

# ● ISSUE OF NON-EVALUATION OF ANSWER SCRIPT IN COMPETITIVE EXAMINATION BY ARTIFICIAL INTELLIGENCE (AI) TECHNOLOGY: JUDICIAL APPROACH



**Prof S D Sharma\***  
**Dr. Priya Ranjan Kumar<sup>#</sup>**

## **Abstract**

*Competitive examinations are the regular affair across the nation to search talent suitable to educational or employment standards. The main component in completing the competitive of examination process is evaluation of answer script in which traditional methodology based on human direct engagement were replaced and candidate merits are tested with the help of AI driven technology particularly in Multiple Choice Question(MCQ) pattern with an objective to attain fairness, accuracy, inexpensiveness, reduce manpower, maintain the integrity of the process of evaluation and most importantly declaration of result on time. AI driven technology while rejecting to evaluate answer script has raised legal issue and litigation. Candidates have equal right to compete for selection to public employment or admission to educational institution is compromised due to commission of technical or accidental error which are non-substantive and not material in nature. Indian judicial trend has seen a shift from humanitarian consideration of technical error committed by candidate to mechanical application of instructions given by the examination conducting authority. Financial disability or legal illiteracy may impede the meritorious candidate to spin the wheel of legal process and secure justice wherein the AI based evaluation process does not evaluate candidate paper due to commission of technical error.*

## **Key words**

*Artificial Intelligence(AI), Evaluation, Competitive Examination, Technical Error, Judiciary, Natural Justice, Per-incuriam.*

## **Introduction**

Digitalization of society has produced a comprehensive influence and infraction on individual and group behaviour. Use of artificial intelligence has made considerable progress in the subject field of education, economics, sociology, political science, and law is not an exception. Advancement in science and technology has replaced the performance of task including 'cognitive task' by human intelligence with AI. In the field of education, its application has transformed the traditional method of teaching,

\*Professor of law, Recipient of President of India award in legal research on 30th May 2017, Former Dean & Head, Faculty of law, Kumaun University, Nainital, India, Former Head of Department of Law, Assam, Central University Silchar, India, Former Professor of law, BBA Central University, Lucknow, India, Former Director, Rajendra Prasad law Institution, Kumaun University, India, Former Member Uttarakhand Legal Services Authority, India, Presently, Professor of law, SSI State University Almora India; Residence 372 Hind Nagar, Lucknow, 226012 U.P. India

<sup>#</sup>Associate Professor & Head, Department of Law, Tezpur University, Napaam.

evaluation, class monitoring, curriculum framing, with that of technology-intelligence based adoptive learning, smart class room, intelligent tutor system, allowing the students to have twenty four hours learning opportunity, have better engagement with less pressure, manage large number of students.<sup>1</sup> AI has replaced the human experts to provide skills for cracking IELTS or TOFEL examination to have better opportunity to study abroad.<sup>2</sup> During the Covid-19 pandemic most of the education institutions have made a shift to adopt technology in teaching-learning process online and evaluate answer scripts by applying various rubric.

In the era of Information Technology, AI is a competitive advantage for the talent manager in the process of admission to educational institution or recruitment to any public or private offices. Traditional methodology based on human direct engagement were replaced and candidate merits are tested with the help of AI driven technology with an objective to attain fairness, accuracy, inexpensiveness, reduce manpower, maintain the integrity of the process of evaluation and most importantly declaration of result on time. Modern recruitment with AI algorithm based software`s allow the employer or institution to scrutinise the huge volume of applications, filter application with assigning code, conduct examination, evaluation and declaration of result, test skill and experience.<sup>3</sup> This paper highlight only the application of AI in evaluation of answer script for competitive examinations (MCQ based examination) conducted by educational institutions or Public Service Commission's whose aim is to select the most meritorious or talented candidate amongst the competing candidates which will also sub-serve the large public interest and efficacy of the institution would attain the necessary standards.

