



LEGALEAGLE
LAW FORUM

Review Document

All India Services Act, 1951

Author- Ms. Ria Garg

ALL INDIA SERVICES ACT, 1951¹

61 of 1951

29th October 1951

SIGNIFICANCE OF THE ACT

Before independence, two services called (i) the Indian Civil Service (“ICS”) and (ii) the Indian Police Service (“IPS”) were in existence and a conference held under the Chairmanship of Sardar Vallabhbhai Patel, a decision had been taken to create two All Indian Services (“AIS”) such as Indian Administrative Service (“IAS”) and Indian Police Service (“IPS”) to replace the former Indian Civil Service and Indian Police. The very scheme of the Act was to lay down rules and Regulations determining the conditions of service of the persons appointed to the AIS. It was further, in the same meeting decided that the recruitment of these two services should be made through the Federal Public Service Commission based on annual Competitive Examination. In the very same meeting, a further decision had been taken that a maximum of 25% of the cadre post in the All Indian Services should be thrown open to the State Civil Service Officers and State Police Officers of outstanding merit. In pursuance of the aforesaid decision the two AIS were formed and they were put on a statutory basis under the Indian Civil Administrative Service Cadre Rules, 1950. The Parliament then passed the All India Services Act, 1951 under Article 312(1) of the Constitution which empowers the Government of India to make after consultation with the State Government, rules for the regulation of recruitment and conditions of service of the persons appointed to an All India Service. All India Services are described in the All India Services Act, 1951 (“1951 Act”), and the code of conduct for Civil Servant overall is specified in the All India Service (Conduct) Rules, 1968 (“1968 Rules”). Exercising the power under Section 3 of the 1951 Act, the Government of India with the consultation of State Governments to make guidelines and procedures for the service conditions and the recruitment of the people appointed to AIS.²

¹All India Services Act, 1951 (Act No. 61 of 1951), accessed at http://legislative.gov.in/sites/default/files/A1951-61_0.pdf

²*GudurKishan Rao v. SuthirthaBhattacharya*, (1998) 4 SCC 189; see also *State of Madras v. Raja Gopalan*, AIR 1955 SC 817; *Tarknath v. State of Bihar*, AIR 1968 SC 1372 (The scheme of the 1951 Act was discussed in these cases)

OBJECT OF THE ACT

A study of the statement of objectives and reasons of the All India Services Act would reveal the following facts:

1. Article 312 of the Constitution of India (“Constitution”) provides that the Parliament may by law regulate the recruitment, and the conditions of service of persons appointed as the AIS, common to the Union and the States, if the council of states have declared by not less than two-thirds of the members present and voting, that it is necessary in the national interest that in respect of a particular service an all-India cadre of officers should be constituted. According to this Article, a statutory authority called The All India Services Act, 1951 (“1951 Act”) was enacted to enable the Central Government to carry on the day-to-day management and to make rules and promulgate decisions for regulating the recruitment and the conditions of service of persons appointed to the AIS. The AIS known at the time of the adoption of the Constitution were only two, namely, the Indian Administrative Service (“IAS”) and the Indian Police Service (“IPS”).
2. In the absence of any proviso to Art.312, similar to that included in Art. 309, the Government of India is (“GOI”) now compelled to deal with many of these matters employing non-statutory executive orders. This is neither satisfactory nor quite justifiable.
3. Parliament should provide the requisite statutory authority to enable the GOI to carry on the day-to-day management of the two AIS and also to take and promulgate decisions on matters relating to the recruitment and the conditions of service from time to time.
4. The entire body of legislation of the AIS falls into the category of “Subordinate Legislation”.

IMPORTANT PROVISIONS AND AMENDMENTS

The 1951 Act is a very brief act comprising of only four sections, namely; Short Title, Definitions, Regulation of Recruitment and Conditions of Service and continuance of existing rules.

The 1951 Act has been amended four times.

- *All India Services (Amendment) Act, 1958*
- *The All India Services (Amendment) Act, 1963*

- *The All India Services (Amendment) Act, 1975*
- *The All India Services Regulations (Indemnity) Act, 1975*

The All India Services (Amendment) Act, 1975 and *The All India Services Regulations (Indemnity) Act, 1975* has been repealed.³

Section 2 of the 1951 Act defines the expression "an All-India Service" which means the service known as the Indian Administrative Service or as the Indian Police Service.

