</sup> On the other hand, the lord chief justice allocates cases to the judges within the same court in the United Kingdom just like India. However, the only deviation here is that this function of the lord chief justice is given a clear recognition in the Constitutional Reform Act<sup>6</sup>. Our neighbour Pakistan has recently shifted from its master of roster policy to a more transparent mechanism wherein the bench of chief justice along with two senior-most judges allocates the case.<sup>7</sup> For this, a specific legislation has been passed named as Supreme Court (Practice and Procedure) Act<sup>8</sup>. There are two inherent problems associated to the master of roster policy as followed in India. To begin with, no reasoning is given for allotting a particular case to a particular judge. This also means that the Chief Justice enjoys absolute powers in this regard; especially after the *Ritu Chhabaria case*<sup>9</sup>. Moreover, this gives absolute power to the Chief Justice on allocating cases which is prone to misuse. Further, it has often been alleged that certain cases which were crucial to the union government were allotted to a specific judge in the Supreme Court moulding even the master of roster policy.<sup>10</sup> The cases which were listed before a particular bench as per the directions of the Chief Justice were withdrawn on the date of hearing without informing the concerned bench.<sup>11</sup> The situation is so precarious that four judges of the Supreme Court conducted a press conference alleging irregularities on the part of the Chief Justice of India.<sup>12</sup> This was considered a watershed moment in the history of India as this was the first time allegations of this court came in public despite all sort of rumours.

### TRANSFER POLICY OF JUDGES

The transfer of judges has always been a cause of concern in absence of lack of policy. Article 222 gives the power to the President to transfer a judge from one High Court to another on the recommendations of the collegium.<sup>13</sup> The reasons for transferring of a judge from one high court to another is not specified in the constitution or any statute but the memorandum of department of justice specifies the sole ground of 'public interest or better administration of justice' as the ground for transfer of justice.<sup>14</sup> The court in the case of K. Ashok Reddy case dealt with the requirement of laying down detailed guidelines on the transfer of judges. The court opined that the sole ground of 'public interest' is a sufficient ground in itself and it is not required to lay down any further guidelines.<sup>15</sup> However, the court provided certain instances wherein a judge can be transferred within the broader ambit of public interest. This includes-<sup>16</sup>

- the controversial image of the judge;
- for better functioning of either of the high courts;
- judge acquiring any material interest in the litigation pending before it which can cause embarrassment to the judge himself as well as the judiciary etc.

Here, it is important to note that in the transfer order of the judges no reason is assigned.<sup>17</sup> Moreover, the transfer orders of some of the judges has met with strong opposition and criticism from both the bar and the civil society. This

<sup>5</sup> How are federal judges assigned to cases?, <https://www.iand.uscourts.gov/content/how-are-federal-judges-assigned-cases#:~:text=The%20majority%20of%20courts%20use,related%20cases%2C%20or%20prisoner%20cases.>

<sup>6</sup> Constitutional Reform Act, 2005.

<sup>7</sup> Swarati Sabhapandit, Abolition of Master of the Roster in Pakistan and lessons for India, The Leaflet, <https://thel.leaflet.in/abolition-of-master-of-the-roster-in-pakistan-and-lessons-for-india/> (February 13, 2024).

<sup>8</sup> Supreme Court (Practice and Procedure) Act, 2023.

<sup>9</sup> Ritu Chhabaria v. Union of India, W.P (Criminal) No. 60 of 2023.

<sup>10</sup> Mekhala Saran, Case Deleted, Sensitive Matters Re-Assigned? What is happening in Supreme Court, The Quint, <https://www.thequint.com/news/law/supreme-court-justice-sk-kaul-dy-chandrachud-dushyant-dave-bela-m-trive-di> (December 8, 2023).

