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An Analysis of the Role of Centre and States in Constituting and Functioning of All India Services

SHIVANGI JINDAL¹

ABSTRACT

Every country across the globe work on different forms of government. Especially in a federal set-up, it becomes interestingly important to look into the working of the Centre and the State together when both are two distinct entities having different functions assigned yet moving together to achieve a common goal or objective for the better functioning of the governance of that country. The study of Centre-State relations becomes crucial, especially in a federal country like India, since the government at both levels interact with each other and cannot live in isolation in watertight compartments to discharge their functions. In the case of All India Services also, the same has to be carried on, as it was formed primarily based on cooperative federalism. The provision for establishing All India Services is provided under Article 312 of the constitution of India. The proposed All India Judicial services also be taken into consideration in this regard as it will further help in serving the same purpose. Neither a State nor the Central level should political considerations be considered. High-level Civil Service Boards should make placements, promotions, and disciplinary decisions based on each officer's unique merits. The India Services officers' conduct and operations while serving at the Centre or in the States should be closely monitored by the Central Government, which appoints them. The state also plays a significant role in this regard because it serves as the Central Government's advising or recommending body, as has been demonstrated in numerous case laws. Both the Centre and the States should be allowed more authority so that they can work more independently to create the All-India Services, as envisaged, strong and effective ties between the Centre and the States in our federal democracy.

Keywords: All India Services, Centre-State, Cooperative Federalism, government.

I. INTRODUCTION

Although there are many private sector job options in India, the demand for government occupations like IAS, IPS, and the judiciary is interestingly rising because it is thought that these positions come with prestige, riches, and other benefits. People have the opportunity to

¹ Author is a student at Christ Deemed to be University, Bangalore, India.

choose their lifestyle by holding a respectable position in both the government and society, therefore it's desirable to be part of All India Services. The All-India Services (AIS) are a unique feature of our federal polity as it introduces a service under Article 312 of the Indian Constitution which is common to both centre and state.

“Federalism is no longer the fault line of Centre-State relations but the definition of a new partnership of India” was the quote given by honourable Prime Minister Narendra Modi, which laid down, in a nutshell, the very foundation on which the concept of federalism has been established. Many constitutional experts hold the belief that, while having a federal structure, the Indian Constitution is unitary at its core. The Union has been given more powers including deciding and even overriding powers over and above the state. Several legislative, judicial, financial, and administrative authorities are granted to the Centre also as compared to the states. The All-India Services scheme is a part of this overarching policy to strengthen the central government in the overall constitutional framework. This might be possible since the founding fathers of the Constitution learned a fundamental lesson from Indian history whenever the central government will become weak, it will lose control over ambitious provincial chieftains, and the nation would time and again become divided and fragmented. Many of them had made declarations of independence from the ruling authority. But by doing the same the federal lines on which the All-India Services was established get disturbed and will fail to achieve its purpose of coordination and cooperation between the States and the Centre.

II. CONCEPTUAL FRAMEWORK

Article 312 of the Indian Constitution explains the core of All India Services. All-India services are those services which are common to both Central and state governments, whose members occupy top positions and serve them by turns. Rajya Sabha has the authority to initiate the proceedings to make new All India Services.² The objective of this provision was to ensure greater inter-state coordination and implementation of the policies of the Central Government and State government through these officers and the Centre's control over the State governments in matters of execution of union laws.

(A) Historical background

It was felt at the time of independence that there needs to be laws specifically for civil services, therefore it was enacted at the time of the making of the Constitution on 26th January 1950 where Sardar Vallabhai Patel played a crucial role therefore, he is regarded as the ‘Father of

² Article 312(1) of the Indian Constitution

All-India Services. These services were recognized under clause (2) of article 312 of the Constitution. The Services was the title of the chapter under the Union and the States by the Ministry of Law and Justice department which manages the activities in the Department of Personnel and Administrative Reforms. This Article empowered the Parliament to create one or more All India services that are common to the Union and the States and also can regulate recruitment and conditions of service therein.³ They were also given protection regarding their conditions of service vide Article 314⁴. In furtherance to this, Parliament passed the All-India Services Act, of 1951 according to which the recruitment for all these services was made by the Union Public Services Commission (UPSC), also the State Public Service Commission (SPSC) is responsible for state-level administrative services recruitment.⁵

Other Acts regulating the same were also enacted namely, All India Services (Conduct) Rules, 1968, AIS (Performance Appraisal Report) Rules, 2007, AIS (Death cum Retirement Benefits) Rules, 1958, AIS (Cadre) Rules, 1954, AIS (Pay) Rules, 2007. The article has undergone various amendments and was amended by the 28th Amendment and Article 312A was inserted in which power was provided to the Parliament for varying and revoking conditions of service of officers. Along with this Article 314 was repealed. An attempt was made to rationalise the rules of civil services and make them uniform among all the officers appointed both before independence and after independence.⁶ Therefore, the 42nd Amendment, 1976 was done wherein provision for All India Judicial Services was also included so that it can also be formulated or created in furtherance of the existing three popular⁷ All India services namely, Indian Administrative Service, Indian Police Service, Indian Forest Service.

