

CONCEPT NOTE ON THE DISTRICT JUDICIARY RECRUITMENT

EXAMINATION

A. Factual Background

A1. The present PIL has been filed seeking the Supreme Court's directions to streamline and standardise the process of appointments to the subordinate judiciary in India. The suggestion of a *Central Selection Mechanism* (CSM) was, *inter alia*, made in a letter dated 28.04.2017, written by the Secretary of the Department of Justice, Ministry of Law & Justice (Government of India), to the Supreme Court of India. Keeping in mind the critical need for filling up these vacancies, this letter was taken up as a PIL by the Supreme Court. It is pertinent to mention here that this note is therefore, confined to suggesting a method for establishing a CSM for the appointment of district judges.

A2. The idea of instituting a CSM has been agreed in principle by most High Courts, through a resolution passed on 22.04.2017.¹

¹ See Annexure A

B. District Judges' vacancies - an Overview

B1. The sanctioned strength of district and subordinate judges in India is approximately 21000 today. Of these, approximately 4800 positions are vacant.² While the exact numbers are not available, it can be assumed that 25% of these are district judges, of which 25% are to be recruited through direct recruitment/examination, as per *All India Judges Association & Ors. v. UOI & Ors.* [(2010) 15 SCC 170]. This means that on an annual basis, there are likely to be approximately 300 vacancies that need to be filled up each year.

C. Reasons for a Central Selection Method and an All India Examination

C1. The Central Civil Services are able to attract highly capable individuals each year. An important reason could be the selection process itself, i.e., conducting an All India Examination and having a consistent and rigorous selection process. Further, the syllabus and other selection criteria are known in advance, which allows aspiring candidates to plan and prepare for the examination. These factors incentivise a large number of candidates to take the examination, of which the best eventually make the grade and qualify as central service officers. To put it succinctly, with quantity comes quality. The larger the pool of aspiring candidates,

² See Annexure B

the higher the probability of getting the top candidates for State Judicial Services. It may be added that the fixed time-table of holding such examinations will enable an advocate who is unsuccessful in a given year, to try harder and make further attempts in a planned manner for the subsequent years.

C2. The main reason for setting up a CSM is to provide a regular pool of meritorious candidates to recruitment and selection bodies for State Judicial Services across India. It is indeed distressing that several vacancies for district judges are not filled due to the lack of qualified and meritorious advocates. This is perhaps due to the absence of a regular/periodic examination system. In most States, the examinations are held in an *ad-hoc* fashion. There is no syllabus to enable candidates to prepare in advance. The uncertainty and irregularity is what the District Judges Recruitment Examination (DJURE) aims to eradicate. Under the CSM, such candidates would be able to write a single common examination, namely the DJURE, and be considered for selection in all the States for which they fulfil the eligibility criteria.

D. No effect on the existing structure of the Judiciary

D1. It is of utmost importance to emphasise that the DJURE as a CSM does not, in any way, impinge upon the powers of each High Court under Article 233 of the Constitution. The CSM does not, in any manner, amend, alter, or abridge any of the rules that currently prevail in the High Courts, while recruiting district judges. This has been made abundantly clear by the order of the Hon'ble Supreme Court dated 10.7.2017.³ This is evident from the following features:

- a. *Not an All India Judicial Service*: The proposed DJURE would not compromise the autonomy of the states in regulating the terms of recruitment or the conditions of service. This is what distinguishes the DJURE from an *All India Judicial Service*. All existing rules regarding reservation, eligibility and service conditions in the States would continue to be in force. The proposed mechanism only seeks to centralise the preparation of the merit list which is based on the performance of a candidate in a written examination.
- b. *Appointments to be made as under the Constitution*: The actual prerogative of appointment of any judges to State Judicial Services would remain with the Governor of a State, as prescribed under the Constitution of India. The

³ See Annexure C

DJURE will *neither recruit, nor appoint* candidates as District Judges. It will merely present a pool of candidates from whom judges can be recruited, after an interview with the selection authority. The selection will remain with the respective High Courts in accordance with Article 233.