### **AI Based Competitive Examinations**

Conducting competitive examinations are the regular affair and can be seen throughout the year across the nation. These examinations are conducted for entry into various graduate programmes and employment. The examinations which are very popular among the candidate having high competition are either conducted by the constitutional body like the Public Service Commission at Union<sup>4</sup> having function to conduct examination for appointment to the services of the Union and the State or by statutory body like Universities or SBI etc. Some of the popular examination are Union Public Service Commission(UPSC) for Indian Administrative Services(IAS), Indian Economic Services Examination(IESC), National Defence Academy Examination(NDA), Combined Defence Services Examination etc; Staff Election Commission(SSC); Food Corporation of India,(FCI); National Testing Agency(NTA) for Joint Entrance Examination(JEE), admission to Central University through CEET for under-graduate

---

<sup>1</sup>SONOO JAISWAL ARTIFICIAL INTELLIGENCE IN EDUCATION, <https://www.javatpoint.com> (Last visited on Sept. 12, 2022, 1.24 PM).

<sup>2</sup>Atmdeep31, Artificial Intelligence vs Human a Comparative Study for Exam-Preparation, ACCIOIBIS <https://www.accioibis.com/artificial-intelligence-for-exam-preparation/> (Last visited on July.29, 2022, 7.14PM),

<sup>3</sup>Berta Melder, The Role of Artificial Intelligence(AI) in Recruitment, TALENTLYFT <https://www.talentlyft.com/en/blog/article/207/the-role-of-artificial-intelligence-ai-in-recruitment> (Last visited on Sept. 10, 2022),

<sup>4</sup>INDIA CONSTITUTION, 1950. art. 315 to 323.



and post graduate; National Eligibility cum Entrance Test (NEET); Graduate Aptitude Test in Engineering (GATE); Law School Admission Test (LSAT); Common Admission Test (CAT); Institute of Banking Personnel Selection Examination for Probationary Officers (IBPS-PO); All Bank of India; and many more conducted by the Central and State Government as well as educational institution for admission to top Universities in India.<sup>5</sup> The preliminary examinations are mostly based on MCQ type question and evaluations are processed either based on human intelligence or artificial intelligence. Andhra Pradesh Public Service Commission (APSC) acclaimed to have successfully completed the evaluation of forty eight thousand scanned answer script digitally by applying AI software and attained fairness, minimise scope of disparity.<sup>6</sup> This examination was an admixture of both human intelligence and artificial intelligence. Paper was evaluated in real sense by the human experts and only the process of recording, identify bar codes, calculation of marks, hint for not evaluated shifts etc were done by tech-based software. Till now descriptive answer book evaluation software with fully automated have not been applied.

It is also very important to note that during Covid-19 pandemic and particularly the imposition of lockdown has adversely impacted the life, living standard, economic progress of every individual of the world. It has revealed technology gap in the system due to which many examinations were postponed or cancelled including the joint entrance examination of NTA, NEET PG, UGC NET, UPSC-Enforcement officer, Staff Selection Commission, Indian Air Force automated e-Pariksha, and all the entrance examination announced by various universities.<sup>7</sup> Such a situation have motivated all the sector to adopt technology based scientific means to carry on their regular work and have free and effective communication. Institutions have relied on AI based technology to discharge their function whether it was the field of education, medical, employment in public or private sectors. Jurisprudence has received challenge with socio-economic development, recognition of political rights and most importantly with the advancement in science and technology. Law being a tool of social transformation must take into account the fast scientific and technological development with aim to foster justice while balancing rights and objectives of the competitive examination conducted with AI mechanism.

### **Patter of Examination/Evaluation and AI Assisted Technology**

The pattern of test may be objective type question which is based on Multiple Choice Question (MCQ) or Descriptive in nature. For MCQ OMR sheet can be evaluated with the help of "optical character recognition technology"<sup>8</sup> and for descriptive AI technology

---

<sup>5</sup>Megha K.S., Competitive Examination in India 2022, GETMYUNI <https://www.getmyuni.com/articles/list-of-competitive-exams-in-india> (Last visited on Sept.12, 2022)

<sup>6</sup>Amravati, APPSC pioneers digital evaluation for competitive exam, TIMES OF INDIA <https://timesofindia.indiatimes.com/education/news/appsc-pioneers-digital-evaluation-for-competitive-exam/articleshow/83142006.cms> (Last visited on Jun. 1, 2021, 3:37 PM)

