

## All India Judicial Service

### Why in news?

\n\n

The NITI Aayog recently mooted the creation of an All India Judicial Service (AIJS) for making appointments to the lower judiciary.

\n\n

### What are the underlying constitutional provisions?

\n\n

\n

- Articles 233 and 234 of the Constitution vested all powers of recruitment and appointment (judicial services of the state) with the State Public Service Commission and High Courts.

\n

- Article 312 of the Constitution allows the Rajya Sabha to pass a resolution, by two-thirds majority, in order to kick-start the process of creating an all India judicial service for the posts of district judge.

\n

- Once the resolution is passed, Parliament can amend Articles 233 and 234 through a simple law (passed by a simple majority), which will strip States of their appointment powers.

\n

- This is unlike a constitutional amendment under Article 368 that would have required ratification by State legislatures.

\n

- In other words, if Parliament decides to go ahead with the creation of the AIJS, State legislatures can do nothing to stop the process.

\n

- The recruitment is to be made through an all India judicial services examination conducted by the UPSC in order to maintain “high standards” in the lower judiciary.

\n

\n\n

### Can AIJS resolve the problem of judicial vacancies?

\n\n

\n

- The idea was mooted on the argument that a centralised judicial recruitment process will help the lower judiciary on timely recruitment and clearing vacancies.

\n

- This was also proposed as a solution to the problems of lack of representation in the judiciary from marginalised communities.

\n

\n\n

\n

- But the Supreme Court recently noted that many States are doing a very efficient job when it comes to recruiting lower court judges.

\n

- In Maharashtra, of the 2,280 sanctioned posts, only 64 were vacant and in West Bengal, only 80 were vacant of the 1,013 sanctioned posts.

\n

- Only in certain States such as Uttar Pradesh, the vacancies stand at 42%.

\n

- These numbers show that the problem of vacancies is not uniform across different States.

\n

- Thus the solution is to pressure poorly performing States into performing more efficiently.

\n

- Further, the argument that the centralisation of recruitment processes through the UPSC automatically leads to a more efficient recruitment process is flawed and not a guarantee of a solution.

\n

- For example, the Indian Administrative Service reportedly has a vacancy rate of 22%, while the Indian Army's officer cadre, also under a centralised recruitment mechanism, is short of nearly 7,298 officers.

\n

\n\n

## **Will it lead to more representation from marginalised communities and women?**

\n\n

\n

- AIJS was also supported on the fact that its creation, along with provisions of reservations for the marginalised communities and women, will lead to a

better represented lower judiciary.

\n

- But the fact is that several States already provide for reservations in their lower judicial service.

\n

- For example, at least 12 States, which include Madhya Pradesh, Chhattisgarh, Uttar Pradesh, Rajasthan and Kerala, provide for caste-based reservation in the direct recruitment examination for district judges from the bar.

\n

- In addition, U.P., Karnataka, Rajasthan and Chhattisgarh provide women with special reservations.

\n

- Karnataka also recognises two additional categories of reservation within caste-based reservation — for those from a rural background and those from Kannada medium backgrounds.

\n

- Karnataka serves as an example of how States are best suited to assess the level of intersectional disadvantage of various communities residing in the State.

\n

- Unlike States, the Centre almost never provides reservation for women in the all India services.

\n

- On the issue of caste, an AIJS may provide for SC/ST reservation along with reservation for the Other Backward Classes (OBC).

\n

- However, the Supreme Court recently held that SC/STs can avail the benefit of reservation in State government jobs only in their home States (domicile) and not when they have migrated.

\n

- The same principle is usually followed even for OBC reservations.

\n

- Thus, instituting an AIJS would mean that nationally dominant SC, ST and OBC groups would be at an advantage as they can compete for judicial posts across the country.

\n

- On the other hand, if the process of recruitment stays with the states, these dominant groups would be disqualified because of the domicile requirement.

\n

- Thus the present system of recruitment does ensure adequate representation of marginalised communities and hence the proposal for AIJS needs re-consideration.

\n

\n\n

\n\n

**Source: The Hindu**

\n