- c. *No change in existing eligibility criteria:* The DJURE does not alter the existing eligibility criteria in different States. A candidate appearing for the common exam would be considered for selection in any State only if he/she already fulfils all the eligibility criteria prevalent in such State at the time of appearing in the common exam.
- d. *No change in reservations:* The rules/regulations for reservation for persons from Scheduled Castes/Scheduled Tribes/ Other Backward Castes, etc., will continue as they currently exist. The DJURE will not alter this in any way.
- e. *Requirement for specialised knowledge about State laws/language remains:* Specific requirements of each State in terms of testing knowledge in local laws or local language would be protected. The written examination would test candidates on both legal aptitude, as well as local laws, language(s), and customs and practices. This has been discussed in greater detail in the subsequent portion of this note. A candidate who wishes to be considered for appointment in a particular State's Judicial Service, must secure the requisite

marks in the common papers of law, and also in the papers specific to that State.

E. Suggested Structure for the DJURE

E1. The structure of the DJURE will be split into four papers, namely Law I, Law II, Law III, and Law IV.

- a. **Law I** will be a paper on **civil law and allied subjects** (Code of Civil Procedure, 1908; Indian Contract Act, 1872; Specific Relief Act, 1963; Sale of Goods Act, 1930; and Family laws) for 100 marks;
- b. **Law II** will be a paper on **criminal law and allied subjects** (Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Indian Evidence Act, 1872; Negotiable Instruments Act, 1881; Protection of Women from Domestic Violence Act, 2005) for 100 marks;
- c. **Law III** will be a paper on **miscellaneous subjects** from both civil and criminal laws, namely Transfer of Property Act, 1882; Indian Easements Act, 1882; Arbitration and Conciliation Act, 1996; Prevention of Corruption Act, 1988; and Narcotic Drugs and Psychotropic Substances Act, 1985, for 100 marks; and

- d. **Law IV** will be a paper on local laws, customs and practices, and local languages for 100 marks.
- e. **Interview:** 200 marks⁴

E2. The question papers of the written examinations, namely Law I, II, III, and IV, may be conducted either in a conventional essay-type question and answer format, or preferably, in a multiple choice question (MCQ) format. In the latter case, answers can be provided in an optical mark recognition (OMR) sheet. This will ensure a faster evaluation process, and allow for a quicker declaration of results. However, if an MCQ question paper method is adopted, it must be ensured that the question papers are meticulously prepared, with only one correct option for every question, to avoid any confusion thereafter.

E3. The examination syllabus will be designed keeping in mind the nature of work that will be discharged by the successful candidates who will be appointed as district judges. Additionally, the syllabus also factors in the importance of knowledge of local laws, language(s), and customs and practices, which is why an entire paper has been dedicated to the same, which will be the basis for

⁴ Candidates must obtain at least 50% (i.e. 100 marks) in their interviews to qualify for the final merit list.

determining the state rank of a candidate, and contribute to such candidate's cumulative ranking.

E4. At present, some states conduct the judicial services exams in local languages. For the DJURE, while the Law IV paper will be prepared in the local languages, Law I, II, and III ideally may be in the English language only. The rationale for this is simple - the candidates sitting for DJURE will be appointed as District Judges. These judges, in turn, will have high chances of being elevated to the respective State High Courts. In most High Courts, English is the official working language of the court. Therefore, it is necessary to ensure that the pool of judges from which the higher judiciary is to be constituted, is proficient in English.

E5. It is recommended that a candidate should be eligible for appearing in multiple Law IV papers, subject to meeting eligibility criteria for multiple States.

E6. The examinations must be conducted in at least one city in every State. Every Law IV paper must be available for the taking at every centre across India. For instance, a candidate sitting for the examination in Assam, seeking an appointment

in Uttar Pradesh, should be able to write the Law IV paper)for Uttar Pradesh) in Assam itself.

