JUDICIAL APPOINTMENT UNDER INDIAN CONSTITUTION
Special Reference to the representations of Weaker Sections in Courts

By

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Introduction

The Articles is deals with the judicial appointment under Indian Constitution. The Judges appointment has discussed with briefly statement in this Article. The appointment of the Judges is made everywhere by the executive. The Judges are appointed to the Supreme Court and the High Court every year. The executive has all powers to appoint Judges.

The three wings of any Government are; The Legislature, the Executive and the Judiciary. The Legislature makes laws for the whole country and its territory. The executive enforces those laws and administers the country. The Law Courts punish the lawbreakers and act as the guardian of the Constitution. The appointment of the Judges is made by the executive not made by the Legislature, but the Legislature can legislate the procedures of the appointment. In both U.S. and U.K. Judges are appointed by the executive. In U.S.A. the Federal Judges are appointed by the presidential nomination confirmed by senatorial Courtesy.

Once essential feature of Indian judiciary system is that it is unified. State has no separate judicial organization, the State Government has no right to appoint the High Court Judges. Under Indian Constitution, the appointment of the Judges is made by the Central executive. The Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court) and the fees taken therein. Persons entitled to practice before the Supreme Court[1]. The Constitution, and organization (including vacations) of the High Court except provisions as to officers and servants of High Courts. Persons entitled to practice before the High Court[2]. Parliament has power to create the new posts of Judges. Anywhere there used to be an intense competition amongst lawyers to be appointed as Judges to the High Court and Supreme Court. The President of India has authroized the appointment of Judges under Articles 124 and 217 of the Indian Constitution.

Appointment of Supreme Court Judges

In actual fact the appointment aspects of Article 124 of the Constitution has two elements in it- a "political" element and a "judicial" element[3]. The power to make appointment has been vested in the executive. This can be called the "political" element. It is not political in the normal sense of the word. The use of the term "political" merely means the executive is responsible for the appointment and it must accept responsibility for the appointment. There may also be political consideration influences the appointment of a Judge but it is not clear what there political considerations ought. On the 23rd of May 1949 Professor *K.T. Shah* moved that Article 102-A be added to the draft Constitution. Article 102-A as proposed subject to his Constitution the judiciary in India shall be completely separate from any wholly independent of the executive and Legislature[4].

1. Entry 77 of the Union List
2. Entry 78 of the Union List
3. Rajeev Dhavan Selection and appointment Supreme Court Judges a case study 1978, Page No.36.
4. Ibidi p.27

(a) Judges of the Supreme Court shall be appointed by the President of India after consulting the Chief Justice and such other Judges of the Supreme Court, as also such Judges of the High Courts as may be necessary for the purpose[5].

The general approach to appointments was debated on the 28th July 1947. This approach quoted above was approved by Sir. *Alladi Krishnaswamy Ayyar* and later by Mr. *K. Santhanam*. The latter did however, put forward an alternative which reads as follows :

"The appointment of the Chief Justice and the other Judges of the Supreme Court shall be by the President of India after consulting a Joint Standing Committee of both Houses of the Federal Parliament consisting of six members from the house of the people and five members from the Council of States[6].

Under Article 124(2) the President, in appointing other Judges of the Supreme Court is bounded to consult the Chief Justice of India. But in appointing the Chief Justice of India he is not bound to consult anyone. This word may used in Article 124 makes it clear that it is not mandatory on him to consult anyone.

Every Judge of the Supreme Court of India shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Court in the States as the President may deem necessary for the purpose.

In the matter of appointment of the Chief Justice of India, the President shall consult such Judges of the Supreme Court and of the High Courts, as he may deem necessary. A nine-Judge Bench of the Supreme Court has laid down that the senior most Judge of the Supreme Court considered fit to hold the office should be appointed to the office of the Chief Justice of India[7].

The President of India has followed the practice of appointing the senior most Judge as the Chief Justice of India till 1973. This practice had virtually been transformed a convention and was followed by the executive without any exception. In 1956, the Law Commission has criticized this practice and recommended that in appointing the Chief Justice of India experience of a person as a Judge, his administrative competence and merit should be Judged and seniority should not only be the main consideration. But it is not implemented. On April 25, 1973 however, this 22nd years of practice was suddenly broken by the Government within few hours of the delivery of the judgment in the fundamental rights case. Mr. *A.N. Ray* was appointed as Chief Justice of India superseding three of the senior colleagues, JJ. *Shelat, Hedge* and *Grover*. The three Judges resigned from the Supreme Court.

Appointment of High Court Judges

Every Judge of a High Court shall be appointed by the President of India by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court must be a full and effective consultation.

Appointment of District Judges

The appointment of the Judges is made everywhere by the Executive Articles 233 to 237 of the Indian Constitution deal with Subordinate Courts. Article 233 which provides for the appointment of District Judges.

5. *B. Shiva Rao*, the Framing of India's Constitution, A study (1968)
6. Rajeev Dhavan Selection and Appointment of Supreme Court Judges A Case Study 1978, p.38.
7. *Supreme Court Advocates v. Union of India*, (1973) 4 SCC 441 (9-Judges Bench).

