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Research Article



AN ANALYSIS ON ALL INDIA JUDICIAL SERVICE

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ABSTRACT

This research paper deals with an analysis on all India judicial service. The main aim of this paper is to deliver what is all about the All India judicial service and appointment of judges and some constitutional provision which is related to the judicial service. Various, collegiums and authorities are been setup like NJAC for higher posts, however the all India judicial services is in up roaring demand for coming into existence. Appointments would be transparent and fair in nature. And it includes constitutional amendment act and the national judicial appointment commission. This paper is purely based on research methodology. Hope the research paper will give an advanced knowledge in the matter regarding all India judicial service.

Key words: Judicial service, appointment of judges, provision constitutional amendments

Introduction

Article 309 of the Constitution which occurs in chapter 1 of Part XIV deals with the recruitment and conditions of service of persons serving the Union or a State. It empowers the appropriate Legislature to regulate the recruitment and conditions of service of persons appointed to public services and post in connection with the affairs of the Union or of any State. The proviso however says that until the appropriate Legislature shall make the rules, it shall be open to the President, in the case of services under the Union, and to the Governor, in respect of the services under the State, to make rules for the said purpose. Article 310, which incorporates pleasure clauses, is not relevant for the present purpose. Article 311 contains three clauses. Clause (1) says that no member of a civil service, whether of the Union or the State, shall be dismissed or removed by an authority subordinate to that by which he was appointed. Clauses (2) and (3) go together. Clause (2) provides for a disciplinary inquiry to be held against a member of civil service before a punishment is imposed upon him. The proviso to Clause (2) creates three exceptions to the above rule which again is not necessary to notice for the present purpose. Clause (3) which qualifies the second proviso can equally be omitted from consideration. Article 312 deals with the All-India services. Prior to the Constitution (Forty-second Amendment) Act, 1976, it did not specifically refer to an All-India Judicial Service. It was however brought in along with Clauses (3) and (4) by the Constitution Amendment Act. This includes appointment of judicial officers by the National Judicial Appointment Commission and their eligibility for appointment.

All India Service

Article 312 empowers Parliament to create new All India Service common to the Union and the States. Parliament can create such service if the Rajya Sabha by a resolution supports by not less than two-third of the members present and voting declares that it is necessary and expedient in the national interest to create such service.¹

Objectives

- To know about all India judicial service.
- To study about appointment of judiciary.

All India Judicial Service

The 42nd Amendment has amended Article 312 of the Constitution which provides for the creation of an All India Judicial Service shall not include any post inferior to that of a district judge as defined in Article 236. The new clause (4) makes it clear that a law providing for the creation of the All India Judicial Service shall not be deemed to be an amendment of this Constitution for the purpose of Article 368.²

The Object of the creation of AIJS is to ensure greater inter-State co-ordination and implementation of the policies of the Central Government through these officers,, this also enables the Central Government to exercise a control over States in matter of execution of Union Laws. It is hoped that these services should be left under the complete control of the judiciary and not under the Government. This would, indeed be essential for the maintain independence and impartiality of the judiciary.

The service known at the commencement of the Constitution as the IAS and the IPS shall be deemed to be services created by the Parliament under Article 312. Until other provision is made under the Constitution all laws in force immediately before the commencement of the Constitution and applicable to any public service or any post which continues to exist under the Constitution, as an All India Judicial Service, or as service or post under the Union or a State shall continue in force so far as consistent with the provision of this Constitution. The Constitution (28th Amendment) Act, 1972, has abolished the privileges relating to salary, leave, pension, etc. of ICS officers which had been protected Article 314 of the Constitution. ³The Centre's plan to establish an All-India Judicial Service may not take shape soon due to divergence of opinion on the issue among various states and high courts and the matter may come up for discussion at a meeting of Chief Justices and Chief Ministers next month.

The plan of establishing an all-India service for judicial officers is hanging fire since the 1960s with some states opposing the idea on various grounds.⁴The All-India Conference of Chief Justices of High Courts and Chief Ministers will meet in the middle of April where the issue is likely to come up for discussion. The creation of All-India Judicial Services has been part of the agenda of the conference in 2013 too but this time the issue assumes importance as it would be the first meeting to be convened after the Narendra Modi government came to power last year. In November, 2012 a Committee of Secretaries chaired by the Cabinet Secretary had approved a "comprehensive proposal" for creation of the service. It was included as an agenda in the 2013 conference which decided that the issue needs more deliberation and consideration. So far, 15 states and 18 high courts (out of 24) have responded to the 2012 proposal. "... divergence of opinion among the state governments and the high court's on constitution of All India Judicial Services still persists," Law Minister D V Sadananda Gowda had informed the Rajya Sabha on Friday in a written reply. ⁵