<sup>11</sup> Senior Advocate Dushyant Dave writes open letter to CJI on shifting of cases from one bench to another in disregard of SC Rules, The Hindu, <https://www.thehindu.com/news/national/senior-advocate-dushyant-dave-writes-open-letter-to-cji-on-shifting-of-cases-from-one-bench-to-another-in-disregard-of-sc-rules/article6761005>

<sup>12</sup> Former%20Supreme%20Court%20Bar%20Association %20president%20and%20senior%20advocate%20Dushyant,before%20other%20Benches%20in%20clear (December 6, 2023).

<sup>13</sup> Sruthi Radhakrishnan, The Hindu Explains: 'master of the roster', The Hindu, <https://www.thehindu.com/news/national/the-hindu-explains-master-of-the-roster/article61493949.ece> (December 1, 2021).

<sup>14</sup> Article 222, The Constitution of India, 1950.

<sup>15</sup> Department of Justice, Memorandum of procedure of appointment of high court judges, <https://doj.gov.in/memo-randum-of-procedure-of-appointment-of-high-court-judges/>.

<sup>16</sup> K. Ashok Reddy v. The Government of India & Ors., AIR 1994 SC 1207.

<sup>17</sup> *Id.*

<sup>17</sup> [https://main.sci.gov.in/pdf/Collegium/30092022\\_051302.pdf](https://main.sci.gov.in/pdf/Collegium/30092022_051302.pdf).

includes the transfer of *Justice Murlidhar*,<sup>18</sup> *Justice V.K Tahilramani*,<sup>19</sup> *Justice Akil Kureshi*<sup>20</sup> etc. There are no studies which are conducted by the Supreme Court pre or post such transfer assessing the impact/ would be impact of such transfer. This ultimately leads to questions being posed over the entire process.

### **ARTIFICIAL INTELLIGENCE AS A SAVIOUR**

The Artificial intelligence can be a one stop solution for all the problems the Indian judiciary is currently facing. The Supreme Court, in fact has introduced several measures for promoting artificial intelligence and technology. One such method is *Supreme Court Portal for Assistance in Court's Efficiency* ("SUPACE").<sup>21</sup> This platform allows the judges to get the processed facts, laws under the relevant provision and examples related to such case. Another platform for interaction of judiciary and artificial intelligence is *Supreme Court Vidhik Anuvaad Software* ("SUVAS"). SUVAS is a machine assisted translation tool equipped with artificial intelligence. It has the capacity to translate judicial documents, orders and judgments in English to other vernacular languages and vice-versa.<sup>22</sup> The things are at the initial stages in India with respect to artificial intelligence. The courts are exploring the use of advanced technology for the Indian judiciary under the supervision of e-committee of the Supreme Court of India. The committee is mandated with installing the efficient justice delivery systems, to automate the processes etc.<sup>23</sup>

*AI can be used in various ways in the legal system through various ways*-<sup>24</sup>

- Can offer itself as a quick translation tool which becomes especially important in countries like India where at times witness testifying in unaware of the language of the court.
- Identify the contradictions; if any made by the lawyers in their written submissions.
- It can be used even in deciding the civil cases where the rule of preponderance is followed and at times the party winning the case wins that case with a narrow margin and hence prone to human error.
- It can aid in proper presentation of the facts where the relationship between the parties can be presented through flowchart, the timeline of events etc.
- In cases of over speeding, the work is largely mundane where the litigants either challenge the fine imposed by traffic personnel or the offence involves higher amount of penalty. In these cases, artificial intelligence can be useful. AI enabled cameras can be installed which can detect speed and identify the identity of the offender with the details of the vehicle captured. This will not only reduce the burden on the courts but will also limit the discretion exercised by the presiding officers in levying the fine which is often highly disproportionate.

*Apart from this, there are other areas as well where AI can be used. This includes-*

- The court which is lacking in a particular practice of law can be bolstered with the transfer/ elevation of a judge who is an expert in that specialized area.
- AI can ensure that cases requiring specific expertise are allotted to the judge with significant experience in that area thus saving a lot of time and labour of the judges.
- Moreover, it has often questioned in India that the lawyers and the judges from the subordinate judiciary do not get adequate representation in the high court and the supreme court. Here, the advocate roll of the bar council/ bar association can be aligned with the judgments involving that judge/ advocate using AI. This will enable in keeping a track record of an individual judge/ advocate which can further be used in his promotion.

