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**CREATION OF AIJS: CHALLENGES AND WAY FORWARD**- A R Anjali & G Vishal<sup>1</sup>**ABSTRACT**

The four basic pillars of democracy are the legislature, the executive branch, the judiciary, and the media. As we all know, the judiciary establishes the foundation of the legal order. All disputes in India must be settled via the present Indian court system, which was carried over from British control. These disputes might be large or little, civil, or criminal, family- or social-related. India has a sizable population, and the judiciary is under increasing pressure. In addition, there are other judgeships that have been unfilled for an exceptionally long period. One of the factors contributing to the poor judicial system is the process used to nominate judges. The only chance for maintaining the proper number of judges in the nation and subsequently regulating and streamlining the justice delivery system of the country appears to be the All-India Judicial Services Examination, which will be held on the same criteria as the Indian Administrative Services and Indian Police Services. The All-India Judicial Services are the subject of this paper, which also examines their past, present, and potential future.

Keywords: judicial service, service, employment, appointment.

**INTRODUCTION**

*"An independent judiciary is the crown jewel of our constitutional republic."*

-Brett Kavanaugh (Associate Justice of US Supreme Court)

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Recently, Kiren Rijju, the Union Minister for Law and Justice opined that there is currently no plan to introduce "All India Judicial Services" because there is not an agreement among the different State Governments and High Courts. The AIJS is an initiative to centralize the appointment of district judges for all states and additional district judges. Judges of the lower judiciary are planned to be recruited centrally and allocated to states in a similar manner to how the Union Public Service Commission conducts a central recruiting procedure and allocates successful applicants to cadres.

In 1958, the Law Commission's 14th report made the initial recommendation for the AIJS. It was spoken of using a statutory or constitutional organization like the UPSC to run a uniform, centralized test for hiring and educating judges. In the Law Commission Report from 1978, which covered case backlogs and delays in the lower courts, the proposal was once more put up. The proposal of a pan-Indian judicial service was supported by the Parliamentary Standing Committee on Personnel, Public Grievances, Law, and Justice in its 15th Report from 2006, which also included a draft Bill.

For almost 60 years, the All-India Judicial Service (AIJS) has been a persistent topic of discussion regarding judicial reform. A judicial service commission was established with the intention of assisting in district judge recruiting and reviewing the selection procedure for judges and judicial officers at all levels.

In this context, the authors found it relevant to analyze the present situation with an aim to propose changes to the current system alongside the challenges that we will be facing in doing so.

## **RESEARCH PROBLEM**

The AIJS has been promoted as a remedy for judge openings, a lack of marginalized representation on the bench, and the inability to recruit the most qualified applicant. This paper demonstrates how many of these problems have received inaccurate diagnoses. There are provisions in our constitution that allow holding all India judicial examinations for the appointment of judges, but the issue of conducting such tests for the appointment of district judges continues to create considerable concerns in India. The purpose of the article is to assess the numerous difficulties that the Indian court would have if judges were selected

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based on merit. This is because there are currently several protocols or requirements that judges must meet in order to be appointed.

The promotion of judges who are appointed directly through all India judiciary exams would also be a problem because there is no guarantee of promotion for judges, which is completely different from public employees who are appointed through the Union Public Service Commission (UPSC) examinations, such as IAS, IPS, etc. The nomination of judges through the UPSC would alter the fundamental structure since it would have an impact on the judges' autonomy in India, where there is a division of powers.

### **AIMS AND OBJECTIVES OF THE STUDY**

The aim and objectives of the study are:

- (a) To study the current system in place- the promotional hierarchy and the overall overview
- (b) To study the historical background, the constitutional provisions, and the role of Indian Judiciary.
- (c) To study the benefits of AIJS, its criticisms and the challenges towards implementing it.
- (d) To critically analyze the proposed system and the issues surrounding it in addition to suggest a way forward.

### **RESEARCH METHODOLOGY**

We used a doctrinal and analytical approach to the subject for our study. Together with main materials like the Indian Constitution and numerous law commission papers, the research also draws on secondary sources including books, journals, articles, and online pages. To further explain and analyze the problems, the paper also draws on a variety of case law. Analytical study is what makes up most of the research paper.

