

## **How All India Are The All India Services?**

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Article 1 of the Constitution makes India a Union of States and the Seventh Schedule framed under Article 246, by containing List 1, the Union List, List 2, the State List and List 3, the Concurrent List prescribes the legislative bounds of Parliament and the State Legislatures in what is basically a federal structure. Part XI, which refers to the relations between the Union and the States, whether legislative or administrative, defines the extent to which the legislative and administrative jurisdictions of the Union and the States extend and to what extent the Union writ prevails over the States. The Federation, while giving constitutional autonomy to the States within their respective executive and legislative competence, is centripetal in that under Article 248 residuary powers of legislation vest in Parliament.

The federal structure of India is somewhat different from that of the constitutional structure of other Federations, for example, the United States of America. In the United States separation of powers between the Federal Government and State Governments is complete in that in matters legislative, executive or judicial Federal Government functions through federal officers and federal judges, as also Congress in matters within the federal competence and the State Governments function through their own set up in matters within State competence. The Federal Government has its own civil servants who administer the areas which come within the legislative competence of Congress and the States have their Civil Services which operate in areas within the competence of the State Legislature. However, the Indian Constitution has a unique structure embodied in Article 312 which permits Parliament to make laws for the creation of what are known as All India Services. The same Article states that the Indian Administrative Service and the Indian Police Service which predate the Constitution would be deemed to be created under Article 312. The same Article also permits the creation of an All India Judicial Service, though none has been constituted so far. The All India Services are covered by the All India Services Act, 1951 and rules have been framed under the Act, including the Cadre Rules, the Conduct Rules and the Discipline and Appeal Rules. Under the Cadre Rules posts in the Central Government and the State Governments in the two initially constituted All India Services, the Indian Administrative Service and the Indian Police Service and the subsequently created Indian Forest Service are prescribed and against these posts only an IAS, IPS or IFS officer can be appointed. There is provision for lateral entry by promotion from State Services or by induction through limited special recruitment, but the fact remains that the senior posts in the General Administration, which include Revenue and Development Administration, the Police and the Forests, including wildlife, can only be held by an officer of the IAS, IPS or IFS respectively. The uniqueness of this constitutional provision is that whereas India is a Union of States, it is a union or federation in which the senior Civil Service posts, including the Police and the Forest Department, are held by officers who are under the direct rule making control of the Union Government. The officers are assigned to a State Cadre and normally serve under the State Government, but they are liable to transfer either for service under the Union Government or, under certain circumstances, on deputation to other State Governments, public sector undertakings and as the rules stand today, to international bodies or even to private undertakings.

An All India Service officer is appointed by the President and can be removed from Service or awarded a major penalty only by the President. An All India Service officer is recruited through the Union Public Service Commission, his promotion through a departmental promotion committee even within the State is done through such a committee, which has representatives of the Union Public Service Commission and of the Government of India. The State Government's authority over the All India Service officers is limited by the provisions of the rules framed under the All India Services Act.

One need not discuss in detail why the All India Services were thought necessary and were created in a federal structure, but some knowledge of the background does help. British India was governed as a unitary state in which for administrative purposes the country was divided into Provinces, each headed by a Governor. Elements of federalism were there even under the 1919 Government of India Act and were strengthened under the 1935 Government of India Act and the Provinces did enjoy a fairly high degree of autonomy because a country as large as India cannot be administratively managed from one power centre alone. In fact in those days of poor communication links the districts were fairly autonomous themselves and the D.C. and S.P. were required to take decisions on the spot, which government invariably supported. Therefore, the provincial governments had considerable freedom of action, including the setting up of provincial services, but the country was held together by what were known as the Imperial Services of which the Indian Civil Service, or ICS was at the apex. The other major Imperial Service was the Indian Police or IP, but there was an Indian Forest Service, Indian Service of Engineers and an Indian Medical Service of all India nature. The Imperial Services were appointed by the Crown and not by the Viceroy and Governor General. When India became independent and the provinces became States which had constitutional legitimacy, the Indian Civil Service was carried forward as the India Administrative Service. In some ways the legal provisions of the Government of India Act 1935 were carried forward into the Constitution, with cast iron constitutional autonomy being enshrined in lieu of the surrogate autonomy of the provinces granted by the Government of India Act 1935.

The reason why we provide for an All India Service in a federal constitution, apart from the need to have continuity in the administrative set up in India after we became independent, was Sardar Vallabhbhai Patel's clear understanding that India had major fissiparous tendencies which needed to be controlled and countered by building into the Constitution centripetal features which would hold the country together. A unified judicial hierarchy, the All India Services, a single independent audit organisation under the Comptroller and Auditor General, with constitutional power of the Central Government to give directions to the States under certain circumstances and the power of the President to take over the administration of the States under Article 356, are all parts of the centripetal features of our Constitution. Sardar Patel was firmly of the opinion that if the executive government of the States and the Union was carried out through officers of All India Services who were protected and immunised from arbitrary action by the political class, then not only would we have a nonpartisan administration where officers work without fear or favour but a united India would also be ensured through these Civil Services whose ultimate rule making control is vested in the Central Government. Hopefully this would eliminate political whimsicality from the administration.

