All India Judicial Service

Why in news?

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

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What are the underlying constitutional provisions?

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- 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.
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- 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.
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- 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.
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- This is unlike a constitutional amendment under Article 368 that would have required ratification by State legislatures.
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- In other words, if Parliament decides to go ahead with the creation of the AIJS, State legislatures can do nothing to stop the process.
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- 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.
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Can AIJS resolve the problem of judicial vacancies?

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- The idea was mooted on the argument that a centralised judicial recruitment process will help the lower judiciary on timely recruitment and clearing vacancies.
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- This was also proposed as a solution to the problems of lack of representation in the judiciary from marginalised communities.
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- But the Supreme Court recently noted that many States are doing a very efficient job when it comes to recruiting lower court judges.
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- 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.
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- Only in certain States such as Uttar Pradesh, the vacancies stand at 42%.
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- These numbers show that the problem of vacancies is not uniform across different States.
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- Thus the solution is to pressure poorly performing States into performing more efficiently.
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- 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.
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- 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.
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Will it lead to more representation from marginalised communities and women?

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- 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.
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- But the fact is that several States already provide for reservations in their lower judicial service.
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- 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.
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- In addition, U.P., Karnataka, Rajasthan and Chhattisgarh provide women with special reservations.
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- Karnataka also recognises two additional categories of reservation within caste-based reservation — for those from a rural background and those from Kannada medium backgrounds.
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- 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.
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- Unlike States, the Centre almost never provides reservation for women in the all India services.
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- On the issue of caste, an AIJS may provide for SC/ST reservation along with reservation for the Other Backward Classes (OBC).
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- 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.
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- The same principle is usually followed even for OBC reservations.
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- 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.
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- On the other hand, if the process of recruitment stays with the states, these dominant groups would be disqualified because of the domicile requirement.
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- Thus the present system of recruitment does ensure adequate representation of marginalised communities and hence the proposal for AIJS needs re-consideration.
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Source: The Hindu

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