E7. Based on these four papers, candidates will be provided a *cumulative ranking* comprising their National and State ranks (wherein national ranks are determined from the first three papers, and State ranks determined by the fourth paper). The cumulative ranking lists will be prepared for the subsequent interview process. It should be ensured that to preserve merit, interviews should be conducted for five candidates (or fewer candidates depending on the total number of shortlisted people) per vacancy.⁵

F. Authority conducting the DJURE

F1. The DJURE, being an all India examination, will require extensive logistical support for its successful implementation. This can be addressed in the following framework:

- a. Central Selection Committee (CSC): A CSC shall be constituted responsible for defining the policies for the operation of the CSM, and general oversight of the CSM process. This CSC will be a five (5) member body, comprising a

⁵ Certain websites indicate that, for the All India Services, approximately 2.5 candidates per vacancy are called for the interview.

chairperson and four other members, all nominated by the CJI, and may include sitting or retired judges. The four members shall preferably represent each of the four regions of the country. The CSC will interact with all High Courts from time to time.

b. Secretariat: A Secretariat must be constituted by the CSC, consisting of such staff and personnel as required. This Secretariat will be responsible for conducting the DJURE written exams, and constituting Interview Boards for conducting interviews for different state judicial services. The Secretariat must perform the following functions:

- i. Set the written papers for Law I, II, III, and IV;
- ii. Add or revise the proposed syllabus for the written exams in the DJURE, if deemed necessary;
- iii. Conduct examinations at regular predetermined intervals;
- iv. Constitute Interview Boards, giving adequate representation to respective state High Courts, for conducting interviews for shortlisted candidates.

The role of the Secretariat will be limited to preparing and holding the examination, organising the interviews, declaring the results, and providing the rank list to the Registrars-General of State High Courts. While declaring

the result, the Secretariat will also be responsible to create a ‘waitlist’ for potential candidates. The waitlist should be available for three months from the date of formal appointment of judges in the State judicial services in a given year. For instance, if the State of UP has appointed its judges on September 30, 2017, then the period for the waitlisted candidates will continue till December 30, 2017. If any newly-appointed judge resigns or is removed in this time, the waitlisted candidates will be given priority, before holding examinations afresh for such a vacancy.

- c. Interview Boards: These boards will be solely responsible for conducting the interviews of candidates who have qualified on the basis of the National and State ranks. While constituting the same, the Secretariat may consider the use of psychologists and other experts to ensure that interviews examine legal aptitude, as well as other characteristics for a potential candidate, including their integrity, work ethic, etc. The Interview Boards may be constituted from time to time, and must give adequate representation to the High Courts.

G. Funding of the Secretariat

G1. It is suggested that all activities of the CSM (i.e. CSC, Secretariat, and Interview Boards) will be funded by the Central Government, keeping in mind the all India nature of the examination. Adequate provisioning in the annual budget may be made for the functioning of the CSC, the conducting of DJURE by the Secretariat, and hosting the interviews by the Interview Boards.

H. Tentative timeline for DJURE

H1. A tentative timeline for the whole recruitment process is discussed below:

Specific tasks	Schedule for completion
Intimation of Vacancies by the High Court to the Secretariat	15 th March
Issue of Examination Notification by the Secretariat	1 st April
Last date for submission of application forms for Examination	1 st May
Issuance of admit cards	15 th May
Written examination on legal aptitude (Law I to III)	1 st June

Written examination on State-specific aspects (Law IV for various States)	Between 2 nd and 15 th June
Declaration of National and State ranks	25 th June
Declaration of candidates selected for Interview	1 st July
Conduct of Interviews by Interview Boards	Between 15 th and 22 nd July
Intimation of final list of selected candidates (total of marks obtained in examination and Interview) by the Registrar Generals of the respective High Courts	31 st July
Publication of result on the Official Website and issue of appointment letters to selected candidates	31 st August

H2. While the timeline is indicative for approximately six months, if deemed necessary, the Secretariat may conduct the DJURE twice a year.

I. Conclusion

11. The DJURE is the first step towards creating a regular annual examination for selecting a meritorious pool of candidates from which appointments can be made to District Judiciary. As mentioned above, this will generate a tremendous opportunity to younger members of the Bar to systematically prepare for such an examination. Presently, as proposed, the DJURE should be used for appointing District Judges alone. In order to improve the quality of lower subordinate judiciary, the Supreme Court may also direct High Courts to conduct annual examinations for the same, along the lines of the DJURE.

experience and new ideas. The better performing High Courts in terms of disposal of cases were requested by the chair to share their best practices on their websites. The trainee judicial officers could be attached to courts with high pendency for assistance as a part of training.