(B) Issues involved

1. More Central autonomy even when All India Service was established on Federal lines, therefore states not having equal roles.
2. Failure in establishing new All India services affects building the cooperation and unity between the centre and the states.
3. Officers working in states hesitant in coming forward to opt for tenure with the Centre.
4. State is only acting as a consultation body, and is not empowered to take decisions.

³ DS Garewal v State of Punjab, AIR 1959 SC 512: 1959 Supp (1) SCR 792.

⁴ R.P. Kapoor v. Union of India, AIR 1964 SC 787. Art 314 was omitted by the Constitution (Twenty-eighth) Amendment Act, 1972

⁵ V.P. Menon, The story of Integration of Indian States (1956)

⁶ S.P. Iyer, "Federalism and All - India Services", Centre-State Relations in the Seventies., 1974

⁷ M. Venkataranjaya, Competitive and Co-operative Federalism, (1951)

III. CENTRE'S AUTONOMY IN ALL INDIA SERVICES

The founding fathers of the Constitution decided in favour of a strong Centre in the case of All India Services as they believed that "it would be injurious to the interests of the country to provide for a weak Central authority which could be incapable of ensuring peace, of coordinating vital matters of common concern and that the soundest framework of our Constitution is a federation with a strong Centre."⁸ To ensure an effective role for the Central Government in the administration of the country, an acceptable and workable link between the States and the Centre is necessary⁹. But the country was very vast and diverse to be solely regulated, therefore distribution of powers among states is also required.

The scheme of All India Services was made after consultation with the states in the new Constitution. The Centre's pre-dominance role was further ensured by providing for a common election commission and a common higher judiciary for the states and the Centre, therefore our federation has strong unitary contents.¹⁰ Dr Ambedkar, one of the main architects of the Constitution, had observed that the Indian Union can be "both unitary and federal according to the requirements of time and circumstances". Among the various institutions, the instruments of governance of All India Services have been designed to strengthen the Centre.¹¹ Earlier there existed two All India Services namely the Indian Civil Service which was later named Indian Administrative Service and the Indian Police named the Indian Police Service¹², but in both of them, state autonomy was seen to be less.¹³ Also, multi-fold problems existed because of the predominance of the Centre and have even been highlighted by Sardar Patel by stating that "In an All-India Service, it is obvious, recruitment, discipline and control, etc., have to be tackled on the base only and under the direction of the Central Government which is the recruiting agency."¹⁴ The States had little power as the imposition of the All-India Services on the states did affect provincial autonomy which is important in a federal polity.

IV. FAILURE IN ESTABLISHING NEW ALL INDIA SERVICES

The reason for creating All-India Services is that officers on whom the brunt of the

⁸ Constituent Assembly's Union Powers Committee Recommendations.

⁹ Goyal, Santosh (1989) 'Social Background of Officers in the Indian Administrative Service', in Francine R. Frankel & M.S.A. Rao (eds.) *Dominance and State Power in Modern India*, Delhi: Oxford University Press

¹⁰ Venkataratnam (2005) 'All-India Services: time to disband', *Economic and Political Weekly*, 40(17)

¹¹ Chatterjee, Upamanyu (1988) *English August. An Indian Story*, London: Faber and Faber

¹² Government of Madras, Rajamannar Committee Report on Centre-State Relations (1971)

¹³ Mukherjee, B.C. (1994) *Administration in Changing India*, Delhi: Blaze Publishers

¹⁴ Government of India, Central Vigilance Commission (2001) *The Indian Administrative Service: a study of the current state of punitive and preventive vigilance mechanisms*, New Delhi: Satarkata Bhawan

responsibility for administration will inevitably fall may develop a wide and all-India outlook.¹⁵ It was made to build a strong uniting link between the Centre and the states in the day-to-day administration of the country as these services are common to both and are meant to provide uniform standards of administration thereof. In 1946, the Central Government consulted the provincial governments to discuss the future of the All-India Services which were pre-existing at that time.

There was "a remarkable unanimity"¹⁶ among the provincial leaders to continue the existing All India Services in the new federal set-up of the country. Even then, the Constituent Assembly only empowered Parliament under Article 312 for creating "one or more All India Service common to the Union and the State" by law.¹⁷ Therefore, the states have become cautious in sharing any of their powers with the Central government even in the larger national interests. The fears turned out to be true, and no new All India Service was established after that, except the Indian Forest Service. To correct defects, and also to secure greater inter-state Co-ordination for the implementation of all-India policies, efforts have been undertaken towards the creation of more All-India Services, especially for technical departments, for the Central and State Governments, which necessitates that technical persons should be trained and recruited on a common basis.¹⁸ Consequently, in 1961, the Chief Ministers Conference accepted in principle the creation of three new All- India Services in the field of engineering, forestry and medicine and public health. After the adoption of a resolution under Article 312(1) by the Rajya Sabha, these services were created by amending the All- India Services Act, of 1951 in 1963.