### **LITERATURE REVIEW**

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### **1. All India Judicial Services: Problems and Prospects<sup>2</sup>**

Social, economic, and political justice are pledges made to all Indian people in the Preamble to the Constitution. The main barrier to the administration of justice, though, is the judicial apparatus designed to handle it. This essay explores the merits and viability of using All India Judicial Services (AIJS) to restructure the judiciary's lowest echelons, which are severely hampered by massive backlogs and unmanageable vacancies. The study examines the legitimacy of objections raised against AIJS and follows the development of the concept to provide a well-rounded viewpoint. The fundamental study issue of this article is the relationship between the structure of AIJS and the impact of such a transformation on the function of High Courts, the caliber of judicial officials, and the independence of the judiciary in India.

### **2. Judicial Independence at the crossroads: An Interdisciplinary Approach<sup>3</sup>**

The independence and autonomy of the judiciary is explored in detail. The book attempts to answer this by exploring the concept of judicial independence in deeper detail and whether there is any material connection between judicial independence and performance. The question of whether judicial independence should concern the general public is asked and attempted to be answered. The author tries to establish a link between independence and performance by exploring the roadblocks in achieving judicial independence.

### **3. Judicial Activism is the cause of Independence: The Indian Supreme Court in 1990<sup>4</sup>**

A critical analysis of the actions and role played by the Indian Supreme Court in the 1990s is undertaken with the lens of judicial independence. This is viewed through the prism of judges' opinions rather than existing laws. The book explores the relationship between independence of the judiciary and Judicial activism, which is major concern in proposals for All India Judicial Services.

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<sup>2</sup>Kaushik, Shivam and Singh, Anushri, All India Judicial Services: Problems and Prospects (2018). NUJS Law Review, 11 NUJS L. Rev. 4 (2018), Available at SSRN: <https://ssrn.com/abstract=3845628>

<sup>3</sup>Stephan B. Burbank ' Judicial Independence at the crossroads: An Interdisciplinary Approach.' Vol. 3, No. 2/3, pp. 317-336, Feb 1969.

<sup>4</sup>Amrit P. Singh, 'Judicial Activism is the cause of Independence: The India Supreme court in 1990.' Vol 85, No.6, June 2002.

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## PROMOTIONAL HIERARCHY AND THE CURRENT SYSTEM

Before delving into the proposal for, and other intricacies of the All-India Judicial Services, it is pertinent to possess a clear understanding of the processes and mechanisms involved in the appointment of judges to the lower judiciary, i.e., the district courts in India. The rate of change about the appointment of judges to the lower judiciary has been glacial and is, to this day, a vestige of the colonial legacy.<sup>5</sup> What exists today is a confusing patchwork of appointments and promotions through multi-modal exams that have vastly differing syllabi in various states with the high courts' responsible for conducting these examinations seemingly conducting them on an ad-hoc basis.<sup>6</sup>

Under the present mechanism, the appointment of judges is governed by Articles 233-235 of the Constitution. Article 233 provides for the appointment of district judges; Article 234 provides for the recruitment of persons other than district judges to the judicial services, while the provision of overall control of subordinate courts is vested vide Article 235 of the Constitution. The power under all these Articles is vested in the High Courts with appropriate territorial jurisdiction. Presently, appointments are conducted by the means of examinations. The examination process is followed by an interview process with a panel of High Court Judges. However, the regional differences in this process are markedly huge.<sup>7</sup> As part of the Public Service Selection Examinations, the exams for appointment to the judiciary is the Provincial Civil Services (Judicial) [PCS(J)] examination.

Per the seminal decision of the hon'ble Supreme Court in *All India Judges Assn v Union of India*<sup>8</sup>, the distribution of the various modes of recruitment of judges to the judiciary has been clearly laid out. Currently, sixty-five percent of all posts in the judicial service are to be filled by regular promotions from the ranks of the Civil Judge (Senior Division), while ten per cent is to be done by competitive departmental examinations, based on merit only, while the leftover twenty-five per cent are done by direct recruitments from the Bar Council of India.

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<sup>5</sup> Robert S. Moog, *Elite-Court Relations in India: An Unsatisfactory Arrangement*, 38 *Asian Survey* 4, 410-423 (April, 1998), available at [www.jstor.org/stable/2645415](http://www.jstor.org/stable/2645415).