<sup>18</sup> Delhi High Court judge Justice Muralidhar's transfer triggers war of words, The Hindu, <https://www.thehindu.com/news/national/justice-murlidhar-transferred-to-punjab-and-haryana-high-court/article30928647.ece> (February 27, 2020).

<sup>19</sup> K. Venkataramanan, Explained | Why are judicial transfers riddled by controversies, The Hindu, <https://www.thehindu.com/news/national/explained-why-are-judicial-transfers-riddled-by-controversies/article37603943.ece> (November 21, 2021).

<sup>20</sup> Government notifies transfer of Justice Akil Kureshi as Rajasthan HC Chief Justice, The Indian Express, <https://indianexpress.com/article/india/govt-transfer-justice-akil-kureshi-as-rajasthan-hc-chief-justice-7562751/> (October 9, 2021).

<sup>21</sup> CJI launches top court's AI-driven research portal, The Economic Times, <https://indianexpress.com/article/india/cji-launches-top-courts-ai-driven-research-portal-7261821/> (April 7, 2021).

<sup>22</sup> Press Release, Supreme Court of India, 25/11/2019, <https://main.sci.gov.in/pdf/Press/press%20release%20for%20law%20day%20celebratoin.pdf>.

<sup>23</sup> e-Committee, Supreme Court of India, <https://ecommitteesci.gov.in/>.

<sup>24</sup> Rachel Curry, AI is making its way into the courtroom and legal process, <https://www.cNBC.com/2023/11/01/ai-is-making-its-way-into-the-courtroom-and-legal-process.html>.

- The representation of the women and scheduled caste is very less in the higher judiciary. The AI can identify candidates from these backgrounds across the country within a short span of time.
- Training sessions are often organized for the judges and lawyers to augment their knowledge and skills on the subject. The AI after analysing the judgements in which they were involved can identify the key areas where an individual is lagging behind. Specific training sessions can be organized focusing on these areas only.

The extent of dependence of courts on AI is also a question need to be answered. This question came up in the case of *Wisconsin v. Loomis*. The main contention in this case was the punishment awarded to the defendant on the results produced by an AI program named *COMPAS AI*.<sup>25</sup> Interestingly, the defendant was not able to challenge the accuracy as otherwise it would have led the developer to disclose the details of his software violating his rights over his trade secrets.<sup>26</sup> This aspect is further discussed in the subsequent section.

The profession of law is often believed to be involving repetitive tasks which are time consuming for real including but not limited to the sue diligence, drafting, consultancy etc. The AI holds the capacity of finish these tasks thus saving a lot of time and resources. The pie chart depicts the specific areas of law which can be performed using AI efficiently.<sup>27</sup>



### AI AS A SUBSTITUTE OF A JUDGE

The important aspect here is that it only aids in the decision-making process but does not replace the judge entirely. The courts are in favour of using AI which can reduce the burden of repetitive work which does not require any kind of human intelligence. Recently, the high court of Punjab & Haryana has asked the state government to develop a system which can identify similar pending cases and can be disposed off accordingly.<sup>28</sup> The high court in a different case made use of ChatGPT to get the jurisprudence on bail across the world.<sup>29</sup> In the words of *Chelameshwar J.* a Judge is considered as an individual “*who has a deep learning in law, incisive and alert mind to quickly grasp the*

<sup>25</sup> *Loomis v. Wisconsin*, 881 N.W.2d 749 (Wisconsin 2016).

<sup>26</sup> *Id.*

<sup>27</sup> <https://www.manupatracademy.com/assets/pdf/AI-Adoption-and-Its-Impact-in-the-Legal-Industry-An-Indian-Perspective.pdf>.

<sup>28</sup> Aiman J. Chishti, In a First Punjab & Haryana High Court suggests state to use Artificial Intelligence to identify ‘similar cases’ which are already settled by it, Live Law, <https://www.livelaw.in/high-court/punjab-and-haryana-high-court/punjab-haryana-high-court-artificial-intelligence-search-dispose-of-similar-cases-240321> (October 17, 2023).

