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## Change in IAS (Cadre) Rules

### Executive Summary

The Centre's proposal to amend the IAS Cadre Rules has sent shockwaves through the State governments and the bureaucratic community. Although the Centre already has preponderance of power over the State government, it has always been the convention to depute All India Services (AIS) officers with the concurrence of the State government(s) and the Central government and the consent of the officer concerned. By providing overriding powers to the Central government, the proposal poses a fundamental risk to the federal structure of the Constitution. Not only should the proposal be recalled, but the annual intake of the IAS officers should be increased to address the issue of staff shortage, while recruiting suitable personnel from other Central Civil Services. The empanelment process also needs to be reformed to ensure transparency, objectivity and to uphold the principles of natural justice.

### What is it?

Deputation of IAS officers is governed under Rule 6 of The Indian Administrative Service (Cadre) Rules, 1954. Rule 6(1) mandates that the deputation of cadre officers to the Centre must be done with concurrence of the concerned State government(s) and the Central government. The proviso to Rule 6(1) states that in case of any disagreement, the Central government's decision will prevail, and the State governments shall give effect to it.

The proposal attempts to amend the Central Deputation rules by giving overriding powers to the Centre to transfer and post Cadre officers without the consent of the State government.

### Proposed Amendments (Singh, 2022)

#### 1. *'Within a specified time'*

The proposal amends the proviso mandating the State governments to give effect to the final decision of the Central government within a specified time as decided by the Central government.

#### 2. *'Officer shall stand relieved'*

In case, a State government delays a cadre officer's deputation to the Centre and does not give effect to the Central government's decision within a specified time, the concerned 'officer shall stand relieved from cadre from the date as may be specified by the Central government'.

#### 3. *'Number of officers'*

Another change proposed is that the actual number of officers to be deputed to the Centre shall be decided by the Central government in consultation with the State government which is required to provide a list of eligible names.

#### 4. *'Public interest'*

In a specific situation, if the need arises for the services of a cadre officer to be utilized by the Central government in public interest, the State governments shall give effect to it within a specified time.

The abovementioned amendments were sent to the State governments in a letter dated 12<sup>th</sup> January 2022 by the Department of Personnel and

Training (DoPT) seeking comments until 25<sup>th</sup> January. The DoPT had earlier sent three similar letters (dated 20<sup>th</sup>, 27<sup>th</sup> December and 6<sup>th</sup> January) which were strongly opposed by six States (including BJP ruled States) (Singh, 2022). As of now, more than 7 States have written to the DoPT opposing the proposed changes and other states such as Maharashtra, Kerala and Tamil Nadu have also raised their opposition. The CMs of Chhattisgarh and Rajasthan have also written to the PM opposing the proposed amendments to the cadre rules.

### Why is it a problem?

The proposed amendments are essentially an attack on the federal structure of our Constitution since it derogates the State government's power in posting and transferring its cadre officers without its consent. In spite of the rules giving preponderance of power to the Centre, it has always been the convention to depute officers to the Centre in concurrence with the State governments and the consent of the officer concerned (Dhingra, 2021).

Mamata Banerjee, the CM of West Bengal wrote a strongly worded letter to the PM opposing this move and calling it a 'unilateral decision' which was 'historically unprecedented and wholly unconstitutional'.

The trigger for this move by the Centre is most likely the result of the tussle between the Centre and West Bengal over former IAS officer Mr. Aapan Bandhopadhyay. Given his experience in handling the Covid-19 crisis as the Chief Secretary of West Bengal, the State government had requested the Centre to extend his tenure and the latter acceded by extending his term for 3 months (24<sup>th</sup> May 2021). However, the Centre on 28<sup>th</sup> May 2021 did a complete 180° and issued an order to Mr. Bandhopadhyay informing him that he has been placed with the Government of India 'with

immediate effect'. Following which, the State government opposed the order and did not relieve him and the concerned officer also opted to retire from the services and is now appointed as the advisor to the CM. The Centre then issued a show cause notice to Mr. Bandhopadhyay for his failure to report to the DoPT. There have been other similar tussles in the past between the Centre and Tamil Nadu government (2001) and West Bengal government (2020) (Agnihotri, 2021), but when the States refused to relieve the concerned IPS officers, the Centre upheld the convention of State government concurrence and did not insist on deputing them anyway.

### Shortage of officers in the Centre

The DoPT cites the shortage of AIS officers in Union Ministries as the driving factor for these proposed amendments since the 'States are not sponsoring an adequate number of officers for Central Deputation'. While this is true, it is pertinent to note that State governments also have been suffering from shortage of officers especially during the pandemic and have requested the DoPT multiple times to increase cadre strength of IAS officers (West Bengal, Rajasthan, Bihar).

