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Present Issue :

MY PERSPECTIVE

Seniority – a wiser option for elevation to the post of CJI.

Justice S. D. Anand (Retd.)

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Nishant Ahlawat
Cyber Law practitioner

Know more about our judiciary
Subhash Nagpal

MY PERSPECTIVE

SENIORITY – A WISER OPTION FOR ELEVATION TO THE POST OF CJI

Justice S. D. Anand (Retd.)

The judiciary would appear to be at the cross roads of the history. Things aptly belonging to yester years, are being flawed in the media. Minimal number of pointed out ‘aberrations’ (which too have been found to have occurred almost in the hoary past) are being magnified to demean the ambience attached to the Judicial Dispensation at the superior level. The mention of an allegation against an individual who is no longer living and cannot defend himself, is inappropriate. The ideal and the only appropriate course was to raise it during his life time and at the time of his induction and confirmation etc.

Like wise, the suggestion by certain quarters that the appointment to the office of CJI ought to be made on ‘merit’ and not ‘seniority’, is fraught with chaotic consequences. The country has yet to come to terms with the supersession phenomenon when eminent Judges quit to protest it and to uphold the dignity and independence of judiciary.

WELCOME ANNOUNCEMENT

State Judicial Services preparations Guidance facility

Finding necessity for guidance for all those preparing for State Judicial Services Competitions Examinations, Paramount Law Consultants Ltd. has decided to help with valuable guidance. Interested persons are welcome.

Legal Audit and Moral Audit Services

Paramount Law Consultants Ltd., Delhi has completed its research and is taking up legal audit and moral audit services for the Corporates.

Subhash Nagpal
Chairman
Paramount Law Consultants Ltd., Delhi

The ultimate outcome of any legal challenge to the creation of NJAC to replace the Collegium System being obviously unpredictable, the prospect of the legislation being ratified by the required number of State Assemblies and it becoming the Law are bright. While the country respects the wisdom of those authorized by the electorate to legislate, the views of the current holder of the office of CJI in defence of the Collegium System did deserve serious consideration. Be that as it may, the implementation of the 'merit' methodology - as against seniority, would spell chaos for the independence of judiciary which is so very dear to our countrymen.

Each dispensation provided for in the Constitutional documentation must get the respect of the whole country. The Justice Delivery System, at the superior level in particular, also craves for avoidance of anything which might affect its independence.



IMPORTANT CHECKLIST TO GET A SOFTWARE DEVELOPMENT AGREEMENT DRAFTED

Nishant Ahlawat*
Cyber Law practitioner

01 SCENARIO

With rise of e-commerce in India and the world, new and naïve form of e-commerce business models and technologies are coming up every minute in market. In fact some of these services have become integral part of our day today life and have changed the way we travel, we shop, we buy items of our daily needs, etc. On other perspective these concepts or models may either be identical or distinct of each other, but all of these streams have one common feature.

This common feature is their dependency on multiple software platforms for effective running and smooth execution of their concepts. Now be it a [startup](#) or an IT giant, they all have their technical dependency on in-house or outside Technical teams for their IT resource development depending upon multiple factors like skills, team size, turn- around time, costing etc.

Like any other business, getting a software developed also requires to be safeguarded with strong, detailed and flexible contracts in order to minimize exposures keeping in mind the dynamism of IT industry.

Based on my experiences as a technology-law consultant, below mentioned are few points that should be essentially considered at time of drafting, negotiating and finalizing such agreements.

02 DESIGN AND DEVELOPMENT PROCESS:

Issues such as size and experience of team, nature and complexity level of software to be developed, methodology of development, prescribing and specifications of the development structure, nature and number of documents required in development of software. It should also be flexible to cater to any increase in team and expansion or variation in change of software to be developed.