<sup>7</sup>Heeba Hameed, List of major exams postponed due to Covid19, TIMES OF INDIA <https://timesofindia.indiatimes.com/education/news/list-of-major-exams-postponed-due-to-covid-19/articleshow/82213367.cms>. (Last visited on Apr. 26, 2021 1:49 PM)

<sup>8</sup>S. Impedovo, L. Ottaviano and S. Occhinegro, Optical character recognition, 5 IJPRAI.1, pp. 1- 24 (1991)

which apply segmentation of words, stemming, removal of stop words etc.<sup>9</sup> The MCQ answer sheet is structured in a fashion to be scanned and read by computer with pre-programmed software to use optical character recognition and evaluate the answers of the candidate in comparison with preloaded answers and produce result quickly in a minute. To effectively evaluate answer sheet the machine requires that one option among four beneath each question to be circled with thickness or darkened shades which will be easily recognised by the programmed software.

By adopting this method of optic reading, hundreds and thousands of answer sheets can be got evaluated in very quick time. This would also avoid the possible error margin and would also avoid the element of adversely affecting the prospects of any candidate.

### **Constitutional Rights of Candidates**

All persons are having equal right to compete for selection to public employment or admission to educational institution. Constitution of India has guaranteed right to equality in admission and employment.<sup>10</sup> These fundamental rights are not absolute and are subject to constitutional and legal limitations including the eligibility criteria for applying for examination in the nature of age, educational qualification, payment of fees, government reservation guidelines, time limit for making application and appearance in exam, adhering to the code of conduct and clear direction issued by the examination conducting authorities. When the mode of conducting competitive examination is AI based which is decided and well informed to the candidate at the time of advertisement then it cannot be prayed to change the mode of conducting such examination. A mixed public view is seen during Covid-19 period for regular examination announced by various universities. All India Forum to Save Education, has criticised the call of Delhi University to conduct teaching and examination online and demanded to cancel all online examination conducted so far and hold offline examination.<sup>11</sup> In contrast to it, the Maharashtra students have demanded online examination.<sup>12</sup> The reasons not to go for online examinations were on the probable ground of economic burden, techno-stress, absence of computer skill knowledge, health issue, non-access to smart phone and internet facilities. But the same logic can not be taken in cases of competitive examinations except training on technology. The contention to arrive at consensual and logical agreement is that the competitive examination is a process to select a meritorious candidate who are competing among other candidate and technology is just providing an assistance to have a more accurate and undisputed result. In the matter of fundamental rights, technology-based impediment which is more in the nature of technicality shall not be allowed to play a

---

<sup>9</sup>Sk Asif Akram, Mousumi Saha &Tamasree Biswas, Evaluation of Descriptive Answer Sheet Using Artificial Intelligence, IJESRT.184, 184 (2019), <http://www.ijesrt.com/issues%20pdf%20file/Archive-2019/April-2019/25.pdf>. (Last visited on 20 Sept, 2019)

<sup>10</sup>INDIA CONSTITUTION. art. 14-16.

<sup>11</sup>Atul Krishna, Covid-19: Students Campaign Against Online Exams, Demand Student Welfare, NDTV <https://www.ndtv.com/education/covid-19-students-campaign-against-online-exams-demand-student-welfare> (Last visited on May.20, 2020, 4:57 PM)

<sup>12</sup>Education and Careers Desk, Maharashtra Board Students Protect Demanding Online Exams, Lathicharged, NEWS18 <https://www.news18.com/news/education-career/maharashtra-board-students-demand-online-exams-protest-outside-varsha-gaikwads-home-4718096.html> (Last visited on Jan. 31, 2022 5:43 PM)



substantive role resulting in denial of right of individual.<sup>13</sup> Artificial intelligence is replacing the human intelligence and in such a development the candidates must be given hands on training to comply with the instruction to nullify the chance of any error or future litigation.

