

## **HIGH TIME FOR ALL INDIA JUDICIAL SERVICE**

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Today if it does not happen, tomorrow it would be futile because the present scenario in the country demands a drastic change in judicial system. WHY IS IT PENDING? If Indian Administrative Service, Indian Police Service, India Foreign Service, Indian Revenue Service etc are constituted through Article 312 of the Constitution of India, then why The Indian Judicial Service is not constituted under the same? When the 42<sup>nd</sup> Amendment in the Constitution of India has already given a green signal to this burning issue, then what is putting a stumbling block on the way? Though judiciary is considered as one of the pillars of democratic system but does not have an all India selection process. Ever since 1961 (50 years), Law Commission of India has been making recommendations to the effect and in spite of the fact that the recommendations of the 1<sup>st</sup> National Judicial Pay Commission have been accepted by the Government of India and approved by the Apex Court and implemented, the process of selection of the members of judiciary at the national level is yet to see the light of the day which really is a matter of concern for all of us. The Chief Justices Conference held on 17<sup>th</sup>- 18<sup>th</sup> April 2008 deliberated upon the issue at its Agenda No.15 and took a resolution "*The High Court will consider entrusting recruitment upto 25% posts in higher judicial service required to be filled in by direct recruitment to a National Commission on all India basis and send their respective views to the Hon'ble Chief Justice of India within 8 weeks*" Again, after one year in the Chief Justice's Conference held in the year 2009 the issue was taken up at Agenda No.20 "Formation of All India Judicial Service) . The issue was discussed at length but nothing substantial was resolved to be implemented. The very next day i.e 16<sup>th</sup> August 2009 a joint conference of The Chief Ministers of the States and The Chief Justices of all High Courts, inaugurated by the Hon'ble Prime Minister of India was held at Vigyan Bhawan , New Delhi but formation of all India judicial service was curiously missing from the agenda. Absence of such a burning issue

from the agenda of an apex forum raises eyebrows of all of us and compels us to reiterate that this is high time that India should have an All India Judicial Service in place.

### **Recommendation of the Law Commission :-**

The first Law Commission recommended and opined that such a course is necessary in the interest of efficiency of the subordinate judiciary. This proposal was considered in the Law Minister's Conference held in the year 1960 where strong opinions were expressed for and against the said proposal. The proposal was accordingly shelved. It appears that in the Chief Justices Conference held in 1961, 1963 and 1965 favored the said recommendation but when the views of the State Governments and the High Courts were sought, there was difference of opinion. More than half of the State and High Courts opposed to the proposal.

In 1969 the Government of India requested the then Chief Justice of India to offer his views on the said proposal. The learned Chief Justice opined that the proposal was not feasible in the face of the then obtaining provisions of the Constitution of India. In 1972, however, the learned Chief Justice while suggesting to the Government to improve the conditions of service of subordinate judiciary, also suggested examination of the question of having an AIJS.

The 8<sup>th</sup> Law Commission while examining the problem of arrears in trial courts recommended formation of an AIJS. Even after the amendment of Article 312 by the 42<sup>nd</sup> amendment, expressly provided for the formation of an AIJS, the opposition to this idea from several High Courts and State Governments has not abated. This matter was again considered by the Law Commission in its 116<sup>th</sup> report in 1986. 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 effected, 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 more than one language over and above his mother tongue and once he is allotted to a State keeping in view the said facts, no problem would arise on the ground of language. Reference was made to the members of Indian Administrative Service in this behalf.

Regarding 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 the promotion from the lower cadre 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.

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 recommendations to the President of India but the President of India will act in the same manner as present it is done by the Governor having regard to the almost binding character of the recommendation of the High Court'. Besides rejecting the third criticism, the Law Commission also emphasized the desirability of such an All India Judicial Service in the interest of efficiency. It made elaborate recommendations with respect to the method of recruitment, holding of examinations, scales of pay, initial pay, seniority, probation, training and so on. (It also recommended by a separate report creation of a National Judicial Service Commission).

### **Recommendations of the National Judicial Pay Commission:-**

This matter has also been examined by the First National Judicial Pay Commission headed by Justice K.Jagannatha Shetty, former Judge of the Supreme Court in the year 1999. It supported

and reiterated the recommendations of the Law Commission. It fully supported the reasoning given by the Law Commission in support of the said recommendation. It then referred to the observation of the Supreme Court in the All India Judges Case (AIR 1992 SC 165) to the effect that “the feasibility of the implementation of the recommendation 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”. The report of the Pay Commission then refers to the fact that the Government of India had elicited the opinions of the State Governments and High Courts in this behalf and that whereas eight States Governments agreed with the proposals, seven State Governments have opposed the same. So far as the High Courts are concerned, it is stated that four High Courts have favoured the idea., four have given their conditional approval while three have opposed and five High Courts did not offer any opinion in the light of the judgment of the Supreme Court. The Pay Commission had also invited the views and comments on the methodology of constituting an All India Judicial Service after considering which it made the following recommendations:-

- i) The AIJS should be constituted only in the cadre of District Judge as per provisions of Article 312 (3) of the Constitution. The District Judges directly recruited and promoted should constitute AIJS.
- ii) The selection for direct recruitment should be by the National Judicial Commission/UPSC and the promotes by the respective High Courts.
- iii) The qualification for direct recruitment to AIJS should be in conformity with that prescribed under Article 233 (2) of the Constitution
- iv) Service Judges should also be allowed to compete for recruitment of AIJS, by appropriately amending Article 233(2) of the Constitution.
- v) Not exceeding 25% of the posts in the cadre of District Judges in every State should be earmarked for direct recruitment.
- vi) The age limit for recruitment to AIJS should be between 35 years to 45 years.
- vii) The procedure for selection shall be by written examination followed by viva voce.
- viii) Appointment: The National Judicial Commission/ UPSC, after selecting the candidates for direct recruitment to the cadre of District Judges, must allocate to the States/ Uts, the candidates equal to the vacancies that are surrendered by the, The HIg

Court thereupon will recommend those names to the Governor for appointment as per Article 233 of the Constitution.

