



DELHI HIGH COURT BAR ASSOCIATION

Sher Shah Road, New Delhi-110 503 Phone : 011-2338-5562

11.06.2021

Hon'ble the Chief Justice of India
Supreme Court of India
New Delhi.

Your Lordships,

Greetings from the Delhi High Court Bar Association. We hope and pray that your Lordship and your Lordship's esteemed colleagues are safe and healthy in these troubled times. We write to you the present letter to bring to your Lordship's kind attention, matters of vital importance concerning our institution.

Yesterday, a letter was circulated by the President of the Supreme Court Bar Association (hereinafter 'SCBA') informing its members that your Lordship had been pleased to favorably consider the request of the SCBA and had written to all the Chief Justices of the High Courts for considering lawyers practicing before the Hon'ble Supreme Court for elevation to the High Court Benches across the Country. SCBA has in fact, constituted a so called "search committee" for identifying meritorious lawyers practising before the Hon'ble Supreme Court, for consideration by the collegium of the High Courts.

At the outset we must point out to your Lordship that the reason cited by the SCBA for elevating lawyers practicing in the Hon'ble Supreme Court of India as High Court Judges is the perception of the SCBA that the said lawyers are more '*meritorious*' than their colleagues practising before the Hon'ble High Courts. This claim is not only preposterous but in fact, humiliates lawyers practising before other Hon'ble Courts throughout the Country. This claim made by the SCBA is not only false and misleading but undermines the competence and talent of lawyers practicing before the High Courts. It is no secret that several well known jurists have evolved from amongst those exclusively practicing before the High Courts and many have also adorned the benches of the High Courts and Supreme Court of India. It would really be futile to name them.

While it is true that each meritorious and deserving lawyer needs to be given an opportunity for being considered for elevation as a Judge of the Hon'ble High Court, but what is disturbing and a matter of grave concern is the attempt to have lawyers practicing in Supreme court alone be considered a separate class of Advocates to be considered for such distinction. If that be the criteria then why not meritorious lawyers practicing in courts subordinate to the High courts be also considered, some of whom have far more knowledge and experience in all fields of law than even those practicing in Supreme Court of India. There is no dearth of talented, competent and meritorious lawyers practicing in all the High Courts in the country and in the Courts subordinate to the High Courts.



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Taking cue from the argument advanced by the SCBA for considering lawyers practicing in Supreme Courts for elevation to High courts, it may well be argued as to why should the High Court lawyers be not considered for direct elevation as Judges of the Hon'ble Supreme Court? Alas that has historically never been done. On the other hand, the record of appointment of Judges to the High Courts in the past would show that many lawyers practicing in Supreme Court were already considered and elevated to the bench of the High Courts, without specific directives to the Chief Justices of the High Courts. In many cases, the collegiums of the Hon'ble High Court did not have sufficient opportunity of assessing as to whether the Advocates recommended by it were worthy of the recommendation as these Advocates did not regularly practice before the said High Court.

The practice and procedure for elevating lawyers to the High Courts is based on the recommendation of the High Courts' collegium. The collegium of the High Court recommended candidates for elevation based on their merit, competence, conduct, integrity and general reputation at the Bar. All these qualities are observed, tested and assessed by their regular appearances before the Hon'ble Judges of the High Court concerned.

If the so called SCBA 'search committee' is to forward the names for consideration by the High Courts collegiums, then why should there not a similar search Committee be formed by every High Court Bar Association, to identify talented and meritorious candidates and forward their names to the High Court collegiums?

Recommending names of lawyers practicing in Supreme Court of India, for elevation to High Courts, without adequate opportunity to the High Court collegium to observe and assess their talent, competence and integrity will neither be fair nor just either for the Institution or for the talented and deserving lawyers practicing before the High Courts. Such recommendations shall also take away the autonomy of the High Court collegium to select candidates regularly practicing to adorn the bench of the High Court based on the assessment of their day-to-day performances. The selection of lawyers by High Court Collegium encourages decentralized decision - making process assessed from ground reality, which benefits not only the Judicial Institution of each state but is also in larger public interest.

Experience has also shown that meritorious, competent and deserving candidates recommended by the High Courts' collegium for elevation as Judges of the High Courts have been rejected / deferred by the Supreme Court collegium without any opportunity to the High Court collegium to explain the reasons for their recommendation and which makes the entire process opaque. The loss is ultimately that of the Institution and the public at large.



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The attempt to create a distinct class of lawyers practicing before the Hon'ble Supreme Court for being considered for elevation as Judge of the Hon'ble High Courts is not only unfair, arbitrary and discriminatory but is likely to create resentment amongst a large number of lawyers in the High Courts. This will lead to disgruntlement and demoralization of a large section of the Bar.

Given the reasons aforesaid, we beseech your Lordship to withdraw such directives, if any, issued to the Chief Justices of the Hon'ble High Courts on the request of SCBA and for which we shall be eternally grateful.

With warm regards,

Mohit Mathur
Sr. Advocate
President

Abhijat
Hony. Secretary

Yours truly