### **Probable Reasons for Non-Evaluation of Answer Scripts in AI Driven Competitive Examination**

It is expected from the candidates that they should adhere to the clear instructions given by the authority. Answer script of the candidate may not be evaluated due to the various reasons: -

**Cancellation of Examination:** After the completion of examination, the authority has declared cancellation of examination as the question paper came into public domain before the schedule date, day, and time of examination. If the examination is cancelled before the schedule date of examination, then the question of evaluation of answer script does not arise. Based on the three-member committee report, the 67th Combined (Preliminary) Competitive Examination held on 08-05-2022 was cancelled.<sup>14</sup> UPTET 2021 examination was cancelled just before few hours for the commencement of Exam.<sup>15</sup> After the date of exam, the Staff Selection Commission cancelled recruitment of Sub-Inspector exam in Delhi due to reported compromised.<sup>16</sup>

**Commission of Malpractice:** Malpractice means careless, wrong, or illegal behaviour or dishonest behaviour.<sup>17</sup> The act includes tampering (rubbing the circles with chalk powder/scratching the circle with razor), writes irrelevant matter giving indications of his identity, influencing examiner or other who are involved in evaluation process to receive undue advantage/favour, cheating, or copying, and misbehaviour etc. The act of malpractice will result into debarring and cancellation of candidature. Karnataka Public Service Commission has debarred a candidate and cancelled his candidature for competitive examination held in the year 2021.<sup>18</sup>

**Non-Adherence to Mandatory Instructions/Guidelines:** The Commissions or the institution or the examination conducting authority, do provide certain guidelines to be followed by the candidate while appearing for examination. If the candidate has not

---

<sup>13</sup>Union of India v. Guduru Raja Surya Praveen, (2015) SCC Online Hyd 437.

<sup>14</sup>Victor Dasgupta, BPSC Exam Paper Leak: Exam Cancelled After Three-member Committee Submits Report, INDIA.COM NEWS DESK <https://www.india.com/education/bpsc-exam-paper-leak-exam-bihar-public-service-commission-cancelled-after-three-member-committee-submits-report-5381147/>(Last visited on May,9, 2022, 1:09 AM),

<sup>15</sup>MaitreeBaral, UPTET 2021 exam cancelled due to alleged paper leak, Hindustan Times <https://www.hindustantimes.com/education/competitive-exams/uptet-2021-exam-cancelled-due-to-alleged-paper-leak-101638077477940.html> (Last visited on Nov. 28, 2021, 11:16 AM)

<sup>16</sup>Zee News Reporter, Paper leak forces cancellation of SSC CPO (SI/ASI) examination - re-exam date inside, ZEE NEWS [https://zeenews.india.com/news/education/paper-leak-forces-cancellation-of-ssc-cpo-si/asi-examination-re-exam-date-inside\\_1868318.html](https://zeenews.india.com/news/education/paper-leak-forces-cancellation-of-ssc-cpo-si/asi-examination-re-exam-date-inside_1868318.html) (Last visited on Mar. 22, 2016, 12:45 PM),

<sup>17</sup>Oxford Learner's Dictionaries, <https://www.oxfordlearnersdictionaries.com> (last visited Sept. 9, 2022)

<sup>18</sup>Daiji world Media Network, Bengaluru: Competitive exam - Candidate debarred for rule violation, DAIJIWORLD (Sept. 29, 2021, 12:11 PM) <https://www.daijiworld.com/news/newsDisplay?newsID=878181> (Last visited on Sept 9, 2022).

followed the mandatory instructions intentionally or committed gross violation of instruction or unintentionally forget to write roll number in numeric and also not circled the roll number in the OMR sheet, then the answer sheet cannot be evaluated.

**Technical Error/Accidental Error:** Technical error like not mentioning the paper number or roll number or paper series and other details which are necessary for computer to read and identify the candidate preliminary information before evaluating the answers to the question in the booklet. Technical error may or may not be fatal for conducting AI driven evaluation process and each case must be given treatment based on the nature of error committed, its free flow effect and impact. Candidates appearing for examinations may be induced by enormous pressure, lapse of concentration and due to which they may commit technical error in filling OMR sheet including darkening/shading circles representing their roll number, paper series code, paper code etc. Technical error does not include non-attempting any question in the booklet. Technical error is not a deciding factor of the merit of the candidate or knowledge or competitiveness of the candidate rather, it is an error which AI driven technology will not read and therefore, does not further the process to evaluate main part of answers to the questions, the result of which is inability to determine merit of candidate. Technical error which is substantive, and material will lead to non-evaluation of answer script.