There is still scope for more All-India Services as the existing ones have not been effectively enforced yet. The State Governments also agreed to the creation of two more All-India services that are the Indian Educational Service and the Indian Agricultural service. The necessary resolution under Article 312 (1) was also adopted by Rajya Sabha. After the fourth general elections, a few State Governments modified their stand and refused to participate in these two services and, consequently, the matter was deferred.¹⁹ Also, even though Article 312 was amended²⁰, to bring in Indian Judicial Services, efficient steps have not been taken to date to constitute the service. Therefore, the lack of new All India Services means the lack of improvement of Cooperation between the Centre and the States.

¹⁵ States Reorganization Commission Report, 232 (1955).

¹⁶ Constituent Assembly by Sardar Patel

¹⁷ Chakrabarty, Bidyut(2006) 'Jawaharlal Nehru and Administrative Reconstruction in India: a mere imitation of the past or a creative initiative?', *South Asia: Journal of South Asian Studies*, 29(1), pp. 83-99.

¹⁸ Ibid, 231. Also, AK Chanda, *Federalism in India*, 106 (1965).

¹⁹ Annual Report, Ministry of Home Affairs, 1(1968-69).

²⁰ Fourth- Second Amendment, 1976.

V. OFFICERS HESITANT TO WORK IN THE CENTRE

It has been observed that fewer All India Services officers working in the States were willing to switch for tenure to work at the Centre. The possible reasons responsible for the same could be, extremely long hours of work, hectic schedules and routines, and the need for extreme clinical care in the preparation and submission of reports which are at times going up the hierarchy up to the Prime Minister himself. Also, fewer comforts than what is available in a state environment.²¹ The Centre's dialogue with the States over amending the All-India Services rules assumes importance in this regard to solve these problems. Such a change would provide the Centre with the authority to order the services of any officer now serving in the States to work for the former, with or without the approval of the relevant State or official. But if this happens the federal character of this provision will be lost and the State will no longer have a say in the same.

VI. THE STATE PERFORMS CONSULTATION FUNCTIONS ONLY

All India Service officers assigned to a State are subject to the disciplinary authority of that State's government in all situations unless mandatory retirement, removal, or dismissal are to be enforced as serious penalties. These major penalties fall within the jurisdiction of the Union Government. This limitation on the powers of the State Government is therefore pre-existing and they only provide consultation to the Central Government. Parliament in the exercise of its powers under Article 309 enacted the All India Service Act, 1951, whose Section 3(1) authorizes the Union Government in consultation with the State Governments, to make rules for the regulations of recruitment and the conditions of service of persons appointed to All India Services.²² This power includes the power to amend from time to time, but the rider it engrafted is that the power should be exercised "after consultation with the Governments of the State concerned". These rules or regulations are statutory in character.²³

While interpreting the word "consultation" in *U.R. Bhatt v. Union of India*²⁴, the court held that the absence of consultation of the Public Service Commission or any irregularity in consultation under Art. 320 will not affect the decision taken by the All-India Service authority under Art. 311 of the Constitution. In *Ram Gopal Chaturvedi v. State of Madhya Pradesh*²⁵, the same

²¹ Banik, Dan (2001) 'The Transfer Raj: Indian Civil Servants on the Move', *The European Journal of Development Research*, 13(1)

²² *T.S.R.Subramanian & Ors vs Union Of India & Ors*

²³ Section 3(2) of All India Service Act, 1951

²⁴ AIR 1962 SC 1344

²⁵ [1970] 1 SCR 472

view was reiterated. Again, in the *State of U.P. v. Manmohan Lal Srivastava*²⁶, the word "consultation" was considered by a Constitution Bench. According to the ruling, the Constitution's framers gave the appointing authority the freedom to contact the Public Service Commission even if the word "consultation" did not imply a necessary nature for consultation. However, the executive branch of government cannot arbitrarily determine which instances the Public Service Commission should or shouldn't be consulted on. This Court ruled that in the lack of a binding character, failure to comply with the "Consultation" obligation would not invalidate the Government's final decree of removing the Government servant from service.

