All India Judicial Service - NITI Aayog’s Proposal

What is the issue?

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- NITI Aayog, in its recent ‘Strategy for New India @ 75’ document, made a strong case for the creation of All India Judicial Service.
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- But the varied limitations and concerns in its implementation call for a relook on the proposals.
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Is this the first time?

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- All India Judicial Service (AJIS) is being advocated akin to the other central services like the IAS and the IPS.
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- The idea of an All India Judicial Service (AIJS) has been deliberated since Independence.
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- The first law commission in its 14th Report on Reform of Judicial Administration recommended creating a separate all-India service for judicial officers.
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- It favored an AIJS to ensure that subordinate court judges are paid salaries and given perks at parity with government bureaucrats.
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- The objective was to incentivize the option of the state judiciary as a viable career prospect.
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- Subsequently, a crucial step towards formalizing the process for setting up an AIJS was taken under 42nd Constitutional Amendment in 1976.
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What is the constitutional provision in place?

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- With 42nd Constitutional Amendment, Article 312 was amended to confer power on the Rajya Sabha to initiate the process for setting up an AIJS.
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- To this effect, it has to pass a resolution supported by two-thirds majority in the house.
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- The provision also restrained the composition of such a service to the rank of district judges (defined under Art 236), excluding the lower subordinate judiciary.
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- So, given this mandate under Art 312, the creation of an AIJS is constitutionally permissible.
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- Presently, the appointments to the subordinate judiciary are made under Articles 233 and 234 of the Constitution.
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- However, the amended Art 312 commences with a non-obstante clause, overriding these provisions.
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- Therefore, any appointments made to the post of district judges, in terms of a law enacted under Art 312 would not conflict with the existing process.
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- Furthermore, entry 70 of the Union List (List I Schedule VII) provides Parliament the exclusive authority to enact a law creating such an AIJS and all connected matters.
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What are the limitations?

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- Despite the constitutional permit, there are some significant concerns which remain unaddressed in the NITI Aayog's proposal.
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- **Vacancy** - The AIJS is being proposed as a way to address the vacancy crisis plaguing the Indian subordinate judiciary.
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- But notably, the Constitution permits only the appointments of district judges to such a prospective AIJS.

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- At best, AIJS can only offer a more streamlined recruitment process for the limited number of vacancies for district judges in the country.
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- **Composition** – NITI Aayog has proposed a much wider composition for AIJS than what is permissible under Article 312.
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- It has covered entry level civil judges, prosecutors and legal advisers to comprise the service.
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- But such a sweeping mandate would require considerable amendments to the Constitution.
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- This is especially with respect to the appointments process for the lower subordinate judiciary (all ranks below that of a district judge).
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- These amendments, establishing a centralized appointments mechanism, may be constitutionally unsound.
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- It is also vulnerable to being struck down as violations of the basic structure doctrine and judicial federalism.
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- **Disagreement** - The central selection mechanism has been contentious within the legal fraternity and other stakeholders.
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- There are concerns with the need to familiarize with local languages, customs, and laws of the state where a potential judicial officer will be posted.
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- There are also procedural challenges to the need to ensure reservation for locally domiciled citizens.
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- In all, the NITI Aayog’s proposal should be revised in the light of these concerns and challenges.
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Source: The Indian Express

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