### **Commission of Technical Error and Issue of Evaluation of Answer Script - Shifting of Judicial Trend from Humanitarian Consideration to Mechanical Applications**

Once, the AI based system was deployed for evaluation, can the authority at later stage allow human intervention in evaluative of answer script for any reason? Whether the technical error (materially or substantially) committed by the candidate cause hardship in evaluating the answer script? The judicial attitude in the early days of application of AI in evaluation of answer script was based on humanitarian ground, to scrutinise each case based on the nature of mistakes committed, reasons behind commission of such mistakes, impact of mistakes committed, balancing the rights & interest of candidate and the objective of competitive examinations. The past couple of years have witnessed shift in judicial trend from humanitarian to just mechanical (adherence to instruction given to candidate). Before 2019, on the above issue the decision of the High court of various states were divided. In the case of *Union of India v. Guduru Raja Surya Praveen*,<sup>19</sup> a candidate who failed to shade/blacken the test form number in the answer sheet while appearing for Tier-II examination of Combined Graduate Level Examination-2014, prayed before the High Court of Hyderabad to declare non-evaluation of answer script as bad in law and issue a direction to the Staff Selection Commission to evaluate and declare result at the earliest. It was noticed that the candidate has secured overall 73.5% score in all two evaluated paper and was a meritorious candidate and failure to shade/blacken the test form number was a technical error which has no direct bearing upon the issue of undertaking the evaluation of non-evaluated paper. The Court has given direction the Staff Selection Commission to undertake evaluation of the answer sheet of all candidates who have committed technical error in not thickening/blackening roll number or hall ticket number or roll number and declare the



result at the earliest. Such technical error will not in any manner materially or substantially alter or cause hardship in evaluating the answer sheet. The non-substantive and non-material irregularities shall not result in denying the benefit of evaluation of the answer sheet of a candidate. The element of flexibility to ignore non-substantive and non-material technical error committed by the candidate would only enhance and promote the larger public interest.

In the case of *State of Andhra Pradesh v. A. Vijayalakshmi*<sup>20</sup> the court while examining the technical error committed by the candidate appeared for entrance examination for the MBBS course in the medical college has taken into consideration minor age of the candidate into consideration and stated that mistakes committed are accidental error. The court examine the fairness and justification on the part of Commission to totally reject the answer script without looking into the mistakes and merit of the candidates. The Court has further observed that when the candidate after realising his mistakes has demanded fresh answer booklet to correct the same, they have not been served fresh booklet rather, an assurance was given that their answer book will be evaluated. Students are bound to commit error out of anxiety and emotional excitement. Their future career and satisfaction/happiness of their parents must be taken into consideration which ultimately promote the growth of the students. The major objective of the test is to measure the ability of the students and secure social justice which will not be attained if the authority take stand not to evaluate the answer script due to technical error or accidental error of the candidate. Even the Supreme court has provided one time relaxation when the candidate has disregarded the clear instructions issued by the Service Commission and written hall ticket number at other places of answer script.<sup>21</sup> Ratio of this case was followed by the Division Bench of Andhra Pradesh high Court on similar issue. The have stated that the objectives of the instruction and demand of its rigorous compliance are necessary to have fairness in the examination process, but it cannot be said that there are no exception to it. Examination is undertaken by the young individuals and there are possibility that they may commit mistakes accidentally. If the candidate has taken all the measures to correct the mistakes beyond the scope of recognition or identification, then there is no injury is said to have been done. Mechanical compliance of the instruction that in case of non-adherence to instruction will result into non-evaluation of answer script may deny justice.<sup>22</sup> During the competitive examinations the candidates are bound to commit mistake due to their mental condition and state of pressure. Unless those mistakes relate to the merit of the candidates and are material- Substantive in nature recourse is to condone it give a fair-equal opportunity to the candidate to compete along with others. In such cases answer scripts can easily be identified though it cannot be processed by the computers. Human interventions are necessary, and evaluation of answer scripts does not depend on adherence to mechanical exercise.<sup>23</sup>

<sup>20</sup>*State of Andhra Pradesh v. A. Vijayalakshmi*, AIR 1983 A.P. 321

<sup>21</sup>*Karnataka Public Service Commission v. B.M. Vijalakshmi*, (1992) 2 SCC 206; AIR 1992 SC 952.