VII. LEGAL REGIME/ JUDICIAL PERSPECTIVE

Initially, in *Keshavanand Bharati vs. Union of India*, the Supreme Court declared Federalism as the "basic structure" of the Indian Constitution. But at a later stage, states were favoured more by the decentralization of federalism which was aided by the role played by an "activist"²⁷ judiciary since the early 1990s²⁸, especially in the case of *SR Bommai v Union of India*²⁹. In the case of *All India Services*, the federalism principle has been applied quite differently by the judiciary in various cases. In *State of Jammu & Kashmir v. M.S. Farooq*,³⁰ it was held that the recruitment and conditions of service of persons appointed to all-India services and any disciplinary proceedings against them can be regulated only by or under any law made by Parliament in the exercise of its power under article 312., and any law made by the state legislature, in this regard, which is repugnant to the discipline and appeal rules, will not operate in such cases.

In the *Indian Administrative Service (S.C.S) Association v. Union of India*³¹, it was held that even if the Central Government consulted the state government, it is not bound to accept all the suggestions from them and can take its own decision without again communicating the revised draft rules to the state governments. Therefore, the judiciary has always been described through various judgements more in the favour of centralizing power. Even the Sarkaria Commission³² which plays a key role in this respect, after examining all aspects of Federalism and All-India Services³³, has always emphasised the vital necessity of continuing, strengthening and

²⁶ [1958] SCR 533 at 542

²⁷ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, Delhi: Oxford University Press, 2003

²⁸ Rekha Saxena and Mahendra Prasad Singh, "The Role of Federal Judiciary in Union-States relations in India", in Jan Erkand Wilfried Snewnden edited *New Directions in Federalism Studies*, London: Routledge, 2009.

²⁹ (1994), 3 SCC 1

³⁰ AIR 1972 SC 1738

³¹ 1993. Supp (1) SCC 730

³² Government of India, Report of the Commission on Centre-State Relations 220 (1988)

³³ N. S. Saxena, "IAS and IPs at War with State Cadres", TM Times of India, April 6, 1984.

expanding the All-India Services as they are essential for maintaining the country's unity.

VIII. ANALYSIS

The All-India Service scheme helps to develop a feeling of unity among holders of higher-level posts in the states and under the Central Government and was formulated to serve the same purpose. It is regarded as having great value and benefits for the country's well-coordinated socio-economic development, which is what the Constitution envisions. But, a closer analysis of the situation gives the idea that the Centre has been granted immense powers in this regard as it is the one which regulates the constitution and functioning of the All-India Services. The State performs consultation by giving recommendations to the Central government before constituting any new All India Service under Article 312 of the Constitution of India.

IX. FINDINGS

All India Services play a crucial role in building cooperation and coordination between the Centres and the States, establishing more All-India services will further enhance the cooperative set-up between the two. Also, it can be said that though it has been formed on federal lines, it favours the Centre more as the decision rests with the Centre, and the Centre may take consultation from the State which has mostly been interpreted by the courts as not so mandatory in nature, therefore, Centre plays a more crucial role in the case of All India services. Even, then the officers are hesitant to work at the Centre, essentially as they are accustomed to the comfort available in the State environment.

X. CONCLUSION

The All-India Services was framed on federal lines where both the Union and the State Governments enjoy equal powers, yet it does not function that way in reality. The State Governments are only consulted when formulating the regulations for the regulation of recruitment and terms of service of personnel appointed to an All-India Service, not with their consent essentially. Additionally, the Union Government, rather than the State Government, which is the authority over his cadre, decides whether an All-India Service officer can be deputed to a position outside of that of his cadre. Therefore, the Union Government while making a new rule relating to All-India Services, should try to secure the concurrence of a majority of State Governments, if not of all of them, to keep the federal feature alive on whose foundation or basis it was initially formulated and incorporated between the Centre and the State. This can ensure higher administrative services of the country, become a joint enterprise of the states and the Centre, to man senior administrative posts, giving a sense of participation

in Central administration to each state of the Union. It will make the federal polity a truly 'cooperative federation' or 'cooperative federalism' between the Centre and the States.

XI. SUGGESTIONS

In the presently changing environment, the role of the Centre and the States is needed to be strengthened in All India Service, to protect their legitimate service interests. Cases of injustice and individual harassment at the state and Central levels need to be speedily looked into and set right by the Central Government. It should also exercise greater disciplinary control over every member of these services. The greater Centre-state cooperation can be achieved by enhancing recruitment on an all-India basis by the Union Public Service Commission without any state quotas or reservations on territorial or population criteria. Allocation and Common training of the recruits should be organised by the Central Government at the National Academy of Administration with emphasis on an all-India outlook. The States can be given more autonomy by interpreting the consultation function as a mandatory requirement, for the Centre. The ultimate decision-making powers should rest with the Centre only. When officials from the All-India Services are deputed to the Union, there should be some element of coercion. Every officer in the All-India Service should be obligated to work for the Union Government for a minimum amount of time. Only after screening them, State Governments should offer officials for Union delegation. The Union Government should accept any officer that is given by the State Government unless there are special circumstances that must be disclosed to the State Government concerned.

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