In 1963,⁴ the words "*or any other service specified in section 2A*" in Section 2 along with Section 2A was inserted the 1951 Act. By the virtue of this amendment, the following three different services were to constitute AIS along with the existing two, namely, IPS and IAS.

1. The Indian Service of Engineers (Irrigation, Power, Buildings and Roads);
2. The Indian Forest Service;
3. The Indian Medical and Health Service

But these services are to come in effect from such dates as the Central Government may, by notification in the Official Gazette, appoint. Accordingly, on July 1 1966, out of the three, only **Indian Forest Service** was constituted under the 1951 Act.⁵

After this amendment of the 1956 Act, recruitment rules have been framed for purposes of recruitment to the Indian forest service, under which initial recruitment regulations to the Indian Forest Service were also framed in the year 1966 and recruitments have been made.⁶ Though the rules have been framed for regulating recruitment to the Indian Medical Services, the recruitment to this service has not yet taken place and the said service has not come into existence and with respect to Indian Service of Engineers, the same has also not been constituted; the relevant rules have not been even framed.

Section 3 of the 1951 Act gives the Central Government the power to make rules for the regulations of recruitment and the conditions of services of persons appointed to an AIS ,

³Repealed Acts, India Code. Legislative Department, Government of India. (Accessed on Aug 16, 2020)

⁴Inserted by Act 27 of 1963 , (*Under Article 312(1) of the Constitution, the Rajya Sabha passed a resolution on 6th December. 1961, by the prescribed majority, declaring that it is necessary to provide, in the national interest, for the creation of the following All India Services, namely*)

⁵*Introduction*, Indian Forest Service, Ministry of Environment, Forest and Climate Change, Government of India. (Accessed on Aug 16, 2020)

⁶*A. K. Kraipak v. Union of India*, AIR 1970 SC 150: 1970 (1) SCR 457.

after consultation with the State Governments. In 1958⁷, the words, “*including the State of Jammu and Kashmir*” were also included, which brings Jammu and Kashmir within the ambit of State Government for the purpose of this Act and the its governing rules.

By the plain reading of Section 3(1A)⁸, it can be inferred that this power will have retrospective effect but such have retrospective effect shall not be given if the rules prejudicially affect the interests of any person to whom such rule may be applicable. Retrospective refers to extending the scope or effect to matters that have occurred in the past. In other words it is the application of a given rule to events that took place before the law was in effect.

These rules and every regulation made under or in pursuance of such rule, after being made, has to be presented in both the Houses of Parliament when it is in session, for a period of thirty days. These thirty days, can be comprised in one session or in two successive sessions.

While exercising this power, the Central Government made the recruitment rules, the Cadre Rules, the All India Service (Conditions of service – Residuary Matters) Rules, 1960. These Cadre Rules enable the central government to determine the strength and composition of the cadre in each state by framing regulations and in the exercise of such power.

The Supreme Court in *Satya Narain Shukla v. Union*⁹ of India has observed that section 3 of All India Services Act, 1951 is an enabling power of the central government to make rules for the regulation of recruitment and conditions of service for persons appointed to AIS. This enabling power is hedged in with the requirement that before doing so there has to be consultation with state governments concerned and every rule made in such fashion is to be placed before both houses of parliament as required by sub-section (2) thereof.

Under section 4 of the 1951 Act, rules relating to recruitment and other conditions of service applicable to IAS and IPS, which were in force prior to the commencement of the

⁷Inserted by Act 25 of 1958, (*The Government of Jammu and Kashmir have agreed to participate in the scheme of All India Services and this has necessitated the constitution of the Indian Administrative Service and Indian Police Service Cadres in that State*)

⁸Inserted by Act 23 of 1975, (*In service matters occasions arise when it becomes an inescapable necessity to amend or make rules with retrospective effect. An instance in point is the implementation of the decisions of the Government on the recommendations of the Third Central Pay Commission*)

⁹*Satya Narain Shukla v. Union* , (2006) 9 SCC 69.