Article 233 Clause (1) of the Indian Constitution provides the appointments of persons to be and the posting and promotion of District Judges in any State shall be made by the Governor of the State in consultation with the High Court but not with Supreme Court exercising jurisdiction in relation to such State.

Representation of weaker sections in Courts

The appointments to Higher Judiciary are made according to the principles and procedures laid down in the Constitution and appointments to the Subordinate Judiciary are made partly according to the provisions of the Constitution and partly according to the Statutes.

But neither Article 124 nor Article 217 speaks about the number of posts to be reserved if any for appointment of the Schedule Caste, Schedule Tribe and Backward Classes or minorities to the Judiciary. Although there is representation provided for weaker sections with regard to the Executive branch of Government even in respect of Central Services such as IAS & IPS there is no representation provided to the weaker sections in the sphere of judicial institution at the Union and the State levels. The result that the persons belonging to weaker sections of society have very little representation on the Benches of Supreme Court and the High Court.

However, in regard to appointments at the subordinate Judiciary *i.e.*, the Munsiffs of Judicial Magistrates, Public Prosecutors *etc.*, representation has been provided by the State Governments by framing the relevant rules.

However the Law Commission of India in its Fourteenth Report (1958) dealt with the practice of making appointments of communal basis and had urged upon the State Government to go by the strict rule of merit and efficiency.

The result of adhering so rigidly to the Conventions since then was that the State Governments could not pay due attention to the interests of the weaker sections in regard to judicial appointments despite its requirement.

In view of the very poor representation given to the weaker sections, demands were put forward before the Government of India by the Organizations to accommodate the SC's and ST's.

In July 2001, *Ramai Ram* Minister for Revenue and Chairman of the Rashtriya Ambedkar Sena in Bihar had demanded 50% reservation for SC/ST/OBC's and Minorities in Judicial Services and Constitution of an All India Judicial Services Commission.

The Parliamentary Committee on Judiciary took stock of the situation and after going into various aspects of the welfare of the SC's/ST's and other Backward Classes it expressed serious concern over dismal representation of the SC's/ST's *etc.* in the Higher Judiciary. The Committee has pointed out to the Government that out of about 460 High Court Judges only about 20 are from SC/ST. Another 180 posts of the High Court Judges are lying vacant and are yet to be filled any only one SC Judge was elevated to the Supreme Court.

In pursuance of the recommendation of the Parliamentary Committee the Central Government has been wiring to the Chief Ministers of the States and Union Territories and the Chief Justices of High Courts to increase the representation of Scheduled Castes and Scheduled Tribes in the High Judiciary.

The Parliamentary Committee has suggested to the Centre to take 'concrete' steps if need be by amending the Constitution to provide for reservation to SC/STs in the appointment of Judges to High Court and the Supreme Court so that high representation of SC/STs is ensured.

The principle of representation should therefore be followed in respect of judicial appointments to the Supreme Court the High Courts and the Subordinate Courts. It should be followed in respect of the quasi-judicial institution *i.e.* the Administrative Tribunals.

LOK ADALAT: AN INSTRUMENT OF ALTERNATIVE DISPUTE RESOLUTION

By

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The legacy of Anglo-Saxon jurisprudence introduced by the British Rule in India has over the years led to an explosive growth of litigation, piling up of arrears in Courts and consequential costs and delays in dispensation of justice. In the present adversarial system of law prevailing in our country there is a preponderance for observance of legal formalities and procedures and assertion of rights of the parties rather than arriving at an amicable settlement of the disputes between the parties. This has inevitably led to long-drawn Court-room battles with each party trying to establish its supremacy over the other resulting in wastage of precious time and money to either party.

The quest for a viable and sustainable alternative to litigation which is also authoritative and enforceable as a Court decree has led to the development of Alternative Dispute Resolution (ADR) methods. ADR is a term generally used to refer to informal dispute resolution processes in which the parties meet with a professional third party who helps them resolve their disputes in a way that is less formal and often more consensual than is done in the Courts. While the most common forms of ADR are negotiation, mediation, conciliation and arbitration, there are many other forms such as mini-trial, fast track arbitration, Court annexed ADR *etc.*

ADR processes have a number of advantages. They are flexible, cost-efficient, time-effective, and give the parties more control over the process and the results. Parties who resolve their disputes through ADR are generally more satisfied because they may directly participate in working out the terms of their settlement. When appropriate settlement processes are available, many disputes can be resolved more efficiently and with greater satisfaction to all parties. Lengthy, costly litigation can be avoided and productive results achieved. According to a survey, nearly 85% of the disputes in the developed countries such as the United States of America, the United Kingdom, *etc.* are resolved by ADR methods only.

Almost all types of disputes, be it relating to business, commercial, civil, labour, family *etc.*, except non-compoundable offences and where a statute specifically mentioned, can be settled by ADR procedures in India. In the words of Dr. *P.C.Rao*1, "ADR techniques are extra-judicial in character. They can be used in almost all contentious matters, which are capable of being resolved, under law, by agreement between the parties. They have been employed with very encouraging results in several categories of disputes specially civil, commercial, industrial and family disputes. In particular, these techniques have been shown to work across the full business disputes: banking, contract performance and