ORGANISATION OF SUBORDINATE JUDICIARY IN INDIA

By

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Introduction

In each State there is a system of Sub-ordinate Court below the High Court. The Constitution makes a few provisions in Articles 233 to 238 to regulate these Courts and to ensure independence of Sub-ordinate Judges.

The Supreme Court has emphasized again and again on the maintenance of independence and integrity of the sub-ordinate judiciary which is closest to the people. Accordingly, the Court has through its various decisions promoted the independence of this Court from executive control and this effect has expanded the control of the High Courts over the sob-ordinate judiciary, so as to strengthen the independence of the Sub-ordinate Courts from the executive control.

In the present day the judicial system in India is quite complicated and not easy to be explained in brief in a type of work as the present one is in existence. The reason is that apart from the judicial system which the Constitution establishes, there are many Laws which define and regulate the composition, powers, appointments and the Criminal and Civil jurisdictions of various Courts.

The Constitution of India which is the basis of all governmental organs and institution establishes Federal Form of Government. A Federal Government requires double sets of Executive, Legislative and the Judiciary one each for the Centre and the States as in the United States of America.

Under the Indian Constitution there is a single integrated system of Courts for the Union as well as the States which administer both Union and State Laws enacted by Union Parliament and State and at the head of the India. The object of their Article deals with the organization of subordinate judiciary system in India and focus on appointment and promotion of the subordinate Judges in India.

The Supreme Court has issued a direction[1] to the Union and the States to constitute an All-India Judicial Service (AIJS) and to bring about uniformity in designation of officers both in Criminal and Civil side.

At the lowest stage, the two branches of justice civil and criminal are bifurcated. The Union Courts and the Bench Courts, constituted under the Village self-Government Acts, which constituted the lowest Civil and Criminal Courts respectively, have been substituted by Panchayathi Courts set up under post-constitution state legislation[2]. The panchayathi Courts also function on two sides, civil and criminal, under various regional names, such as the Nyaya Panchayat, Panchayat Adalat, Grama Kutchery. In some States, the Panchayat Courts are Criminal Courts of the lowest jurisdiction in respect of petty cases[3].

But, the organization of the judicial system in India at the time of the transfer of power presented certain anomalies. Both the Indian statutory (Simon) Commission in 1930, and the Joint Select Committee on

1. *Durga Das Basu.* Introduction to the Constitution of India, 18th Edn. 1997, P.285.
2. Ibid
3. *Durga Das Basu.* Introduction to the Constitution of India, 18th Edn. 1997, P.285.

Indian Constitutional Reform in 1934, had emphasized the paramount importance of Independent and fair-minded judiciary enjoying the confidence of the people.

Special stress was laid to the need for a competent subordinate judiciary, because, as the Joint Committee observed : It is the subordinate judiciary in India who are brought most closely into contact with the people and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question that in the case of Superior Judges[4].

The District and Session Judges who exercised both Civil and Criminal jurisdiction were appointed by the Governor of the province, exercising his individual judgment, and the High Court had to be consulted on each such appointment[5].

The Commission to provide specially for the subordinate judiciary in the Constitution was prominently mentioned by the Conference of the Judges of the "Federal Court" and the Chief Justices of High Courts held in March, 1948. Their Memorandum observed:

So long as the subordinate judiciary, including the District Judges, have to depend on the provincial executive for their appointment, posting, promotion and leave; they cannot remain entirely free from the influence of members of the party in power and cannot be expected to act impartially and independently in the discharge of their duties. It is therefore, recommended that provision be made placing exclusively in the hands of the High Courts the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including the District Judges[6].

The Drafting Committee accepted these recommendations, it considered that the two branches of Justice, both Civil and Criminal and placing them equally under the control of the High Court[7].

The suggestion to set up a Supreme Court in India was contained in the Nehru Report of 1928. Official thinking that the idea of a federal Court first took practical shape when, following three Round Table Conferences in 1930, 1931 and 1932, the British Government evolved a federal scheme for India's Constitution.

The white paper proposals of 1933, recommended the establishment of two Courts at the Centre. The federal Court was to be the ultimate judicial Tribunal for the interpretation of the Constitution as well as all questions concerning the respective spheres of the federal and provincial authorities and of the Indian States: Such Court which was to be independent of the federal[8].

The federal Court was to have both an original and an appellate jurisdiction. Its original jurisdiction was to determine justiciable disputes between the federation and any federal unit or between any two or more federal units, involving the interpretation of the constitution Act or any rights or obligation arising thereunder[9].

The original jurisdiction of the federal Court was also to be extended to any matter arising out of any agreement between the federation and province or a State or between two provinces or between province and a State[10].

Under Article 233(1), appointment, posting and promotion of District Judges 14 in a State are made by the Governor in

4. Joint Select Committee on Indian Constitutional Reform, Report 9 (1934) Para 337.
5. Government of India Act, 1935, Section 254.
6. *Shiva Rao, B*. The framing of India's Constitution, 1st Edn. 1963, P.308
7. Ibid.
8. Ibid
9. Ibid
10. Ibid

consultation with the High Court under Article 233(2), a person not already I the 'service of the State' is eligible to be appointed as a District Judge only if:

i. he has been for not less than seven years an advocate or a pleader; and

ii. is recommended by the High Court for such appointment.

From the tenor of Article 233 it appears that there are two sources of recruitment of District Judges:

i. service of the Union or the State

ii. Members of the Bar.

The Judges from the second source are appointed on the recommendation of the High Court, no one can be appointed from the Bar until and unless his name is recommended by the High Court.

In *M.M. Gupta v. State of Jammu & Kashmir*[11]

Appointment of District Judges by the Governor was quashed because these appointments were made without full and effective consultation with the High Court. The Supreme Court held that normally, as a rule, the High Court recommendations for the appointment of the District Judges should be accepted by the State Government and the Governor should act on the same.

CONCLUSION

India is one country from Kashmir to Kanyakumari and the Constitution of India has not provided for a double system of Courts as in the United States of America. The appointment, posting and promotions of the Subordinate Judges in India is well settled. Even though, the Indian Judiciary is independent from Executive and Legislature, there is a need of uniform Rules with regard to the appointment, posting and promotion of District Judges throughout India. The criteria of eligibility shall be on the basis of practical experience and well versed in different branches of Laws.

The constitutional provisions have given rise to several important controversies laying down the condition that an advocate who had practised in the Rajasthan High Court for 7 years would be eligible to be appointed in the State higher judicial services.

The High Court of respective State shall organize the orientation programmes to the subordinate judicial officer on newly enacted laws in order to improve their knowledge upto date.

E-COMMERCE AND THE LAW

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Electronic Commerce means buying and selling of goods and services across the internet. An e-commerce site can be as simple as a catalog page with a phone no, or it can range all the way to a real time credit and processing site where customer can purchase downloadable goods and receive them on the spot.

11. AIR 1982 SC 1579 also see *Chandramouleshwar Prasas v. Patna High Court*, AIR 1970 SC 370; (1969) 3 SCC 56.