<sup>22</sup>*The Convener EAMCET-93, Andhra University College of Engineering, Visakhapatnam v. Divyash K. Shah*, 994 SCC OnLine AP 434: (1995) 1 An WR 289 (DB)

<sup>23</sup>*Smt. Sujata Cheruku v. The State of Telangana*, 2017 SCC OnLineHyd 408

Unlike the decision in Guduru Raja Case, the High Court of Assam has taken contrary stand upholding the mechanical application of instruction or guidelines is mandatory and the candidate will not get benefit on humanitarian ground if they have committed technical error even though non-substantial or not material in nature. In *Assam Public Service Commission v. Izaz Yusuf Ahmed*<sup>24</sup> a candidate who appeared for the Assam Civil Services (Junior Grade) prelims examination and his result was declared as invalid candidate due to not mentioning of the question paper series in General Studies paper. Assam Public Service Commission contended that the candidate was well informed with a clear instruction to mention the appropriate series in the OMR answer sheet otherwise the paper will not be evaluated as the entire process of evaluation of OMR sheet is computerised with no scope of human intervention. A single Judge bench of Gauhati High Court held that when the artificial intelligence does not work, there should be human intervention and directed the APSC for evaluation by human agency as the mistakes on the part of the candidates were unintentional and bona fide. In appeal the Division Bench of Gauhati High Court relying on the ratio given in *State of Uttar Pradesh v. Upendra Nath Yadav*<sup>25</sup> has set aside the High Court Decision while upholding that when the entire examination was designed on evaluation of the OMR answer script by computer then human intervention is not permissible.<sup>26</sup>

To have a clarity on the point of law it is apt to refer Supreme Court decision in a matter arising out of review jurisdiction under Art. 142. The background of the case is that there was an allegation of commission of massive corruption and fraud in the examination and recruitment process conducted by the Tamil Nadu Public Service Commission for Group-1 Services for the year 2000-2001. The advocate commissioner appointed by the court revealed that except eight candidates' others candidate answer scripts were found in gross violation to clear instruction. Violation to instruction were of the nature of using sketch pen, pencil, two colour pen, irrelevant marking, writing name or number in answer script, first page kept blank. The Single Judge Bench of the Madras High Court given relief to the candidate while holding that the violation of instruction and memorandum of admission would not result in the invalidation of answer scripts and answer script must be evaluated. In appeal, the Division of the High Court set aside the single judge decision take note that violation of instruction given to the candidate, their scripts are liable to be rejected for evaluation by the TPSC. As the TPSC proceeded to evaluate those script, an inference is towards fact that illegality was committed. Therefore, the selection of 83 candidates were set aside as they have indulged in malpractices and gross violation of instructions to the candidates and directed the TPSC to evaluate only those eight candidate answer script who have not indulge in malpractices and prepare the merit list a fresh.<sup>27</sup> Division Bench of the Supreme Court of India while affirming the Division Bench of High Court decision taken note that the

---

<sup>24</sup>Assam Public Service Commission v. Izaz Yusuf Ahmed, 2019 SCC OnLineGau2415 : (2021) 5 Gau LR 158 at page 160

<sup>25</sup>Civil Appeal No. 3899/2019 [SLP (C) No. 35187/2017]

<sup>26</sup>Assam Public Service Commission v. Izaz Yusuf Ahmed, 2019 SCC OnLineGau2415 : (2021) 5 Gau LR 158 at page 160

<sup>27</sup>A. B. Natarajan v. The Secretary, Tamil Nadu Public Service Commission, 2011 SCC OnLine Mad 346: (2011) 4 Mad Lj 417.





