

...look at core issues

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from their own experience) how they meet the published criteria for judicial appointment.

Conclusions drawn from the approach adopted in other jurisdictions

The search for the elusive balance between independence and accountability in judicial appointments processes has led to substantive reforms in many countries. According to Kate Malleson, global researcher on judicial appointment comes to the conclusion that the most obvious example of this is found in judicial appointments commissions, which look likely to become the most popular selection system of the twenty-first century. Throughout common law and civil law systems alike the use of commissions is increasingly being explored as a solution to the difficult problem of achieving a balance between independence and accountability in judicial selection. In England and Wales, Canada, South Africa and Scotland and many civil law systems in Europe now use some form of commission. Their great strength is their adaptability, which allows them to be shaped to meet the particular requirements of

each system.

Now that we are thinking of overhauling our judicial system, we must try to adopt the most modern method.

The benefits of use of commissions are transparency, inclusiveness, objective evaluation, independence, fairness, accountability and no tap on the shoulder. Once we can take a decision on the commission, the form may be part of a discussion paper. The idea is like any multinational corporation hiring those executives who demonstrate the required skills and qualities for that particular job and in order to find such executives, companies heavily invest in productive human resources departments and make use of the latest technologies and testing criteria in order to ensure the recruitment of the best available candidates for the job. The judiciary, besides being an institution maintaining balance of three organs of the State, is also providing a service to the citizens and therefore the recruitment and selection process should be efficient so as to ensure that the best possible judges are chosen who are appointed through a process that are transparent, independent, open, fair and inclusive.

JAC has already been in place, as we came to learn from the newspaper without consultation with any of the stakeholders. No consultation was

made with the Bar or the Bench. The idea for a JAC though may seem to be an improvement from the past practice but this ad hoc and abrupt turn without any deliberation with the stakeholders unlikely to bring any improvement at the end. Nepal has recently experienced similar set up of a Commission, provided in the Constitution of Nepal but it did not work very well. The critiques raised objection against the inclusion of Law Minister, and Executives into the Appointment Commission. In our case, the inclusion of the Minister, Secretary and Legislator nominees of two party chiefs seem to violate the doctrine of separation of judiciary.

Even if we were to assume that the Minister, Secretary and Legislator nominees are not in the Appointment Commission, whoever sits in their place allowed to choose on the basis of subjective opinion without any objective criteria and prescribed yardstick in absence of a competitive and transparent method, the selection of judges will be dominated by the subjective opinion of the individuals sitting in the Committee and the selection will be based on the basis of substandard and subjective evaluation, no yardstick having been prepared for the selection, no method adopted to ascertain the competence of candidates with commitment for

Constitutional and Human Rights value nor having sensitivity towards ensuring justice and fairness.

In a forward looking manner beyond the present need, we can also plan for the future

On the completion of 5 years of active practice, bright members with promising background and potentials may be encouraged to join the preliminary panel. They may be considered after their grooming during the next five years at the Bar. Their names after due scrutiny could be placed on the preliminary panel. A motivational and skill development course could be considered. Specialized courses can be designed if so recommended in collaboration with other regional and international institutions.

There are various ways to groom our own Judges with right kind of motivation and training in a transparent manner. All that we need is a will to do it.

Some thoughts for a process and a system in appointing Judges to the Subordinate Courts

(i) Appointment of Judges:

Existing process in appointing Judges in the subordinate Judiciary is based on assumptions that there are adequate numbers of motivated law graduates available and on passing a written test they may be appointed as Judges. After having done their period for probation as confirmed Judges they could perform the obligation and responsibility for dispensing Justice in matters involving dispute between citizens or between State and the citizens in respect of their rights, obligations and liabilities.

It is high time to put these assumptions on test and review the process

It is important to consider whether after completing the LL.B Hons or LL.M, there is need for selecting those candidates aspiring to become Judges to undergo Justice Education Training. Such a course can be specially designed by adopting a practical and problem solving mode, enhancing capacity to absorb and analyze the facts and documents for making decisions, sensitising and motivating them to respond to socio-economic issues, civil right, gender and environmental issues and relation between crime and punishment while

one has to choose between the punitive, corrective and remedial measures those choices being available within the law, particularly for the young and the juveniles.

(ii) To consider whether like in India we should prescribe three years active practice in the Bar before qualifying to be a candidate to become a judge and consequent increase on the retiring age up to 60.

(iii) To consider whether JSC should act closely with the Justice Education Training project to be conducted by an appropriate institution.

(iv) Whether JSC supported by an appropriate authority with an adequately trained research team and work force be made "appropriate authority" for evaluation, performance and quality of each of the Judges dispensing justice in subordinate courts.

(v) The Salary of a Magistrate or a Subordinate or Assistant Judge to be increased. The Judge doing the magistracy work in Australia does that well without any expectation of promotion. Job of a Magistrate is an office and an institution by itself having various specialization i.e. social and economic crimes, crimes against environment, juvenile crime, sexual crime, offences against women and

children, etc. serving regular social needs.

(vi) To consider an open competition and selection process for becoming District Judge as was contemplated under Article 116 of the original Constitution.

(vii) Judicial Service Commission and its Secretariat ought to be equipped with all data, information and reports as to the performance of each of the Judges and work out an evaluation and assessment methodology and criteria to be applicable for their posting, promotion and transfer.

(viii) Economic compensation for Judges' work and their social status be so maintained that it would be well integrated in a coordinated fraternity of the Judicial hierarchy, each tier having its own unique specialization, adequate remuneration, status and dignity. Like Magistrates, there were Munsifs. This was an institution by itself. We have reduced them to a cadre of Assistant Judge undermining the prestige of the office. This needs adequate redressing in order to remove the cadre related mind set.

(ix) Supervision and control of the High Court Division be reinforced with detailed rules framed in this regard, so that there could be continuous

monitoring and due investigation of any complaint. This could be performed with the support of the research cell as to be maintained and shared by the JSC and the HCD.

(x) A continuous vigil of inspection should be conducted to stream line the judicial performance, ensure accountability and ensure speedy disposal.

(xi) To have all the data and information including the status of the case be put in the computer. Any information regarding the latest position of the case can be made available for litigants and the HCD. Certified copies of case documents, orders and judgments be made available more easily and a service oriented case management system may be developed.

Recommendation

Taking all these scopes for improvement into consideration the government could immediately form a Judicial Reform Commission by getting all the stakeholders together to deliberate on each of the issues discussed above involving the civil society, NGOs and business leaders involved in a participatory process for reform.

The author is senior advocate Bangladesh Supreme Court.

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