¹ *Dr.J.N.Pandey, The Constitutional Law of India, P no 745*

² *ibid, P no 745*

³ *Dr.J.N.Pandey, The Constitutional Law of India, Pp no745-746*

⁴ <http://timesofindia.indiatimes.com/india/All-India-Judicial-Service-unlikely-soon/articleshow/46571916.cms>

⁵ *ibid*

One of the problems cited is that since several states have used powers under CrPC and CPC to declare that the local language would be used in lower courts even for writing orders, a person say selected from Tamil Nadu may find it difficult to hold proceedings in states like Uttar Pradesh and Bihar.

The other point of opposition is that an all India service may hamper the career progression of state judicial services officers. ⁶ The Centre's plan to create a national-level judicial service, on the pattern of the All-India Civil Services, got a push as at least two recommendations of the Law Commission and a department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice have supported the idea. In its 15th report, tabled in May, 2006, the standing committee had asked the Law Ministry to expedite steps to set up all-India judicial services to appoint district-level judges. As of now, while most government departments have all-India service recruits, selected after the all-India competitive examination conducted by the Union Public Service Commission (UPSC) every year, judiciary is perhaps the only set-up that doesn't have an all-India selection process. Almost all states have their own state-level judicial services, with successful candidates constituting the bulk of the subordinate judiciary.⁷

Appointment made by NJAC

- The National Judicial Appointments Commission Bill, 2014 was introduced in the Lok Sabha on August 11, 2014 by the Minister of Law and Justice, Mr. Ravi Shankar Prasad.
- The Bill has been introduced in conjunction with the Constitutional (121st Amendment) Bill, 2014, which establishes the National Judicial Appointments Commission (NJAC).

Reference to Commission for filling up of vacancies

- When a vacancy arises in the SC or HCs, the central government will make a reference to the NJAC.
- Existing vacancies will be notified to the NJAC within thirty days of the Act entering into force.
- When a vacancy arises due to the completion of term, a reference will be made to the NJAC, six months in advance
- For vacancies due to death or resignation, a reference must be made to the NJAC within thirty days of its occurrence.⁸

Procedure for Selection of Supreme Court judges

- Chief Justice of India: The NJAC shall recommend the senior most judge of the Supreme Court for appointment as Chief Justice of India. This is provided he is considered fit to hold the office.
- SC judges: The NJAC shall recommend names of persons on the basis of their ability, merit and other criteria specified in the regulations.
- Veto power of members: The NJAC shall not recommend a person for appointment if any two of its members do not agree to such recommendation.⁹

Power of the President to require reconsideration

- The President may require the NJAC to reconsider the recommendations made by it.
- If the NJAC makes a unanimous recommendation after such reconsideration, the President shall make the appointment accordingly.¹⁰

⁶ <http://timesofindia.indiatimes.com/india/All-India-Judicial-Service-unlikely-soon/articleshow/46571916.cms>

⁷ *ibid*

⁸ *ibid*

⁹ <http://www.prsindia.org/billtrack/the-national-judicial-appointments-commission-bill-2014-3359/>

¹⁰ <http://www.prsindia.org/billtrack/the-national-judicial-appointments-commission-bill-2014-3359/>

NJAC- objection overruled

The observation by the Constitution Bench of the Supreme Court, which is presently hearing the petition challenging the National Judicial Appointments Commission Act and the Constitution Amendment Act, that the collegiums system was good but its implementation was bad is the subject of much speculation in government circles. There is apprehension that the court may even strike down the two enactments on the ground that judicial primacy in the appointment of judges has been done away with. However, from a closer reading of the judgment in the Supreme Court Advocates on Record Association versus Union of India (or **second judge's case**) it would appear that it may not be easy for the Constitution Bench to strike down these two laws on the ground that they destroy judicial independence and thus violate the basic structure of the Constitution.¹¹ The Bill provides for the procedure to be followed by the NJAC for recommending persons for appointment as Chief Justice of India and other Judges of the Supreme Court (SC), and Chief Justice and other Judges of High Courts (HC).¹²