Upto 1967 the system worked extremely well and this was possible because, by and large, the Governments at both the Centre and in the States were formed by the same party. In 1967 suddenly the politics of defection through purchase of power was introduced and now

power was up for grabs. Thus began an era of political uncertainty in which the politicians, in order to remain in power, had to use bribery as a major weapon. Money for bribes can only be made by misusing the instrumentality of State power and obviously an impartial and fearless Civil Service would be an obstruction in obtaining such money. The Civil Service had to be tamed and this the politicians proceeded to do with vim and vigour, using the instrument of posting and transfer as a major weapon. In 1975, when Mrs. Indira Gandhi declared a state of Emergency and concentrated all power in herself, a new slogan of a committed Civil Service was added to our administrative lexicon. A committed Civil Service meant that civil servants would no longer necessarily be servants of the law and would be prepared to carry out the will of the political masters, even if it meant that administration became partisan. At this stage intimidation of civil servants was added to the armoury of the politicians and not only were honest, impartial civil servants sidelined, but many of them were subjected to humiliation through suspension and worse. So long as the Central Government continued to be under a single party some element of protection was available to the civil servants, especially the All India Services. However, when the Central Government became weaker and we entered into an era of unprincipled coalitions narrow political interests very often overtook the legal provisions relating to the All India Services and in many States the local satraps arbitrarily decided the fate of civil servants because the ruling coalition in the centre needed their support in order to remain in power and hesitated to protect the civil servants. In some States the politicians went berserk and Uttar Pradesh and Bihar are two glaring examples of how the All India Services were hounded, bullied and bludgeoned into virtual servility by totally arbitrary actions of Chief Ministers such as Mulayam Singh Yadav, Lalu Prasad Yadav and Mayawati. In West Bengal and in Kerala the Left Front Governments did not act in a crude manner but they did take political decisions whereby in areas of interest to the party in power the civil servants were rendered helpless. Industrial unrest is one area where the police and the magistracy were reduced to impotence where the interests of the Left Front were concerned. Here it is what the party dictated which mattered and not the law. In Tamil Nadu whereas both the DMK and the AIADMK Governments left the cutting edge level of the district administration more or less alone because the Collector was used for efficient delivery of such services as were politically ordained, at senior levels the All India Services were made subservient.

This was a total negation of Sardar Patel's ideal of an impartial Civil Service, immunised from undue political influence and, therefore, in a position to give advice without fear and favour and to administer without bias. Over the years the position has worsened. The standard joke in Uttar Pradesh is that the Annual Confidential Report of an IAS or IPS officer serving in the districts is seldom written because hardly any officer serves for even three months in a district before being transferred and the ACR must span at least a three months tenure. There is total whimsicality in such transfers. The Queen of Hearts in the book "Alice's Adventures in Wonderland" was in the habit of going around shouting, "Off with his head". That is how Mayawati behaved, that is how Mulayam Singh Yadav operated. It is unfortunate that senior officers at the level of Chief Secretary and D.G. Police have been silent spectators to the virtual destruction of the Civil Service hierarchy and have not had the courage to open their mouths in protest. I have a theory about this which is based on my own experience. After I was removed from the Delhi Development Authority towards the end of 1979 I spent a whole year without a posting in Delhi and somehow the impression was created that I was dissatisfied or disgruntled. The fact is that I was being paid my full salary without having to do a stroke of work and was personally very comfortable, but it is true that being on the shelf is never a good feeling. There

were several of us who were similarly placed, including Hari Pillai and Ved Marwah of the IPS and JC Jaitley of the IAS. Krishnaswamy Rao Sahib, who was then Cabinet Secretary, sent for me and wanted to know why some IAS officers were disgruntled. I asked him whether he wanted an honest answer and when he said that that was what he wanted I told him that the real reason why there was some dissatisfaction is because a whole succession of Cabinet Secretary had not put their heads on the chopping block. He was a little taken aback and wanted to know why I said this. I told him that there were a number of us without a posting for no fault of our own except that some politicians were annoyed with us and that even for postings at junior level officers were being informally advised to find a political godfather. I said that successive Cabinet Secretaries were probably looking for their governorship on retirement and, therefore, were hesitating to stand up for these Services. In my view the Cabinet Secretary should have told the Prime Minister that personnel management was his job and not that of the politicians, whose job was to frame policy. Anyway, the meeting ended inconclusively, though to give the Cabinet Secretary his due he did not hold my acerbic remarks against me.

