

Creation of All- India Judicial Service

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Article 312 of the Constitution provides for the creation of an all-India Judicial Service (AIJS) common to the Union and the States. Such a service can be created and regulated by the Parliament by law, provided that the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest to do so. Article 312 reads as follows:

"312.All-India services.-(1)Notwithstanding anything in Chapter VI of Part VI or Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services including an all-India judicial service common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2)The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

(3)The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236.

(4)The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368."

The quality of judicial officers recruited to the subordinate judiciary in most states is on the decline. In comparison, the prestige and prospects attached to the Indian Administrative Service and Indian Police Service attract some of the brightest youngsters into these services. The duties and responsibilities of judges are onerous,

and any dilution of competence in recruitment into judiciary has profound consequences to the country. Poor quality of judges causes delays in justice, increases pendency, impairs the quality of judgments, diminishes trust in judiciary, affects the competence of higher judiciary, and in general vitiates rule of law and constitutional governance.

The experience in many States shows that with the present practice of recruitment of subordinate judges, competent lawyers and bright youngsters with law degree are usually not attracted to a career on the Bench. However, for appointment into the all-India services there is fierce nation-wide competition. There is fair criticism about lack of mechanisms to sustain motivation, competence and integrity once officers are recruited to IAS and IPS. However, in general the quality and competence of officials in the all-India services are regarded as fairly high at the stage of recruitment.

The competence and quality of judges in trial courts is critical for the integrity and credibility of the whole justice system. Therefore there is a strong case for creation of an all-India Judicial Service, in line with the IAS and IPS.

The first Law Commission in its fourteenth report, examined the issue in great detail and recommended the creation of an all-India Judicial Service. The relevant extracts of the report are cited below:

"58. Though a competitive examination will be the method of selection and the persons selected will have had no experience at the Bar, in our view, the scheme we propose takes care to avoid the disabilities from which the Indian Civil Service judges suffered. To begin with, he had very often no legal qualifications other than those which had been given to him as a part of his training. These officers served for a number of years in the executive which clearly gave them an executive bias. Moreover it was the general belief that the less able of them who were, as it were, found wanting on the executive side were taken up in the judiciary. We are however, proposing to take only law graduates as recruits to the proposed service. Further, they will have no period of service in the executive as in the case of the civilian. In our scheme, they will from the commencement, be earmarked for appointment to the judiciary so that they will be imbued, as it were, with a judicial bias."

"59. The great advantage that the Indian civilian had, was the intensive and varied course of training which he had to undergo. At the time of his first entry into service, his training was confined to matters pertaining to the revenue and criminal administration alone, but when he was taken over to the judicial side, generally an equally intensive training in civil law was given to him for a period of not less than eighteen months. There can be no doubt that a similar intensive judicial training given to a judicial officer who possesses a law degree can be of the greatest value. If a law graduate recruited by a competitive examination is subjected to a carefully devised scheme of training which would include the practical working of the courts, there is no reason why he should not make as successful a judicial officer as a person recruited after a few years' experience at the Bar. After all, experience at the Bar is only a matter of training and an equally satisfactory training may be given by the adoption of other methods. Indeed, it can be claimed that a planned and systematic training such as is contemplated by us for the judicial officer selected for the Indian Judicial Service may be more effective than the uncertain and spasmodic training which may be received during the course of a few years' practice at the Bar. These and the other considerations referred to earlier have led us to the conclusion that in the interests of the efficiency of the subordinate judiciary, it is necessary that an All India service called the Indian Judicial Service should be established. This will need action being taken in the manner provided by article 312 of the Constitution

"60. The personnel constituting the Service could be selected through a combined competitive examination relating to the Indian Administrative Service and other allied Services. Candidates competing for the Indian Judicial Service will have to be law graduates and will have to offer at least two optional papers in law. The standards insisted upon in their case will be the same as in the case of the Indian Administrative and the Indian Foreign Service. As to the age limit, having regard to the requirement that the candidate should be a law graduate, we are of the view they should be recruited from the age group of twenty-one to twenty-five years

"61. As in the case of the other All-India Services, persons selected for the All India Judicial Service will be allotted to a particular State and will form part of the judiciary of that State for the rest of their service. However, in order to foster an all-India outlook which is of vital importance to the nation, we suggest that as a rule the Indian Judicial Service officers should be allotted to States other than their own States.