Procedure for Selection of High Courts judges

- Chief Justices of HCs: The NJAC is to recommend a Judge of a High Court to be the Chief Justice of a High Court on the basis of seniority across High Court judges. The ability, merit and other criteria of suitability as specified in the regulations would also be considered.
 - Appointment of other HC Judges:
 - Nominations: Nominations shall be sought from Chief Justice of the concerned High Court for appointments of HC judges.
 - Eliciting views: The Commission shall nominate names for appointment of HC judges and forward such names to the Chief Justice of the concerned HCs for his views
 - In both cases, the Chief Justice of the HC shall consult two senior most judges of that HC and any other judges and advocates as specified in the regulations.
 - Views of the Governor and CM: The NJAC shall elicit the views of the Governor and Chief Minister of the state before making recommendations.¹³
 - Veto power of members: The NJAC shall not recommend a person for appointment if any two members of the Commission do not agree to such recommendation
 - Transfer of Chief Justices and High Court judges:
 - The NJAC is to make recommendations for transfer of Chief Justices and other judges of the High Courts
 - The procedure to be followed will be specified in the regulations

The judgment lays down the following propositions: (a) Judicial independence extends also to the stage of appointment of judges. It is not enough to have security of tenure, salary, pension, and so on ; (b) Selection of judges is a participatory, consultative, constitutional function performed by high constitutional functionaries whose objective is to pick the best persons for the higher levels of judiciary; (c) In this exercise, no one is higher or lower than the other; (d) normally a judge should be selected through a process of consensus. In case that is not possible, more weight age should be given to the opinion of the Chief Justice because he or she is the expert who can judge the competence of the

¹¹ <http://www.thehindu.com/opinion/op-ed/national-judicial-appointments-commission-act-objection-overruled/article7400005.ece>

¹² <http://www.prsindia.org/billtrack/the-national-judicial-appointments-commission-bill-2014-3359/>

¹³ *ibid*

candidate better. This is necessary to avoid a stalemate and also to avoid an incompetent person with political backing getting through.¹⁴

Participatory exercise

In the narrative part of the judgment, the court has adopted a larger perspective on the issue. Note the following observation of the court: "The emphasis has to be on the importance of the purpose and not on the comparative importance of the participants working together to achieve the purpose. Each of them has some inherent limitation and it is only collectively that they constitute the selector."

It further says, "Appointment of judges is a participatory constitutional function. It is perhaps inappropriate to refer to any 'power' or 'right' to appoint judges. It is essentially a discharge of a constitutional trust of which certain constitutional functionaries are collectively repositories."

Here, the court emphasizes the point that selection of judges is a participatory exercise to be performed by the highest constitutional functionaries and consultation is the essence of this process. The question of the primacy of opinion will arise only when all other efforts fail to select an agreed candidate. "The joint venture of all the constitutional functionaries will help to transcend the concept of primacy between them," said the court.¹⁵

While it is true that the judges require the support of other members of the commission to get a name through, that by itself is not going to cause any serious erosion of the independence of the judiciary. After all, the learned judges who wrote the judgment made the following significant statement: "The joint venture of all the constitutional functionaries will help to transcend the concept of primacy between them."

The judiciary could share their knowledge and expertise with other members and elevate the exercise of collective consultation to a higher level. The fact that no one individual or group has primacy in the new scheme accords with the sentiments expressed by the court in the Second Judges Case and the overall perspective adopted by the judges in dealing with the issue. In fact, the integrated participatory consultative process has been raised to an almost philosophical level by the learned judges. The new enactments provide for a qualitatively better and more broad-based consultation than the consultation among a few judges as per the collegiums system.

Constitutional safeguards

The Constitution safeguards judicial independence. Apart from the specific provisions that safeguard that independence, the new enactments extend the concept of independence to the stage of appointment also by providing for the largest number of judges compared to other representatives on the commission and a veto power for them. Judicial independence is not an end in itself. It is also a means to realise a higher objective, namely to find competent, independent-minded judges for India's higher judiciary. It is not the means to select judges arbitrarily and without any sense of accountability using the power of primacy. The true merit of a judge will become known only through the process of wider consultation. The two enactments provide for such consultation.

The Collegium system lacked transparency and was therefore susceptible to abuse. The present Constitution Bench admitted that there was bad implementation of the collegium system and that is the severest indictment of the system by the judges themselves. The NJAC is by all accounts a superior alternative, and there is no ground to strike down the laws.¹⁶

¹⁴ <http://www.thehindu.com/opinion/op-ed/national-judicial-appointments-commission-act-objection-overruled/article7400005.ece>

¹⁵ *ibid*

¹⁶ <http://www.thehindu.com/opinion/op-ed/national-judicial-appointments-commission-act-objection-overruled/article7400005.ece>

Merits of all India judicial service

The proposal of introducing an All India Judicial Service (AIJS) on the lines of the Indian Administrative Service (IAS) and Indian Police Service (IPS) is under active consideration of the government. This measure was long overdue and has been hanging fire for over five decades now. As of now, while most government departments have all India service recruits, selected after a competitive examination by the Union Public Service Commission (UPSC) every year, the judiciary is the only set up that does not have a national-level selection process of its own to attract the best possible talent.¹⁷