1. **Testing** is an integral part of software development, hence questions such as process for testing the software and at what points, clients access to the results of tests, evaluation process, results and its implication, costing for the same, whether inclusive or exclusive shall be kept in mind.
2. **Intellectual Property Rights** is the most important and commercially critical part related to software development. Issues such as licenses involved, third party licenses to be sought, platform used whether open source or specific, open source license terms, nature of client rights involved and developer licenses, sub licensing rights etc. need to be addressed to at time of software development.
3. **Warranties and Indemnities** is again a critical part in the process of software development legal documentation. Warranties are promises that a particular state of affairs obtains; indemnities are undertakings to compensate by a defined measure (usually going beyond standard contractual damages) in defined circumstances. Warranties and indemnities are used to allocate risk between the parties to the contract. Issues such as warranties by developer related to originality and genuineness of software under development, limitation of liability related to any exposure, level of indemnification by developer in case of time lapses, non-delivery or product quality inferiority to client or as the case may be must be kept in mind while evolving such documentation. Who will control and conduct the dispute and any settlement with the third party, specific warranties as to the performance, stability or security of the software, other warranties and indemnities essential in the agreement.
4. **Installation and Integration** of the developed software with one or more software(s), operating systems, specific API accesses or any other futuristic technology, onus of party taking care of such integration for technical support or commercial charges as the case may be must also be well defined in order to avoid any vacuums in terms of execution and implementation of such software development.
5. **Maintenance** and technical support with respect to the developed, evolved, integrated software should also be aptly defined in order to avoid any ambiguity and confusions in development channel. Issues such as to what extent developer will cater its support and what shall be onus of client should be expressly described based upon structure, team size and complexity of such software under development.

- 6. Updates and Upgrades** is part and parcel of IT market, forming bases of dynamism of this industry. Issues such as what sort of upgrades and updates are essential with respect to dependent soft wares, which party has what obligations, updates and upgrades to be available in general and custom software modules, dependency on support services, whether upgrades and updates shall be forced or optional.

03

SOURCE CODE ESCROW

Source Code Escrow is a part of the business to safeguard client and to maintain stability against exposures to business dependency. It becomes very essential as substituting a software platform completely becomes very difficult or impossible at large because of integration, implementation and dependency of a business on such software, which requires constant updates, upgrades and maintenance support. What if in such a situation developer goes out of business, goes bankrupt or by any means go out of trade. You cannot wait and decide such situations then and there. Ideally source code can be stored safely with a professional third party/escrow agent in order to avoid any risk if at all any such issues arises, who will pay for such a support, in what contingencies source code be released to client, for what time period escrow agent will keep sourced code secure etc. are some of the issue to be addressed to at time of drafting.

04

DISPUTE RESOLUTION

Dispute Resolution is one part of any business contract that seems more of a necessary evil. Till times and relations are good, this party of contract stays silent. But still it is a road map in worst case scenario. Issues such as jurisdiction for dispute resolution, seat of arbitration, rules to be followed, governing laws etc. should be aptly defined in any such agreement. Ideally your arbitrator should be one who has ample knowledge of techno-legal affairs in case of predefining of name of an institute or arbitrator.

05

RENEWAL, TERMINATION, AMENDMENTS AND EXIT

This clause needs to be most cautiously drafted providing entry and exit points in a contract. Issues such as by which party and under what circumstances such agreement can be renewed, how can terms already agreed between parties can

be amended, edited, updated, how can a new party be introduced and existing party be released must be clearly defined. In case of termination, under what contingencies can either party terminate this agreement and its implication on licenses granted under this or any dependent agreements, whether any charge will have to be paid to either party in case of such termination, if any software installed and active under this agreement has to be removed , or allowed to be continued.

Besides these there might be other integral structures for any such software related contract/ document based upon nature of understanding between parties/ size, kind of technologies/commercial interests involved with such business process.

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***For any further issues and queries and suggestions please contact me on nishant@technolegals.com**

Next Write Up: Why you should have a 'E-will' ?

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KNOW MORE ABOUT OUR JUDICIARY
Subhash Nagpal

Supreme Court of the India is the Apex Court of the Country.