"62. An officer selected for the Indian Judicial Service should, in our view, be given an intensive training for a period of two years before he starts his judicial career. To begin with, he will undergo the training that is at present being given to persons selected for the Indian Administrative Service in the Training School. It is essential that for a period, the training of the future executive officers and the future judicial officers should proceed *pari passu* and in association with one another. We have found that in maintaining the efficiency of judicial administration, the district judge has to depend a great deal upon the executive officers for their co-operation. It has been generally noticed that a district judge borne on the cadre of the Indian Civil Service is able to secure the co-operation of the other officers in a larger degree than a district judge belonging to the State service. This perhaps is psychological. However, that may be, we must make use of every factor which may help to make judicial administration more efficient. Officers of the Indian Judicial Service, if trained in close association with those of the Indian Administrative Service, will in the future stages of their career as judicial officers, be able to obtain all necessary co-operation from their colleagues of the Indian Administrative Service.

"The course which has been prescribed for the one year period of probation of the Indian Administrative Service officer includes a study of the principles of the Constitution, of the Indian criminal law, general administrative knowledge, such as Indian History in its social, political and economic aspects, general principles of administration, organization of Government institutions and the regional language of the State to which he is allotted. These subjects would, in our view, be equally useful to a

judicial officer. We may, however, suggest that in order to render this period of training in the Indian Administrative Service School of more practical value to the Indian Judicial Service officer, some additional subjects like Economics and Commercial law with particular reference to the civil procedure, company law, insolvency, banking and insurance, should also be included in the course of instruction at the school

"63. The training at the Indian Administrative Service School for a year should be followed by a further period of intensive training in the State to which the officer is allotted. The officer will be subjected to this training side by side with members of the subordinate judiciary recruited at the State level. We have earlier prescribed the nature of this training. This period of training for the Indian Judicial Service officer in the State will have, however, to be longer, by reason of his unfamiliarity with courts of law. It should, we think, extend to a period of one year which will include a three months' training in the revenue matters, a two months' training in the police department and five months under a selected district judge. It may be advantageous, to give the officer some idea of how cases are prepared by posting him for training for a short period under the Government Pleader or the Public Prosecutor. In order that the officer may have some idea of work in the High Court, we also recommend that he should work as a legal assistant to a selected High Court judge for a period of two months. During this period he will be able to familiarize himself with the High Court procedure beginning with the institution of civil and criminal matters up to their final disposal. He would also be able to train himself by preparing exhaustive notes and summaries in some matters to be heard by the judge to whom he is attached. This personal contact with the High Court judge will enable him to get an intimate understanding of how complicated legal problems are approached and dealt with in the High Courts. He would also be able to watch the methods of work of experienced judges. The period of training in the High Court should also familiarize the officer with the methods by which the work of the subordinate courts is reviewed. At the end of a training such as we have suggested, the officer could well be entrusted with the responsibility of doing judicial work.

"64. After the training, the officer will be posted as a magistrate. Care will have to be taken in States where separation of the judiciary from the executive has not yet been effected to see that he is under the control and supervision of the High Court and not the executive. This should present no difficulty. Cases could be transferred to him from time to time for disposal. After a period of not less than three years has been spent by him as a magistrate exercising progressively increasing powers, the officer can be posted to the civil side starting as a junior civil judge. In some of the States where separation has been effected, the posts of magistrates and munsifs are borne on the same cadre. In these States, the officer will work as a munsif for not less than three years before he is promoted to higher posts and works as a subordinate judge or senior civil judge or an assistant sessions judge as the case may be. After three or four years' experience in these higher posts, he will be fit for being posted as a district and sessions judge.

"65. In the scheme we have proposed, the emoluments of the posts in the Indian Judicial Service will be the same as those in the Indian Administrative Service. These officers will therefore draw a higher remuneration when working as magistrates, munsifs and subordinate judges than their counter-parts in the State services. On appointment, however, as district and sessions judges their remuneration will be the same as that of persons occupying these posts who are not members of the Indian Judicial Service"

The Chief Justices conferences held in 1961, 1963 and 1965 favoured the recommendation. But the views of state governments and High Courts were more divergent. In 1972, the Chief Justice of India suggested creation of AIJS. Later, the Law Commission, in its 77th Report, recommended creation of AIJS. In 1976, Article 3 was amended by the forty-second amendment, expressly providing for the formation of an AIJS.