Senior IPS officers advise that the problem of shortage of AIS officers has been perennial and does not warrant a knee-jerk reaction at the cost of violating the basic structure of our Constitution. The problem of shortage must be seen as secondary to upholding the federal structure especially since there are other ways to address this problem without seizing the State governments' authority. While only AIS officers come under the common purview of both the Central and State governments, there are other Central Services with ample human resources over which the Central government has sole authority and the shortage can be filled by

deputing these Central services officers.

### The Empanelment Process

The empanelment process of AIS officers in India has been infested with executive arbitrariness and lack of transparency. The procedure for empanelment is laid down in the Central Staffing Scheme which does not have any legislative sanction and is instead governed by a slew of Executive Orders (E.O), the primary dated 5th Jan 1996 (NO.36/77/94-EO(SM-I)). The flawed Annual Confidential Report system was replaced by the Annual Performance Appraisal Reports (APAR) system following a Supreme Court ruling to ensure more transparency.

However, the additional layer of review with the 360° appraisal system or the Multi-Source Feedback system introduced by PM Modi in April 2015 allows the panel to override the recommendations of the APAR system.

The 92<sup>nd</sup> Report of the *Department-Related Parliamentary Standing Committee on Personnel, Public grievances, Law and Justice* in 2017 reprimanded the 360° system for its opacity and lack of objectivity, thereby leaving the empanelment process 'susceptible to manipulation'. Former Upper-level Secretaries have also been critical about the 360° system due to its

- Lack of transparency
- Absence of an appeal process
- Susceptible to bias and discrimination. (MS, 2018)

The absence of legal backing for the empanelment procedure has led to the arbitrary exercise of power by the executive. Usually, officers start their career after training in State cadres and it would take up to 9 years for an officer to occupy Central government positions. But the present government has started a practice of appointing newly recruited officers, fresh from training, as Assistant Secretaries in the Union Ministries. Although this move was said to increase exposure for the new officers, it also may as easily be detrimental to their careers. This new pattern, initiated by the Modi govt, is characterised by lack of transparency and establishing a core group of loyalist officers at the cost of building experience, knowledge, and performance. Loyalty of the civil services officers must be to the Constitution alone and not to any political party or even government of the day if it violates the constitutional provisions.

Already, the AIS officers are in a bind where the State government and Central government are governed by opposing parties. The lack of fairness in the empanelment process has further discouraged and disheartened officers from Central Deputation. Although salaries and incentives remain the same, the State governments use transfers and postings as de facto punishment for AIS officers who do not follow suit with the State government's decisions. Similarly, the Central government beguiles AIS officers with the temptation of post-retirement postings. The proposed amendments grant overreaching powers to the Central government which could be used to harass and corrupt an unwilling officer.

## Conclusion

In conclusion, the proposed amendments derogate the consent of State governments and the officer concerned. This not only gives rise to a lack of transparency and increased bias, but also has the potential to disintegrate the delicate federal structure that has been upheld since Independence. The Supreme Court has on many occasions emphasized that federalism is a part of the basic structure of our Constitution, and even a Constitutional amendment cannot do away with it. The Supreme Court has also affirmed cooperative federalism as a 'cherished Constitutional goal'. Therefore, the Central government must look at other ways to overcome the issue of staff shortage, without granting itself overarching powers in direct violation of the Constitution.

## Recommendations

- Recall the proposal amending the IAS (Cadre) Rules which will fundamentally damage India's federal structure, thereby undermining national integrity and security.
- Shortage of officers can be addressed, in the short term, by recruiting suitable personnel from other Central Services such as IRS, Indian Defence Accounts service, Customs, etc. Alternatively, well-known professional experts in various fields can be inducted at senior positions, which will not only address the shortage but also the need for professional competence and experience in specialist departments as against the oft raised complaint of generalist nature of the IAS.
- Keeping in mind the demands of the Covid-19 pandemic, increase the annual intake of IAS officers to address the shortfall of 22 per cent in IAS posts.
- Increase Lateral recruitment for Central posts on a contract basis in the short term.
- The empanelment process, especially the 360° Appraisal system must be completely reformed to ensure equal opportunity and better transparency.
- The Centre's proposal is a reflection of the long overdue need for the complete overhaul and reform of the Indian civil service system. These piecemeal amendments and a myriad of executive orders are not only unproductive to the civil service system but also counterproductive to the basic structure of the Constitution. A high-level committee should be established to undertake a holistic study to reform the Indian civil service system not only to bring in better performance and accountability but more importantly, to get rid of the colonial legacy once and for all.

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