material irregularities were committed by the selected candidates which were serious in nature. The core aim of having competitive examination based on impartiality and transparency was impeded due to misconduct of candidates. Candidate who are reckless to his own interest cannot be expected to be a good officer.<sup>28</sup> Hearing the review petition by the Division of Bench of the Supreme Court, certain facts was appraised to the court that the candidates whose appointments were set aside were already appointed and were in service for nearly 10 years and their superior reports about them were also good. These candidates have not been given sufficient time to present their case and therefore, principle of *Natura Justice* was denied. Within two days from the date of issue of returnable notice to them the matter was disposed of. Granting relief to the candidate allowing them to continue their service, the court stated that "mistakes committed by the candidates were very often ignored and it would be not just and proper to take such harsh view in the matter so as to render several reasonably good officers working for several years jobless".<sup>29</sup>

### **Per-incuriam**

Doctrine of precedent is embodied in Article 141 of the Indian Constitution which states that "the law declared by the Supreme Court shall be binding on all courts within the territory of India." *Stare decisis* provides settled basis for legal reasoning, curb arbitrariness of judges, promote efficient judicial administration, and give human sense of justice.<sup>30</sup> It introduces a modicum of certainty and calculability as to how once rights, duties, interest, and obligation will be applied. According to William Hocking, *stare decisis* is an ethical principle,<sup>31</sup> therefore, the judgement pronounced the apex court should not be ethically or legally be ignored unless substantial reasons exist to depart from the earlier decision.<sup>32</sup> Supreme court is having power to review its earlier decision to give beneficial effect to public interest, or to remove any conflict to the Constitution.<sup>33</sup> Decision is binding not because of its conclusiveness but due to ratio (reason) and principle laid down. Thus, Judicial Precedent is cited as an authority to decide a similar set of facts, and which can be used by the courts as a source for future decision making. Decision of a court is said to be *per-incuriam* if it was delivered in ignorance of relevant statutory provisions or in disregard to the decision of higher court/higher bench.<sup>34</sup> When the High Courts or subordinate court have not taken due care to refer decision of Supreme Court or higher Bench of the High Court or statutory provision then the decision of such high court or subordinate court would be regarded as decision in *per-incuriam* (lack of Law) and is not a good decision to be followed.

<sup>28</sup>Secretary, Tamil Nadu Public Service Commission v. A. B. Natarajan, (2014) 14 SCC 95.

<sup>29</sup>The Secretary, Tamil Nadu Public Service Commission v. A. B. Natarajan, (2016) 16 SCC 144.

<sup>30</sup>EDGAR BODENHEIMER, JURISPRUDENCE THE PHILOSOPHY AND METHODS OF THE LAW, 426-427 (Harvard University Press 2018)

<sup>31</sup>William E. Hocking, *Ways of Thinking About Rights: A New Theory of the Relation Between Law and Morals*, LAW: A CENTURY OF PROGRESS Public Law and Jurisprudence 259 (New York, 1937).

<sup>32</sup>Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

<sup>33</sup>Sambhu Nath Sarkar v. State of W.B., (1973) 1 SCC 856.

<sup>34</sup>Indore Development Authority v. Shailendra, (2018) 3 SCC 412.

The decision of Gauhati High Court delivered in *Assam Public Service Commission v. Izaz Yusuf<sup>35</sup> Ahmed* was delivered on 04.06.2019 in ignorance to Supreme Court decision in *The Secretary, Tamil Nadu Public Service Commission v. A. B. Natarajan<sup>36</sup>* in as much as the error or mistakes not material to the merit of the candidate was taken very harshly and denying the candidate a fair and equitable opportunity to compete among the other candidate and therefore was not just and proper. High Court of Assam decision was given in reliance to decision of Supreme Court in the case of *Upendra Nath Yadav<sup>37</sup>*, which has set a precedent to adhere strict compliance to the instructions issued to the candidates in much mechanical way without refereeing to the A. B. Natarajan case which was made on humanitarian ground.