In 1986, the Law Commission, in its 116th report, again examined the issue and strongly recommended formation of an all-India Judicial Service. Justice Jeevan Reddy summarized this report as follows:

"The report dealt with three objections, generally put forward against the said proposal, namely:-

- (a) inadequate knowledge of regional language would corrode judicial efficiency both with regard to understanding and appreciating parole evidence pronouncing judgments;*
- (b) promotional avenues of the members of the State judiciary would be severely curtailed causing heart burning to those who have already entered the service and manning of the State judicial service would be adversely affected; and*
- (c) erosion of control of the High Court over subordinate judiciary would impair independence of the judiciary.*

"The Law Commission considered each of the above objections at length and rejected them as unsubstantial. It held that a member of the All-India Judicial Service would be required to learn one more language over and above his mother tongue and once he is allotted to a State keeping in view the said fact, no problems would arise on the ground of language. Reference was made to members of Indian Administrative Service in this behalf. It also referred to the fact that prior to the independence there were provinces like Bombay and Madras, which comprised more than one linguistic area. For example, the Bombay province comprised Gujarati speaking, Marathi speaking and Kannada speaking areas and Madras province included Tamil speaking, Telugu speaking and Malayalam speaking areas. If no difficulty was found in those provinces at that time, the Commission observed, there is no reason to feel that the language question should pose a problem. With respect to the second objection, the Commission observed that in as much as according to the present rules in force in various States about 50% (if not, more) vacancies in the cadre of District Judges are reserved to be filled by promotion from the lower cadres and because the members of AIJS will be allocated only against the vacancies to be filled by direct recruitment,

the promotional prospects of judicial officers (below district judge level) will in no way be affected. Similarly, it was held with respect to the third objection, that the control of the High Court will in no manner be diminished or curtailed because on allotment to a State, the allottees (members of AIJS) would become members of the State Judicial Service for all practical purposes with the difference that "while at present it (High Court) recommends various things such as promotion or disciplinary action to the Governor, it would be recommending the same to the National Judicial Service Commission which, in turn, would make necessary recommendation to the President of India but the President of India will act in the same manner as at present it is done by the Governor having regard to the almost binding character of the recommendation of the High Court."

The Supreme Court considered this issue in the All India Judges case: AIR 1992 SC 165 Paras 9-11). The Supreme Court observed as follows:

"9. We shall first deal with the plea for setting up of an All India Judicial Service. The Law Commission of India in its 14th Report in the year 1958, said:

'If we are to improve the personnel of the subordinate judiciary, we must first take measures to extend or widen our field of selection so that we can draw from it really capable persons. A radical measure suggested to us was to recruit the judicial service entirely by a competitive test or examination. It was suggested that the higher judiciary could be drawn from such competitive tests at the all-India level and the lower judiciary can be recruited by similar tests held at the State level. Those eligible for these tests would be graduates who have taken a law degree and the requirement of practice at the Bar should be done away with.

'Such a scheme, it was urged, would result in bringing into the subordinate judiciary capable young men who now prefer to obtain immediate remunerative employment in the executive branch of Government and in commercial firms. The scheme, it was pointed out,

would bring to the higher subordinate judiciary the best talent available in the country as a whole, whereas the lower subordinate judiciary would be drawn from the best talent available in the State”.

The Commission proceeded to further state:

‘Recruitment to the higher judiciary at the all-India level in the manner suggested would be a powerful unifying influence and serve to counteract the existing growing regional tendencies. In this connection, attention may be drawn to the observations made by the States Reorganisation Commission in regard to the creation of the All India Services as a major compelling necessity for the nation. The Commission observed : ‘The *raison d’etre* of creating All India Services, individually or in groups, is that officers on whom the brunt of responsibility of administration will inevitably fall, may develop wide and all-India outlook.... The present emphasis on regional languages in the universities will inevitably lead to the growth of parochial attitude, which will only be corrected by a system of training which emphasizes the all-India point of view... it has not been very easy for us to balance these considerations, but we are definitely of the view that proportion of the higher judiciary should be recruited by competitive examination at the all-India level so as to attract the best of our young graduates to the judicial service. This measure will enlarge the field of selection and bring into the higher judicial service a leaven of brilliant young men who will set a higher tone and level to the subordinate judiciary as a whole. The personnel so recruited will be subjected to an intensive training. The rest of the higher judiciary should, in our view, be recruited in part directly from senior members of the Bar, and partly by promotion from the lower subordinate judiciary’.

‘The Law Commission has reiterated this view in subsequent reports. It took nearly 20 years for the Government to take follow up action on the basis of the recommendation and that led to the amendment of the legislative entries as already referred to.