<sup>6</sup> Supreme Court of India, *Court News*, Vol. XII (4), 2017, available at [https://www.sci.gov.in/pdf/CourtNews/COURT\\_NEWS\\_OCTOBER-DECEMBER\\_2017.pdf](https://www.sci.gov.in/pdf/CourtNews/COURT_NEWS_OCTOBER-DECEMBER_2017.pdf).

<sup>7</sup> Diksha Sanyal & Shriyam Gupta, *Discretion and Delay: Challenges in Becoming a District and Civil Judge*, Vidhi Centre for Legal Policy (December, 2018) ('Sanyal & Gupta').

<sup>8</sup> *All India Judges' Assn. v. Union of India*, (2010) 15 SCC 170.

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However, it must be noted that, to be eligible to be elevated from the bar to the bench in the capacity of a district judge, the candidate must have at least seven years of experience at the bar.

Although the bifurcation of recruitment has been laid out by the Supreme Court, as per the constitutional scheme, all the High Courts are free to regulate recruitment within these guidelines. The High Courts, in exercise of these powers, have made rules laying out the standards and processes for recruitment of judges. However, this has unfortunately led to a proliferation of varying standards whereby the lack of uniformity and resemblance between the recruitment of judges in various states has come to be accepted as the ground reality.<sup>9</sup> Additionally, the Higher Judicial Services direct recruitment examinations, that are slated to happen either annually or biennially, as per the rules framed by the High Court happen on an ad-hoc basis; a fact that has often been bemoaned by various senior legal luminaries.

To provide, but a few examples of the inconsistency between various states in the recruitments process of judges: Some states such as Uttar Pradesh, Tripura, Assam and Arunachal Pradesh include aspects such as general knowledge, aptitude and English writing skills in the assessment, most other states don't. In certain states such as Odisha and Sikkim, increased emphasis is placed on state laws over the central laws. States such as Kerala and West Bengal follow a two-tier process of written examination and interview, whereas other states such as Karnataka and Uttarakhand follow a three-tier process of preliminary examination, written test and interview. In addition to these factors that already heavily contribute to a cast difference in the quality of judges and judicial service between the various states, the pay scale in different states is also different. There is no uniform remuneration prescribed with the emoluments and benefits provided atop the basic pay scale varying wildly from state to state.<sup>10</sup>

Perhaps, even more worrying is the state of affairs when it comes to promotions. The straits are so dire that the rules regarding promotion get altered very frequently. As pointed out by

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<sup>9</sup> Amit Anand Choudhary, Supreme Court for All India Common Test for Selection of Judges for Lower Courts, THE Times of India, May 9, 2017, available at <https://timesofindia.indiatimes.com/india/supremecourt-for-all-india-common-test-for-selection-of-judges-for-lower-courts/articleshow/58598588.cms>.

<sup>10</sup> Press Trust of India, Panel Recommends 30-PC Interim Relief for Lower Court Judges, The Economic Times, available at <https://economictimes.indiatimes.com/news/politics-and-nation/panel-recommends-30-pc-interim-relief-for-lower-court-judges/articleshow/63369090.cms>.

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the 116<sup>th</sup> Report of the Law Commission,<sup>11</sup> the situation is so bad that certain states do not even have rules in place for governing promotion!

All these factors combined point towards the urgent need for sweeping reform in the recruitment and promotion of judges.

### **PROPOSAL TOWARDS THE CREATION OF AIJS: HISTORICAL BACKGROUND**

The concept of an All-India Judicial Service (AIJS) was first mulled over in 1958, whereby an idea for united centralized State Judicial Services was suggested. However, this concept remained an abstract idea, with no concrete steps taken to implement it into fruition. The proposal aimed to create an efficient and qualified cadre of judicial officers at the District Courts who would be recruited at the central level by means of a national level examination conducted by a central authority. These qualified cadre would then be reallocated to different states on the basis of requirement. This proposal was aimed as an alternative to the Higher Judicial Services (HJS) examination, while the PCS-J would remain unchanged. This proposal sought to rectify and patch many of the ills plaguing the subordinate judiciary mentioned in the previous part. The proposal was originally part of the 14th Law Commission Report.<sup>12</sup>

The aforementioned idea for an All India Judicial Service (AIJS) was reiterated in the 77th Law Commission Report<sup>13</sup> and the 116th Law Commission Report as well. The idea of an AIJS was opposed vehemently and rejected, inter alia, by the Law Ministers' Conference, 1960, the Chief Justices' Conference in 1961 and the Chief Justices' Conference in 1985. The Chief Justices' Conference, 1985 gave 3 reasons for the rejection of AIJS<sup>14</sup>:

1. Inadequate knowledge of local language militating against judicial efficiency, particularly in evidence evaluation.
2. Severe restrictions on promotional avenues for members of State services.