Constitution, were adopted. Provisions of Article 310 and 311 of the Constitution applies to persons appointed to AIS and no distinction has been made in between the members of AIS and persons appointed to the services under the union or the state in regard to the tenure of office.

RECENT PROPOSALS

As a consequence of the 14th Law Commission Report ¹⁰ in 1976, the Parliament, in the 42nd Amendment Act had amended Article 312 which laid down how the All India Judicial Service (AIJS) can be set up through initiation by the Parliament of India. Recently, the GOI has moved a step forward by seeking to introduce a new Bill for AIJS which will be on the same lines of the IAS and IPS.¹¹

DRAWBACK AND SUGGESTION

Part XI of the Indian constitution specifies the distribution of legislative, administrative and executive powers between the union government and the States of India and makes India a quasi-federal state. The AIS is controlled jointly by both the Centre as well as the respective State. The immediate control lies with the State Government, but the ultimate control lies with the Central Government. The Constitution also provides that disciplinary actions against them can be both by both of these Governments. Sardar Patel was of this firm 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 immunized 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. But, to the contrary, AIS being one of the most prestigious Institution in India, is still adversely affected by political whimsicality and stands a victim of corruption. Not to forget, during the reign of Indira Gandhi, when unprincipled coalition prevailed, AIS was bullied if a decision was taken against the interest of ruling, powerful parties. The practice of 'transferring of posts or placing an officer under suspension' remains popular. This was a total negation of Sardar Patel's ideal of an impartial Civil Service, immunized from undue political influence and, therefore, in a position to give advice without fear and favour and to administer without bias. The State

¹⁰Law Commission of India, *Reforms in the Judicial Administration*, Report No.14, (September 1958).

¹¹Rajya Sabha, *Budget Session*, Session No.251, (March 2020) <<https://doj.gov.in/sites/default/files/RS-19.03.2020.pdf>>

Government's power to suspend an All India Service officer should be curtailed. All India Services officers are servants of the law and not the personal servants of a politician and the reward for protectors of law should not be suspension and transfer.

CONCLUSION

These laws were framed more than six decades ago, and no major changes have been made in the past few years. One of the major challenges faced by the civil services is, the problem of political interference. In addition, politicians in state government were seen to have been transferring civil servants repeatedly. To overcome this problem and to seek a mechanism to insulate bureaucracy from political interference, T.S.R Subramanian, retired Indian Administrative Service (IAS) officer and former Cabinet Secretary along with T. S. Krishnamurthy, retired IAS officer and former Chief Election Commissioner; N. Gopalaswami, retired IAS officer and former Chief Election Commissioner and more than 80 others IAS and IPS officers, in 2011 filed a Public Interest Civil Writ Petition¹², seeking mandatory court injunction to support the independence of the various Indian Civil services and their freedom from political interference, by requiring the Indian federal and State Governments to implement the recommendations made by several commissions of review that oral instructions given by politicians to civil servants must be recorded in writing, that senior civil service appointments should be made for a fixed term, and that civil services boards should be established to advise on postings.

The outcome of this PIL was that in the year 2013, the Court directed both the Central and State Governments to set up a Civil Services Board to decide on transfers of all AIS, including IFS and to place a fixed-tenure policy to insulate bureaucrats from frequent transfers mainly through political interference.

Although this judgement was applauded by many, considering the fact AIS are the crucial pillars of the Indian State, it is of immense significance to introduce more progressive reforms to remove corruption from the grassroot level and also increase the scope of the AIS by bringing within its ambit, more services which are necessary in the contemporary times.

¹²*T. S. R. Subramanian v. Union of India*, W. P. (C) No. 82 of 2011 D. No. 4750-2011

About the Author



Ria Garg is a final year law student at Alliance University, Bangalore, pursuing BBA LL.B with honors in Finance and International Law. Her interest in law peaked at a very young age. Always been eager to learn new tasks, she has interned at a few law firms and with different practicing Advocates in the Bombay High Court where she was mainly engaged in legal research and drafting. She has developed reasonable skills in this position and aspires to develop her research experience and enhance knowledge. She believes that life is a learning journey and is always looking for more opportunities to take in.