‘10. This proposal of the Law Commission and the follow up governmental action led to consultation and dialogue in the Conference of Chief Justices of the High Courts but many of the High Courts were of the view that setting up of an All-India Judicial Service would affect the constitutional scheme of control of the High Court over the subordinate judiciary and in particular Article 235 of the Constitution. Article 233 makes provision for appointment of District Judges and requires that appointment to such posts has to be made by the Governor of the State in consultation with the appropriate High Court. Article 234 provides for recruitment of persons other than District Judges to judicial service by prescribing that appointments shall be made by the Governor of the State in accordance with the Rules made by him in that behalf after consulting the State Public Service Commission and the High Court exercising the jurisdiction in relation to such State. The post of District Judges has ordinarily been equated with the senior scale status in the All-India Services. It was perhaps not contemplated by the Law Commission that on appointment members of the proposed All-India Judicial Service were to hold the post of District Judge. Like all other All-India Services, the initial recruitment could be to a lower rank equal to civil judge and after serving in such post for a reasonable time, appointment to the post of district Judge could be made. Since the Law Commission itself was of the view that a percentage should be filled up by direct recruitment from the Bar, the scheme envisaged by the Law Commission would not require amendment of Article 233. It is to be examined whether any alterations in Article 234 would be necessary or recruitment to All-India Service could be made by appropriate amendment of the State Rules contemplated under that Article.

‘Control over the subordinate courts under the constitutional mechanism is vested in the High Court. Under Article 235, the provision is that the control over District Courts and courts subordinate thereto vests in the High Court. The main objection against implementation of the recommendation of the Law Commission relating to the setting up of the all-India Judicial Service was founded upon the basis that control contemplated under Article 235 of the Constitution would be affected if an

All-India Judicial Services on the pattern of All-India Services Act, 1951, is created. We are of the view that the Law Commission's recommendation should not have been dropped lightly. There is considerable force and merit in the view expressed by the Law Commission. An all-India Judicial Service essentially for manning the higher services in the subordinate judiciary is very much necessary. The reasons advanced by the Law Commission for recommending the setting up of an All-India Judicial Service appeal to us.

'11. Since the setting up of such a service might require amendment of the relevant Articles of the Constitution and might even require alteration of the Service Rules operating in the different States and Union Territories, we do not intend to give any particular direction on this score, particularly when the point was not seriously pressed but we would commend to the Union of India to undertake appropriate exercise quickly so that the feasibility of implementation of the recommendations of the Law Commission may be examined expeditiously and implemented as early as possible. It is in the interest of the health of the judiciary throughout the country that this should be done."

Former Chief Justice J.S.Verma recommended formation of Indian Judicial Service as follows:

"Speedy justice is within the ambit of 'right to life' guaranteed in article 21 of the Constitution of India. It is also a right duly recognized in the International Covenants. Its significance hardly needs emphasis. It is necessary also to retain faith in the credibility of the administration of justice and to preserve the 'rule of law', which is the bedrock of democracy. The problem of mounting arrears in subordinate courts, which also adversely affects the pendency in the High Courts and the Supreme Court, is a constant worry. Mere increase in the number of judges, without improvement in their quality is of no avail. To effectively tackle this problem, it is imperative to constitute the All India Judicial Service to improve the quality of judges in the subordinate judiciary. The fact that it is, for many years now, becoming difficult to persuade the front rank lawyers to join the Higher Judicial Service and even the bench of the

High Court is accentuating the need. The quality of justice administered depends on the quality of those who administer it."

From the foregoing, it is clear that there is a compelling case to create a highly competent, meritocratic all-India Judicial Service. Such a Service can be created by an Act of Parliament following a resolution of the Council of Ministers by special majority.

It may be desirable to recruit judges at a young age very much similar to those in IAS and IPS. They must have adequate experience in trial courts below district level before they become district judges and elevated to High Courts later. However, Article 312 (3) states that such an all-India Judicial Service shall not include any post inferior to that of a district judge as defined in Article 236. If officers of AIJS are directly appointed as district judges, they will not have the benefit of training and experience in subordinate positions. In case of IAS and IPS, officers have several years' experience before they become district magistrates and superintendents of police respectively. In order to ensure adequate experience and maturity before elevation as district judges, one of the following courses may be adopted :

a) Clause (3) of Article 312 may be repealed.

or

b) The rules concerning training of AIJS officials may include five years work experience in subordinate courts below district level before they are formally confirmed in AIJS in the rank of a district judge.

All other conditions of recruitment and service may be similar to IAS and IPS. The AIJS will be controlled by the High Courts in States, and the Supreme Court at the national level. While appointing judges in High Courts, a high proportion should come from AIJS, once such a service takes root, and the judicial officers so recruited gain experience.

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