

Time for an All-India Judicial Service

Rule of law is the essence of modern civilization and democratic governance. Delayed justice, poor appreciation of evidence, and incapacity to apply constitutional and legal principles to real-life situations play havoc with people's lives. In particular, the economic life of a society revolves round contractual obligations, enforcement of rights, conformity with various laws protecting the environment and citizens, and fair, impartial and effective application of various tax and other laws. Failure of justice extracts a heavy toll from the society and economy.

When we examine the pendency of cases in courts, we ignore two factors. First, certain judges handle a much larger case load and yet dispose of cases swiftly and fairly. Others take interminably long, and yet fail to render justice. The quality of judges in India is far too indifferent for our comfort. Highly competent and successful lawyers are rarely willing to give up their lucrative practice and become judges. More often than not, the subordinate judges are recruited from a pool of unsuccessful lawyers. They and other not-too-competent lawyers eventually become judges in higher courts.

The quality of justice administered depends on the quality of those who administer it. Quality of judges is clearly of paramount importance. Unlike the executive branch of government, the judiciary is completely independent and invulnerable to the vagaries of politics and partisan pulls. The High Court has complete control over the conduct and functioning of subordinate courts. And there are established procedures for elevation to High Court and Supreme Court. Therefore, once recruitment practices are sound, there are incentives for better performance and effective monitoring at least until a judge is elevated to the High Court.

This is very dissimilar to the administrative services in the executive branch. Take for instance the IAS and IPS. There is fierce competition for entry into these elite services. Annually, some 200,000 bright youngsters compete in a gruelling examination. There is central recruitment to meet all the States' requirements. The selection procedure is objective and highly meritocratic, giving due allowance to affirmative action policies. Unquestionably, highly competent, intelligent and well-qualified youngsters join the civil services. And they are put through a two-year rigorous training, including an year at the field level. That is how, despite all the deficiencies and adversities, the civilian administration is keeping the system intact.

But the flaw in civil services is, while recruitment is of high standard, there are no incentives to maintain high standards of excellence and integrity, nor is there punishment for corrupt and incompetent behaviour. As a result, over time, the

civil servants, as a class, have been under-performing. But there are still outstanding officials whose contribution to public good is significant. This is clearly a failure in instituting a system of rewards and risks to sustain high standard of performance and conduct.

Is it possible to adopt the practices of all-India services in recruitment, training and encadrement in the judiciary? If we ensure that there is a meritocratic recruitment through a nation-wide competitive examination, and if judicial officers are accorded the prestige and respect that all-India services enjoy, then the best talent can be tapped for the judiciary. Then the control exercised by the High Court, and the prospects of elevation to High Court ensure high quality performance in district and other subordinate courts. The current procedures to enforce accountability in higher judiciary are unsatisfactory, but that problem needs to be dealt with separately. At the very least, formation of an all-India service for judiciary would ensure a high level of competence and skills in our justice administration.

Article 312 of the Constitution provides for the creation of an all-India Judicial Service common to the Union and the States. Such a service can be created and regulated by the Parliament by law, provided 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.

The first Law Commission, headed by MC. Setalwad, with the benefit of the opinion of Chief Justices KN Wanchoo and MC Chagla, and jurist Nani Palkhivala among others, had made a strong recommendation for the constitution of an All-India Judicial Service (AIJS), like the IAS and IPS. The felt need for such a service increased several fold in the 47 years since that recommendation. Article 312 has subsequently been amended to specifically provide for creation of such a service. Three Chief Justices' conferences in 1961, 63 and 65 favoured this recommendation. In 1972, the Chief Justice of India suggested the creation of AIJS. Later, the 8th Law Commission, in its 77th Report, recommended creation of such a service. In 1986, Law Commission, in its 116th report, again examined the issue in detail, and recommended formation of an All-India Judicial Service. The Supreme Court considered this issue in the All-India Judges case in 1992, and endorsed the creation of AIJS.

Undoubtedly our judge, population ratio is too low, and we need many more trial courts. But as many jurists have pointed out, mere increase in the number of judges, without improvement in their quality, is of no avail. The quality of justice administered critically depends on the quality of the judges recruited. Clearly, there is a compelling case to create a highly competent, meritocratic All-India Judicial Service. Judges can be recruited at a young age, very much similar to officials in IAS and IPS. Provisions can be made for adequate experience in trial courts below district level as part of training, or by repealing article 312(3), and providing for posting of AIJS officials below district level for some years.

Creation of AIJS is a low-cost, high-impact reform long overdue. There are many other steps required to make our justice system work for the people. But improving the quality of judges, enhancing the prestige and dignity of judicial service, and promoting competition for recruitment is a relatively simple measure around which there is impressive consensus. It is time to create AIJS, 47 years after the first recommendation by the Law Commission, and nearly 30 years after the constitutional amendment facilitating its formation

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