(II) Vacancies and Recruitment in Subordinate Courts:

➤ *Centralised recruitment mechanism*

After taking views from all the High Courts regarding problems in filling up of vacancies, the house, with certain suggestions, supported the idea for conducting a centralised recruitment on the pattern of NEET exam, initially to the cadre of District Judges. It was noted that this proposal should not be confused with All India Judicial Services or amendment to Articles 223 or 224 of the Constitution. The central mechanism could take care of local languages, individual high court rules as well as constitutional provisions. Most of the High Courts in principle agreed to consider and explore the idea. Majority of the High Courts expressed willingness for such mechanism.

(III) Status of under-trial prisoners cases

➤ *Plan for Magisterial/Sessions Trial & Plan for bail*

The house echoed the need for disposing of the bail applications within one week. It was also agreed that all efforts be made to complete the magisterial trial of under-trial prisoner cases within six months and session trials of such cases within 2 years.

(IV) Re-engineering the structure of administration of justice

In light of the high figures of pendency of criminal appeals and civil appeals, the suggestions of the law ministry for establishing an appellate fora below the high court and above district courts found support of the house. The house acknowledged the need for various statutory amendments to operationalise the appellate fora. Although, apprehensions have been raised by one or two High Courts that an appellate bench below the High Court and above the Subordinate Courts may only facilitate another round of litigation, without providing any solution.

Annexure B: District and Subordinate Judges in India¹

State	Sanctioned strength	Working Strength	Vacancy
Andhra Pradesh & Telangana	975	798	177
Assam, Nagaland, Mizoram, Arunachal Pradesh	547	386	161
Bihar	1825	1016	809
Chhattisgarh	395	334	61
Delhi	793	491	302
Gujarat	1953	1133	820
Himachal Pradesh	155	145	10
Jammu & Kashmir	246	219	27
Jharkhand	671	454	217
Karnataka	1299	923	376
Kerala, Lakshadweep	473	418	55
Madhya Pradesh	1461	1233	228
Maharashtra, Goa, Daman and Diu	2321	2302	19
Manipur	41	34	7
Meghalaya	57	41	16
Odisha	863	606	257
Punjab, Haryana, Chandigarh	1348	1083	265
Rajasthan	1203	1081	122

¹ As on 30.9.2016, based on data from Court News, Issue 3, 2016, for the months of July to September 2016, available at: http://supremecourtindia.nic.in/pdf/CourtNews/2016_issue_3.pdf

Sikkim	18	14	4
Tamil Nadu, Puducherry ²	1064	962	102
Tripura	106	78	28
Uttar Pradesh	2262	1674	588
Uttarakhand	285	220	65
West Bengal, Andaman and Nicobar	1013	885	128
TOTAL	21374	16530	4844

² As per latest figures for Tamil and Puducherry, the total sanctioned strength of judges is 1181, of which 271 are District Judges, 44 are ad hoc District Judges, 303 are Civil Judge Senior Division, and 563 are Civil Judge Junior Division. According to these figures, approximately 25% of all subordinate judges are District Judges.

ITEM NO.301

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSSMW(C)No(s).000001/2017IN RE CENTRAL SELECTION MECHANISM FOR SUBORDINATE JUDICIARY

(THE INSTANT MATTER IS TO BE LISTED ON 10.07.2017 AT 3.00 P.M VIDE COURT'S ORDER DATED 09.05.2017)

Date : 10-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Parties

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Mr.Rituraj Biswas, Adv.

Mr.Tapesh Kumar Singh, Adv.
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Mr.Kumar Anurag Singh, Adv.

For State of Mah. Mr.Nishant Ramakantrao Katneshwarkar, AOR

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For State of Tripura Mr.Gopal Singh, Adv.
Mr.Rituraj Biswas, Adv.

For State of Bihar Mr.Gopal Singh, Adv.
Mr.Manish Kumar, Adv.
Mr.Shreyas Jain, Adv.