- ix) Training : The prescribed training is only after the appointment.
- x) Seniority : All India seniority is as per the ranking in the select list.
- xi) Inter-se Seniority in the State/UT : The inter-se seniority between direct recruits and promotees shall be determined according to the date of allotment and date of promotion. Such direct recruits must thus be annexed to the respective State Judicial Service within the three-tier system.
- xii) Court Language: Recording of the deposition should be: (1) Regional Language (to be recorded by the Court Officer); and (2) English (by the Presiding Officer).

### **Hon'ble Supreme Court on this Agenda :**

In All India Judges case at paragraph 63 of the judgment, Hon'ble Supreme Court briefly indicated the directions given in the judgment regarding All India Judicial Service as follows:-

“(I) An All India Judicial Service should be set up and the Union of India should take appropriate steps in this regard”

In the above matter when Review Petition came up, further orders were passed on 24<sup>th</sup> August 1993 [1993 (4) SCC 288] in paragraph 17 of this judgment reference was made to the directions regarding All India Judicial Service and considering the objections raised at the time of Review, Hon'ble Supreme Court reiterated the requirement to form such All India Judicial Service.

Again when the matter came up before the Hon'ble Court on 10<sup>th</sup> April 1995 [1998(9)SCC 245] this Hon'ble Court impressed upon the Union of India to take immediate measures for the implementation of the directions to achieve the objective of setting up an All India Judicial Service.

The proposal was considered in detail by the First National Judicial Pay Commission. The Commission obtained the Status Report from the Government of India on this issue and was informed as under:

“In light of the recommendation of the Law Commission of India, direction of the Supreme Court and views/ comments of the State Governments/ High Courts, the question of

setting up All India Judicial Service through a resolution of the Rajya Sabha and as enactment of Parliament under Article 312 of the Constitution is under consideration”

## **Conclusion:**

Based on the aforesaid recommendations of the two Apex recommendatory bodies intentions of the Government of India are reflected from the following :-

- “Bar & Bench News Network (**August 12, 2010**) – “Minister of Law and Justice, Veerappa Moily in his written reply to the Lok Sabha said, “That pursuant to the recommendations of the Law Commission of India in its 1<sup>st</sup>, 8<sup>th</sup> and 11<sup>th</sup> reports, the directions of the Supreme Court of India and the guidelines recommended by the First National Judicial Pay Commission, the Government is seized with the matter of creation of an All India Judicial Service.” He added, “That creation of such a service through competitive examination, would attract brilliant young men and women and thus best talent all over the country would come to the judiciary, as in respect of other All India Services, and improve overall justice delivery system.”
- “**Times of India (November 6, 2010- New Delhi)**- The Centre is finalising creation of two new all-India services — Indian Judicial Service (IJS) and Indian Legal Service (ILS) — to fulfil its promise to create 15,000 additional courts by 2012 and meet the demand for services of legal professionals from various departments of the Union and state governments". We will create two all-India services — IJS and ILS — mainly aimed at capacity building at the lower levels of judiciary and to provide professional legal advice to various departments," law minister M Veerappa Moily told TOI. Though he was tight-lipped about the timeframe of the plan, the minister said the IJS would help attract talent from all over the country for appointment at the sessions judge level” and, latest being,
- **Press Release by Press Information Bureau, Government of India Release ID : 78262 dated December 7<sup>th</sup>, 2011** “The Government has said that it is seized of the matter of creation of an All India Judicial Service under article 312 of the Constitution which requires a

Resolution to be passed by the Rajya Sabha enabling the Parliament to enact necessary laws. This information was given by the Minister of Law & Justice Shri Salman Khurshid in written reply to a question in the Rajya Sabha”

In light of the above, I wish to suggest the following:-

- Article 312 of the Constitution of India be amended and provisions of Article 312(3) be removed from the Constitution.
- Law graduates between 24-30 years of age be recruited in AIJS and initially appointed as Civil Judge who in course of time be alleviated to the positions of District Judges and above.
- All existing Higher Judicial Services members be granted the category of AIJS.
- Civil Judges who have put in 7 (seven) years of judicial service be alleviated in the category of AIJS.
- Civil Judges having experience of even less than 7 (seven) years be allowed to appear at AIJS examinations
- Last but not the least, existing power of section and appointment of Civil Judges be vested with the Central body-UPSC/National Judicial Commission.

It is unfortunate that inspite of loud thinking of Government of India and unanimous resolutions taken by All India Judges Association to ensure formation of All India Judicial Service golden dream of this forum is yet to see the light of the day. This issue in hand requires untiring perseverance as it is **High Time for an All India Judicial Service.**