Its present Chief Justice and Judges are:

S. No.	Name of Hon'ble Judge	Date of Birth	Date of Appointment	Date of Retirement
1.	Hon'ble Mr. Justice R.M. Lodha (Chief Justice of India w.e.f. 27/04/2014)	Sep. 28, 1949	Dec. 17, 2008	Sep. 27, 2014
2.	Hon'ble Mr. Justice H.L. Dattu	Dec. 03, 1950	Dec. 17, 2008	Dec. 02, 2015
3.	Hon'ble Mr. Justice T.S. Thakur	Jan. 04, 1952	Nov. 17, 2009	Jan. 03, 2017
4.	Hon'ble Mr. Justice Anil R. Dave	Nov. 19, 1951	Apr. 30, 2010	Nov. 18, 2016
5.	Hon'ble Mr. Justice S.J. Mukhopadhaya	Mar. 15, 1950	Sep. 13, 2011	Mar. 14, 2015
6.	Hon'ble Mrs. Justice Ranjana P. Desai	Oct. 30, 1949	Sep. 13, 2011	Oct. 29, 2014
7.	Hon'ble Mr. Justice J.S. Khehar	Aug. 28, 1952	Sep. 13, 2011	Aug. 27, 2017
8.	Hon'ble Mr. Justice Dipak Misra	Oct. 03, 1953	Oct. 10, 2011	Oct.02, 2018
9.	Hon'ble Mr. Justice Jasti Chelameswar	Jun. 23, 1953	Oct. 10, 2011	Jun. 22, 2018
10.	Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla	July 23, 1951	April 2, 2012	July 22, 2016
11.	Hon'ble Mr. Justice Ranjan Gogoi	Nov. 18, 1954	April 23, 2012	No. 17, 2019
12.	Hon'ble Mr. Justice Madan B. Lokur	Dec. 31 1953	Jun. 04, 2012	Dec. 30, 2018
13.	Hon'ble Mr. Justice M.Y.Eqbal	Feb. 13, 1951	Dec 24, 2012	Feb. 12, 2016
14.	Hon'ble Mr. Justice V. Gopalagowda	Oct. 06, 1951	Dec 24, 2012	Oct. 05, 2016
15.	Hon'ble Mr. Justice Vikramajit Sen	Dec. 31, 1950	Dec 24, 2012	Dec. 30, 2015
16.	Hon'ble Mr. Justice Pinaki Chandra Ghose	May. 28, 1952	Mar. 08, 2013	May.27, 2017
17.	Hon'ble Mr. Justice Kurian Joseph	Nov. 30, 1953	Mar. 08, 2013	Nov. 29, 2018
18.	Hon'ble Mr. Justice Arjan Kumar	Mar. 07, 1954	Apr. 12, 2013	Mar. 06, 2019

	Sikri			
19.	Hon'ble Mr. Justice Sharad Arvind Bobde	Apr. 24, 1956	Apr. 12, 2013	Apr. 23, 2021
20.	Hon'ble Mr. Justice Shiva Kirti Singh	Nov. 13, 1951	Sep. 19, 2013	Nov. 12, 2016
21.	Hon'ble Mr. Justice C. Nagappan	Oct. 04, 1951	Sep. 19, 2013	Oct. 03, 2016
22.	Hon'ble Mr. Justice R.K. Agrawal	May. 05, 1953	Feb. 17, 2014	May. 04, 2018
23.	Hon'ble Mr. Justice N.V. Ramana	Aug. 27, 1957	Feb. 17, 2014	Aug. 26, 2022
24.	Hon'ble Mr. Justice Arun Mishra	Sep. 03, 1955	July. 07, 2014	Sep. 02, 2020
25.	Hon'ble Mr. Justice Adarsh Kumar Goel	Jul. 07, 1953	July. 07, 2014	Jul. 06, 2018
26.	Hon'ble Mr. Justice R.F. Nariman	Aug. 13, 1956	July. 07, 2014	Aug. 12, 2021
27.	Hon'ble Mr. Justice Abhay Manohar Sapre	Aug 28, 1954	Aug. 13, 2014	Aug. 27, 2019
28.	Hon'ble Mrs. Justice R. Banumathi	Jul. 20, 1955	Aug. 13, 2014	Jul. 19, 2020
29.	Hon'ble Mr. Justice Prafulla C. Pant	Aug. 30, 1952	Aug. 13, 2014	Aug. 29, 2017
30.	Hon'ble Mr. Justice Uday U. Lalit	Nov. 09, 1957	Aug. 13, 2014	Nov. 08, 2022

