

## **1. All India Judicial Service, a panacea for all**

**Prelims Level: Polity and Governance – Judiciary**

**Mains Level: GS-II Structure, organization and functioning of the Executive and the Judiciary.**

### **Why in News?**

- NITI Aayog in its strategy document "Strategy for India@75", had proposed for the creation of AIJS to bring about the Judicial Reforms and improve the Judicial Administration.
- However, an Independent think tank known as Vidhi Centre for legal Policy has recently opposed the creation of AIJS.
- The Debate regarding the Creation of All India Judicial Service has been lingering for almost 60 years in the backdrop of judicial reforms. There are both proponents and opponents to this idea of creating AIJS. This article discusses about the pros and cons of setting up AIJS in brief.

### **Present Process of Recruitment and Appointment of Judges:**

#### **Single Integrated Judiciary:**

- Some of the Federal countries such as USA have adopted dual system of courts wherein the Federal courts decide on the Federal laws while the State courts decide on the State laws. Thus, in such countries, the Jurisdiction of the courts is well-defined. However, in case of India, In spite of being a Federal country, we have adopted single Integrated Judiciary.

#### **Recruitment and Appointment of Judges:**

- Presently, under the Indian Constitution, the Judges of the Supreme Court and High Court are appointed by the President.
- Whereas, under Article 233 and Article 234, the Judges at the district court and lower subordinate courts are appointed by the Governor in consultation with the concerned high court and State Public Service Commission.
- So, in case of India, even though we have adopted a single integrated judiciary, there is clear cut demarcation of powers with respect to appointment of Judges.
- While the Judges for the Supreme Court and High court are appointed by the Centre, whereas the Judges at the district courts and subordinate courts are appointed by the concerned State Governments.

### **All India Judicial Service (AIJS):**

- The Idea of the AIJS is to have centralized recruitment mechanism for the appointment of the Judges at the district and subordinate courts. This is similar to the IAS and IPS wherein all India exams are conducted by UPSC and subsequently the successful candidates are appointed by the Centre and allocated to the different states.
- Similarly, in case of AIJS, the UPSC (or any other similar body) would conduct all India Judicial Service Examination for the appointment of District Judges and Judges at the subordinate courts.

### **Constitutional Provisions relating to AIJS:**

- Under Article 312 of the Indian Constitution, the Rajya Sabha can pass a resolution supported by at least 2/3 of the members present and voting for the creation of new All India Service. Presently, the IAS and IPS are deemed to be all India Services.
- So, under Article 312, the RS has to pass resolution. It must be followed by the amendments to Article 233 and Article 234. However, since these amendments are not deemed to be constitutional amendments under Article 368 and hence approval of the state Governments is not needed for the creation of AIJS.

### **Proposals for AIJS**

- The proposal for the creation of AIJS was first mooted by the Law commission in the year 1958. Further, in the recent times the Union Law Minister has constantly argued for the creation of AIJS.
- The NITI Aayog has also mooted the proposal for the creation of AIJS in its strategy document known as "Strategy for India @75".
- Majority of the experts also opine that the creation of AIJS is one of the major Judicial reforms that can address the pendency of the cases before the lower Judiciary and it would improve the overall efficiency of the Judicial administration.

### **Why do We Need AIJS?**

- The various problems existing with the Lower Judiciary (District Courts and Subordinate Courts) have raised the need for AIJS. So let's have a brief look on the various problems existing in the lower judiciary.
1. **Huge Pendency of Cases:** Presently, there are around 3.5 crore cases which are pending across the different courts in India. Out of this, almost around 88% of the cases are

pending before the Subordinate courts. This huge pendency of cases is leading to undue delay in the administration of the Justice and hence it is undermining the rule of Law.

2. **Huge Vacancies in Lower Judiciary:** According to the Economic Survey 2018-19, there are almost around 2,579 vacancies in the lower judiciary at the district courts and subordinate courts. Most of the state Governments are unable to fill up the existing vacancies and hence the lower judiciary is functioning below the sanctioned strength.

### **How the AIJS would help to Overcome the Existing Issues?**

#### **1. Timely Recruitment:**

- In some of the states, the exams for the appointment for the lower judiciary have not been held every year leading to huge vacancies. Once the AIJS is established, the UPSC would conduct exams annually and ensure that all the vacancies are filled up. Hence, setting up of AIJS would lead to timely recruitment of judges at the lower judiciary.

#### **2. Uniformity in Judicial Administration:**

- Presently, there are large scale differences among the states in term of number of the vacancies in the lower judiciary. In some of the states such as Maharashtra, the number of vacancies is quite less. However, in states such as UP there are almost 42% vacancies in the lower judiciary. The Creation of AIJS would help us solve this problem. This is so because once the exam results are announced, the candidates would be allocated to the different states based on the total number of vacancies. Thus, the AIJS would be able to bring about the Uniformity in the Judicial administration across the multiple states in India.

#### **3. Improvement in Efficiency of Judicial Administration:**

- The AIJS would attract the best talent in the country and hence it would be able to maintain high standards of Judicial administration.

#### **4. Promote National Integration:**

- The AIJS would be able to promote all-India outlook and promote the national integration. This is so because the candidates may be posted in states other than their own state. Hence, the Judicial officers can function beyond their regional and linguistic interest.

#### **5. Beneficial to the states:**

- Some of the states that are poor in human resources may not be able to find the best talent within their state for the recruitment of the judges at the lower judiciary. The AIJS would

be able to solve this problem by conducting all India Exams and appointing the best talent from other states in such resource poor states.

## **6. Representation of Marginalized section:**

- By following the reservation system in the recruitment, the underrepresented communities get represented in the judiciary. This makes the judiciary more diverse and to represent true democracy in decision-making.

## **Why AIJS is sternly opposed?**

### **1. Goes against the Federalism:**

- Presently, it is the responsibility of the state Governments to appoint the Judges at the lower Judiciary. Hence, any changes in the Judicial structure have to be approved by the State Legislatures. However, as discussed before, the AIJS can be established without any constitutional amendment wherein the prior approval of the State legislature is not needed.

### **2. Problem of Language:**

- In pursuance of the powers vested with the state Governments in accordance with the Code of Criminal Procedure, most of the state governments have declared the local language to be the language of the court in the lower judiciary.
- Accordingly, most of the arguments and counter arguments in the lower judiciary are presented in the local regional language. Further, the witnesses also provide their statements in the local regional language. Hence, the Judges in the lower judiciary need to be proficient in the local regional language.
- However, once the AIJS is established, a person from one state may get appointed to another state and hence he may not be proficient in the local language. Hence, even though, such a person may be exceptionally talented, but the lack of proficiency of the regional language may act as a handicap. This is precisely the reason, some of the southern states have opposed the idea of AIJS.

### **3. Demoralize the State Judicial Service Officers:**

- Presently, the state judicial officers appointed at the lowest cadre rise through the hierarchy and are promoted to be appointed as District Judges.
- Once the AIJS is established, the district Judges would be directly appointed and hence it would reduce the promotional avenues for the state judicial officers. Hence, some of the states have opposed the AIJS since it would demoralize the state judicial officers.

**4. Unequal Representation of States in AIJS:**

- Presently, in case of All India Services, there is a lack of uniform representation among states and there exists a domination of officers from certain states such as UP, Bihar, TN, AP etc.

**5. Violates the sons of the Soil aspect.**