For Govt. of Puducherry Mr.V.G.Pargasam, Adv.
Mr.S.Prabu Ramasubramanian, Adv.

For State of Karnataka Mr.V.N.Raghupathy, Adv.

For High Court of Meghalaya Mr.Sanjai Kumar Pathak, Adv.
Mr.Satya Veer Singh, Adv.

For High Court of Rajasthan Mr.Arunav Patnaik, Adv.
Ms.Kanika Singh, Adv.

For State of Goa Mr.Jai A.Dehadrai, Adv.
 Mr.S.S.Rebello, Adv.
 Ms.Manisha Ambwani, Adv.
 Ms.Shivangini Gupta, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The instant exercise has been initiated in furtherance of a communication dated 28.04.2017, received from the Department of Justice, Government of India. In continuation of the above communication, the Union of India, as also, all the State Governments (including Union Territories) were duly served. This position stands noticed in the motion bench order dated 09.05.2017. In compliance of the direction given in the motion bench order dated 09.05.2017, 21 different High Courts have submitted their comments. Three of the above High Courts, including the High Courts of Guwahati, Jammu and Kashmir and Punjab and Haryana have sought further time. The High Courts of Andhra Pradesh, Uttarakhand, Kerala and Gujarat have expressed some reservations. So as to effectively conclude the matter one way or the other, the Registrar Generals of the High Courts, who have expressed reservations, may submit details thereof, and such of the High Courts who have sought further time may also finalise their views, and place the same for the consideration of this Court. The above exercise may be carried out, before the next date of hearing.

2. Before parting with this order, we consider it essential to record, that the exercise being carried out by this Court, would not affect the rules and regulations, as are presently in vogue in

different States, with regard to appointments. The selection process will also be carried out substantially in consonance with the prevalent rules and in case the regional subject has been provided for under the prevailing rules, an examination may be conducted therefor as well. Even the reservation policy, as it obtains in the different States, shall be maintained.

3. The instant exercise is only for centralising the selection process, so as to make the recruitment a regular recurring feature, which would result in filling up judicial vacancies at the earliest, through a time bound mechanism. Since the process of selection is proposed to be centralised, it would, if implemented, allow a candidate to apply for more than one States, through a singular selection process.

4. Mr.Arvind Datar, learned senior counsel, is appointed as an amicus curiae, to assist this Court. The Registry is directed to furnish the entire paperbook to the learned amicus curiae, within one week from today. Likewise, a similar set be also furnished to Mr.Ranjit Kumar, learned Solicitor General.

5. Post for consideration on 28.07.2017, at 3.00 P.M., unless otherwise notified.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RENUKA SADANA)
ASST.REGISTRAR

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

S.M.W. (C) No.1 of 2017

IN RE : CENTRAL SELECTION MECHANISM FOR SUBORDINATE JUDICIARY

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 04-08-2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE A.M. KHANWILKARMr. Arvind P. Datar, Sr. Adv. (Amicus Curiae)
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UPON hearing the counsel the Court made the following
O R D E R

1. Mr. Arvind P. Datar, learned Senior Counsel, in his capacity as an Amicus Curiae, on our asking, has prepared a Concept Note with reference to the proposed centralization of the District Judiciary Recruitment Examination.
2. We are of the view, that the aforesaid Concept Note should be circulated to all State Governments and High Courts. Accordingly, the Registry of this Court is

directed to forward the Concept Note to Registrar Generals of all High Courts, and Secretaries in the Ministry of Law of all State Governments. The needful be done within two weeks from today, immediately by e-mail, to be followed by furnishing hard copies. The concept note may also be posted on the Supreme Court Website, so as to enable the High Courts and Secretaries to the State Governments, to make suggestions.

3. Suggestions, if any, shall be forwarded by the respective State Governments and the Registrar Generals of the High Courts to this Courts, so as to reach this Court on or before 16.08.2017

4. Post for hearing on 18.8.2017, at 2.00 p.m.

(Sarita Purohit)
COURT MASTER

(Renuka Sadana)
Assistant Registrar