<sup>29</sup> Jaswinder Singh @ Jassi v. State of Punjab & Anr., CRM-M-22496-2022.



*controversy, energy and commitment to resolve the problems. These are considered as the critical elements making a Judge efficient and also enable him to decide cases quickly at the same time. However, any person despite of having all the above-mentioned qualities does not automatically become a Judge unless he gains the confidence of the litigants regarding his fairness and impartiality.*<sup>30</sup> The courts are also strongly against this idea as well. The Delhi High Court in one of the cases held that the AI can be used only to a limited extent and that to an extent.<sup>31</sup> The accuracy and the reliability of the artificial intelligence still cannot be trusted.<sup>32</sup> There is a scope of irregularities being done using AI such as imaginative data, non-existing case laws etc. Further, it is highly dependent upon the information fed to the system which might at times be incorrect. The law is made for governing the society and is largely influence by the morality prevailing at that time. In fact, the judgments passed by the courts are largely based on the morality of the society. But, the morality is subject to change according to the time as happened in the case of decriminalization of homosexuality. If AI were to give a judgment it would not be able to grasp this change in the morality of the society and would have still kept the section 377 IPC intact. Moreover, judgments of sensitive cases if made through the artificial intelligence can be leaked online even before they are pronounced which can cause issues pertaining to public order. Further, it was reported in United States where the lawyers submitted briefs using artificial intelligence containing cases that were non-existent.<sup>33</sup> Further, the accuracy of the artificial intelligence results depend upon the precision with which the information is fed and the volume of information. The results arrived at after uploading one file in a case and after uploading thousands of files in another case would be witness a huge difference.<sup>34</sup>

### **CONCLUSIONS AND SUGGESTIONS**

The paper attempts to discuss the utility of artificial intelligence for the judiciary in India. There are many issues in the judiciary which lacks transparency and thus require a better clarity over the same. The first point of discussion in the question pertaining to master of roster where the power to allocate the cases to the judges rests with the chief justice. Despite of this power being an administrative power; no guidelines are laid down for such allocation of the cases. This runs contrary to the principles of natural justice where the speaking order is a must on every decision. This conflict is not only important for the reason discussed above but also due to the fact that the allocation of cases sensitive to the government is being done in such a manner where the central government is to get the benefit the most.

Further, the elevation of the judges is another area of concern where the artificial intelligence can prove to be useful. The majority of the judges elevated to the High Court and the Supreme Court comprises the advocates. In addition to that, the judges at the Supreme Court does not comprise more than one judge from the subordinate courts. The higher judiciary is further dominated by the males despite of the fact that the women have the majority in the lower judiciary. It is argued that the artificial intelligence can bring objectivity to the problems discussed. It can store the large amount of data and can take decisions just like a human but without getting influenced by any bias. Moreover, the results arrived at by the artificial intelligence can be laid in public domain as well for the reasons of the decisions. This will not only ensure objectivity but will also boost public confidence in the judiciary as well. However, a line of caution has to be drawn on the overuse of artificial intelligence which might jeopardise the very need for the judges. Currently, the courts are of the opinion that the AI can only act as an assistant to the judges and not as a substitute. The artificial intelligence can aptly apply the law in a particular case but when it comes to the serving the justice; it may prove to be ineffective as at times even the law cannot serve the justice.

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<sup>30</sup> Supreme Court Advocates on Record Association & Anr. v. Union of India, Writ Petition (Civil) No. 13 of 2015.

<sup>31</sup> Christian Louboutin Sas & Anr. v. M/S The Shoe Boutique, CS (COMM) 583/2023.

<sup>32</sup> *Id.*

<sup>33</sup> 2023 Year End Report on the Federal Judiciary, <https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf>.

<sup>34</sup> James E. Baker et al, AI for Judges: A Framework (CSET Policy Brief), December 2021.