The idea of having an AIJS is not new. The Law Commission has thrice - in its 1st, 8th and 116th reports - called for such a service. The Supreme Court first in 1991 and then in the all-India judges case (1992) had endorsed the creation of an AIJS. In its 15th report, the Parliamentary Standing Committee on law and justice too recommended for its establishment and directed the Union Law Ministry to take immediate steps. The first National Judicial Pay Commission and the National Advisory Council to the Centre have also supported the proposal. Over and above, Article 312 of the Constitution explicitly provides for the creation of a national level judicial service. But in spite of all this, the proposal could not get far in and mere opposition by some state governments and high courts to the reform gave a lame excuse to successive governments at the Centre to sleep over the matter.¹⁸

In the absence of a body like AIJS, it is becoming increasingly difficult to maintain the required judge strength at all levels of courts. For example, against a requirement of 75,000 judicial officers, the sanctioned strength of judges in subordinate courts, where we have the maximum backlog of cases, remains just 17,151. Out of this, 3,170 posts are still vacant and only 13,981 incumbents are working across the country. The country's 21 high courts with sanctioned strength of 895 are managing with 604 judges and thus account for 291 vacant positions. Similarly, the Supreme Court in October last year had only 24 judges, including the chief justice and seven vacancies were to be filled to maintain the full strength of 31. This means that 15-20 per cent of the courts, where the aggrieved go for justice, are headless. Consequently, the available judges are unable to clear the huge backlog of over 30 million cases, leave alone handle new ones.

If implemented in letter and spirit, the scheme will have its own distinct advantages. Primarily, the recruitment of judges right from the entry level will be handled by an independent and impartial agency like the UPSC through an open competition thereby ensuring fair selection of incumbents. It would naturally help attract bright and capable young law graduates to the judiciary, who otherwise prefer immediate remunerative employment in the government and the private sector. For the subordinate judicial officers it would ensure equitable service conditions besides providing them with a wider field to probe their mettle. As of now, the subordinate judges are recruited from a pool of less successful lawyers eventually become judges in higher courts, as established lawyers are rarely willing to give up their lucrative practice to join the bench.¹⁹

In this scheme of things, the measure of uniformity in standards for selection will improve the quality of personnel in different high courts, as about one-third of judges come there on promotion from the subordinate courts. Similarly, judges of the Supreme Court are drawn from the respective high courts. In this process only persons of proven competence will preside over the benches of superior courts, thereby minimizing the scope of partiality, arbitrariness and aberrations in judicial

¹⁷ <http://www.thestatesman.com/news/3828-merits-of-all-india-judicial-service.html>

¹⁸ *ibid*

¹⁹ <http://www.thestatesman.com/news/3828-merits-of-all-india-judicial-service.html>

selection. Simultaneously, the quality of dispensation of justice will also improve considerably right from the top to the bottom, as it essentially depends upon the quality of judges recruited.

The reform should help considerably in toning up the judicial administration by throwing open appointments to talented persons across the country. In addition, the objective of introducing an outside element in high court benches can be achieved better and more smoothly because a member of an all-India judicial service will have no mental block about interstate transfers. It will enrich their experience and make them better judges. At present judges of subordinate judiciary remain only in one state where they are appointed to work. However, critics of this feature may say that a district judge coming from a different linguistic region will face a problem of language in assessing and tackling the critical legal and the issues.²⁰

Conclusion

In recent years, there is a growing demand for implementation of a transparent system for appointments of personnel in the supreme authority of the country, the judiciary. Various, collegiums and authorities are been setup like NJAC for higher posts, however the all India judicial services is in up roaring demand for coming into existence. Once setup, this would ensure that the deserving gets the value for talent. Appointments would be transparent and fair in nature. Like the other all India services, even the judiciary would attain new levels of excellence and competence. Also due to this, young law aspirants would be more inclined towards the judicial services that otherwise opted for diverse opportunities due to various reasons. Also, it would be a challenging task to set up examination standards and members who would govern the overall process. Only after critically examining, should a decision be taken which would add up to the efficiency of the Indian Judiciary. There should not be any corruption. Judicial service like IAS, IPS, etc should work only for the people not for any executive authority or for any political leader. There are flaws in the judges appointing by judges so this system has to be reformed. So Supreme Court has declared that NJAC is unconstitutional and void I discussed elaborately all about the analysis on all India judicial service based on my knowledge. Hope that my research as given an advance knowledge about the judicial services and appointment of judges

²⁰ <http://www.thestatesman.com/news/3828-merits-of-all-india-judicial-service.html>