Recently a young IAS officer with two years service, Durga Shakti Nagpal, has been placed under suspension by the Uttar Pradesh Government because she took on the powerful political and commercial interests behind illegal sand mining. There are innumerable decisions of the Supreme Court and the High Courts calling upon government to control illegal mining and it is the duty of civil servants to implement these orders. If, however, the politicians are to harass civil servants doing their duty, how will the rule of law prevail? Javed Usmani, the Chief Secretary of Uttar Pradesh, should have stood up to the Chief Minister and opposed the suspension of this young officer. Instead he has become a party to framing a false and frivolous charge-sheet against the officer to try and justify the suspension. Durga Nagpal's case is one of many in which civil servants of the All India Services are being harassed. The IPS is a major target because politicians want to use the police for furthering their own ends. I remember a case in which Mayawati, because she was annoyed with the SSP of Lucknow, suspended him and transferred the DG Police, Zonal IG and the Range DIG and this happened in the presence of the Chief Secretary. Did that worthy protest at these totally irrational orders? He preferred to be a silent spectator. This weakened his own position also. What a contrast with RCVP Noronha, the then Chief Secretary of Madhya Pradesh, who not only resisted the wholly unjustified suspension of R.S. Khanna, then Sales Tax Commissioner, by P.C. Sethi, Chief Minister, but refused to issue orders and when Mr. Sethi asked whether or not orders would be issued replied, "They probably will be issued, but by my successor". It is P.C. Sethi who stepped back.

How do we remedy the situation? The Supreme Court, in a writ petition filed by Prakash Singh IPS (retired) has been pressing the Central Government and the State Governments to immunise the police from undue political influence. The Supreme Court wants the Police Act to be amended to give the police autonomy, to provide tenure for officers from the rank of Station Officer up to DG Police and to protect officers from arbitrary action by government. Why is the Supreme Court suo motu not extending this to all the Civil Services and in particular the two other All India Services? It is about time that we put in place a set of laws and rules which, whilst accepting that it is the elected representatives through the Council of Ministers which will have the final say in all matters relating to policy of governance, the Civil Services are also be given due protection against arbitrary action by the politicians so that they can perform their task of implementing lawful orders without fear or favour. One set of rules which need immediate amendment is the All India Services (Discipline and Appeal) Rules 1969. Rule 3 relates to suspension. Under this rule a State Government may suspend an All India Service officer

serving in that State Cadre. The opening words of Rule 3 are important and they read, “If, having regard to the circumstances in any case, and where Articles of Charges have been drawn up, the nature of the charges, the government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that government may, if the member of the Service is serving under that government pass an order placing him under suspension...” The same rule, however, says that if there is a difference of opinion between the Central Government and the State Government about the suspension order, then the opinion of the Central Government shall prevail. In the Durga Nagpal case the order of suspension and the grounds of suspension are so flimsy and so obviously contrived that the Central Government should have treated this as a case of disagreement with the State Government and should itself have quashed the suspension order. It is not necessary to wait for ninety days, within which period a charge sheet has to be served.

Considering the fact that there are many State Governments which are misusing the power of suspension we need to amend the rules on the following lines:-

The State Government should have no power to suspend an All India Service officer except on the following grounds:-

- (a) The officer’s conduct is under investigation in a criminal case, in connection with which the officer has been arrested and remanded to custody in excess of forty-eight hours.
- (b) The officer’s actions are so prejudicial to public safety or national integrity that he must be neutralised without delay. However, in every such case the State Government must submit a report within forty-eight hours of the order to the Central Government, which may then decide whether or not to continue the suspension of the officer.
- (c) In every other case if the government feels that the suspension of an officer is in the public interest it must make a report to the Central Government, which may decide whether or not the officer is to be placed under suspension.

Other than this the State Government should have no power whatsoever to place an All India Service officer under suspension. This is all the more so because the power to impose a penalty on an All India Service officer vests in the Central Government and can be imposed only in consultation with the Union Public Service Commission. This would go a long way in ensuring that the All India Service officers function without fear and favour.

There is another set of reforms that we need if we have to make the All India Service truly national in character. At present there are many officers who, after allocation to a State Cadre, never serve outside that State. This must immediately end. In the approximately thirty-five years span of service an All India Service officer should serve outside his cadre for at least ten years. Every All India Service officer should have one stint of five years of service in a cadre other than the one to which he is allotted, that is, he must serve under a State Government other than the one to which he is allotted. He must also put in an additional five years stint in any post under the Central Government. Thus in his thirty-five years of service at least ten years will be spent outside his parent cadre. The idea is that an All India Service officer must serve anywhere in India and not be confined to just one State. This would widen his

horizon and give him an all India perspective, which is very necessary if our All India Services are to have a national character.

There is another suggestion I have to make, which is that the All India Services must be made to realise that they are servants of the law and not the personal servants of a politician. Therefore, if a civil servant has acted in a manner which promotes the interests of a politician or a political group and in doing so has been in violation of the law then, if the State Government does not take action, the Central Government must charge-sheet the officer and take disciplinary action against him. Every All India Service officer must be made to realise that if in order to curry favour with State politicians he acts in a manner prejudicial to law, he will have to face the consequences because the Central Government will intervene. This is the only way to curb the whimsicality of wayward Chief Ministers who are under the false notion that they are above the law and can, therefore, expect senior civil servants to even ignore the law to serve the interests of the Chief Minister. If condign punishment is awarded in a few such cases it would have a salutary effect in reminding the All India Services where their duty lies.

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