### **Application of Principle of Natural Justice**

The basis of procedural law and process to make "fair play in action" is the Principle of Natural Justice. It is the basic requirement of rule of law. It relates fact and decision and provide protection against arbitrariness, non-application of mind and uphold faith in judiciary. The principle is applicable for judicial as well as quasi-judicial function and based on the latin maxim "nemo judex in re sua causa and audialterm partem" It do have corelation with article 14 and 21 of the Indian Constitution to ensure procedural fairness, just and reasonableness. In *S. Obula Naidu Case<sup>38</sup>*, the Division Bench of Andhra Pradesh High Court have not provided reasons to its decision while confirming the Tribunal order negating relief to candidates who have improperly written their register number/optional code which resulted into non-evaluation of their answer scripts. Such judicial trend may also be seen in the year 2017 wherein technical error committed by candidate in bubbling the hall ticket number were not given relief without assigning any reason by the high court except confirming the Tribunals order against which the appeal was made.<sup>39</sup> In the case of *Shiramdas Mahesh v. Telangana State Public Service Commission<sup>40</sup>* the court have not followed the principle of reason decision and has based its decision referring to A. B. Natarajan case decided by the SC ignoring the decision in review petition.

### **Litigative Ability and Free Access to Justice**

In the process of talent hunt through competitive examination, possibility of litigation in the Court cannot be ignored. Litigative ability and access to justice depends on the knowledge and awareness of the candidate on that matter of his rights, interest, available remedies in case of violation of his rights, appropriate legal forum from where justice may be obtained and financial ability to bear the expenses to move the process of court. Students appearing for examination to seek admission or unemployed young candidate may not have adequate financial ability to sustain the litigation cost. Financial disability or legal illiteracy may impede the meritorious candidate to spin the wheel of legal process and secure justice.

---

<sup>35</sup>(2019) SCC OnLineGau2415 : (2021) 5 Gau LR 158.

<sup>36</sup>(2016) 16 SCC 144

<sup>37</sup>*State of U.P. v. Upendra Nath Yadav*, Civil Appeal No. 3899/2019 SLP[C] No.35187/2017.

<sup>38</sup>W.P. No.20088/2003

<sup>39</sup>*B. Deepkumar v. Secretary, Telangana State Public Service Commission*, W.P. No. 41273/2016.

<sup>40</sup>W.P. No. 3862/2017.



## Conclusion

Artificial Intelligence and human reliance on its application have become inexorable. The algorithms technology has revolutionised all the sector with efficiency and accuracy in results. With all its merits, we cannot avoid the other side of AI which pose threats and legal issues among others while applying it in evaluation of answer scripts based on MCQ pattern. Human agencies act humanly with humanity considering all factual state in existence, apply its skill based on reasoning power for all course of action otherwise the same may be held in conflict of Natural Justice principle. During the competitive examination, the state of mind in which the candidate is situated, aspiration of their parents and society are often a driving factor due to which a candidate commits technical error while filling the first page of answer script. Equal right of the candidates to compete with others are denied due to commission of accidental error which are non-substantive in nature and expected to be ignored. The judicial approach in *Upendra Nath Yadav* and *Izaz Usuf Ahmed* reflected a shift from humanitarian consideration to mechanical application of instruction given to candidate. In a state of legal administration of justice where there is disagreement on the legal definition of Artificial Intelligence, scope of AI is not clearly defined, no hands-on training on computer and computer-based evaluation mechanism is provided to candidate, in such state of affair, giving mechanical application of instruction to candidates and complete denying human intervention to resolve the evaluation of answer script issue is denial of the very concept of equality. Competitive examination is a process to select a qualified and meritorious candidate who will bring laurels to the institution to which selected. Such selection can only be judged based on performance of candidate which he has answered to the given question in the booklet. Denying an opportunity at the initial stage solely on technical or accidental error committed by him while not circling or not darkling the appropriate column in the first sheet representing his or her roll number or paper code when there is other mechanism i.e. "Human Intervention" to resolve the issue and uphold the interest of the students and aim of the competitive examination, denies justice. All candidate who has not been given relief by the educational institutions or constitutional or legal body conducting examination, may not have financial resources or legal awareness to litigate and have access to justice. Before giving effect to mechanical application of instructions to candidates or denying human intervention in resolving issue relating to evaluation of answer script due to commission of technical error, the authority must assure to provide hands-on training on technical aspect which needs to be followed and expected to be adhered by a candidate in competitive examination.