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<sup>11</sup> Law Commission of India, Formation of an All-India Judicial Service, Report No. 116, 7 (November 1986) ('Report on All India Judicial Service').

<sup>12</sup> Law Commission of India, Reforms on Judicial Administration, Report No. 14, Vol. 1, 164, 167 & 184 (September 1958) ('Report on Reforms on Judicial Administration').

<sup>13</sup> Law Commission of India, Delay and Arrears in Trial Courts, Report No. 77, 32, (1978).

<sup>14</sup> Resolution adopted at the Conference of Chief Justices, convened by Chief Justice of India, 1985.

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3. Impairment of control of High Courts over lower judiciary, affecting the independence of judiciary.

However, despite all these historical objections, it is the 42nd Constitutional Amendment, 1977 to Article 312 that keeps the discourse around AIJS alive as it vests the Council of States with the power to create an AIJS.<sup>15</sup> This was done at the behest of the 1976 report of the Swaran Singh Committee report.

The proposal for an AIJS has been the site of multi-faceted discussion in various institutions of the state, including the judiciary. The Supreme Court initially ordered setting up of the AIJS, however, this direction was slightly amended vide a 1993 review petition whereby it was left up to the decision of the Union government.<sup>16</sup>

The constitution of an AIJS continues to be an active topic of discussion, as the Union law minister addressed the topic, as recently as December 2022.

## **BENEFITS, CRITICISM AND CHALLENGES OF AIJS**

### **BENEFITS**

#### **Fills vacancies.**

A justification that has been used widely for the creation of the AIJS, historically and also in present times is that the creation and institution of the AIJS will solve the problems of vacancies at the district and subordinate level. Contemporarily, this is a justification that has been used by Union Law Ministers of the recent past, in addition to the Parliamentary Standing Committee on Law and Justice.<sup>17</sup> In 2013, in pursuit of a broader discussion about the prevalence of judicial vacancies, the Parliamentary Standing Committee on Law and Justice went on record and stated that creation of an AIJS would solve the issue of shortage of availability of judges at all levels and deal with the persistent issue of delay in adjudication and the vast number of pending cases. The Standing committee suggested that the AIJS

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<sup>15</sup>The Constitution of India, Art. 312.

<sup>16</sup>All India Judges' Assn. (2) v. Union of India, (1993) 4 SCC 288.

<sup>17</sup>Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Demand for Grants Report No 52 (May 2012).

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would facilitate a continuous availability of a high standard of legal talent that would help deal with the issue of judicial vacancies.

However, in the light of certain statistics, the optimism in this regard must be measured. It is widely believed that there are over 5,000 vacancies in the subordinate judiciary of the states.<sup>18</sup> This must be viewed because the rate of vacancies varies greatly between the states varying between 1% - 12%.<sup>19</sup> Thus, the picture that emerges is that of widely varying levels of efficiency between the various states and the respective High Courts in filling vacancies in the subordinate judiciary.

Thus, the implementation of AIJS cannot be an all-encompassing solution for solving the issue of vacancies in the subordinate judiciary. Localized studies must be conducted to identify the issues that plague recruitment in a particular jurisdiction and efforts must be taken to improve recruitment in that jurisdiction to improve the effectiveness of any AIJS that is constituted.

### **Better pay and more talent**

The original proposal for AIJS in 1958, mentioned in the previous part cited the need for better pay and more talent as one of the primary reasons for the creation of an AIJS. This sentiment was echoed in the 116th Law Commission report in 1986 as well.<sup>20</sup> The original proposal put forth by the Law Commission in 1958 gave two primary reasons justifying its position that the constitution of AIJS would ensure better pay and more talent.

First, it was stated that All India Services enjoyed better standing and prestige in the consensus of the Indian public. Additionally, the All-India Services were open to everyone soon after graduating, whereas the judicial services, as they are currently set up, require a minimum pre-requisite of experience for the candidate to be eligible. As a result, there was an age disparity between the judicial services and the other public services as fresh inductees

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<sup>18</sup>Sriharsha Devulapalli, Vishnu Padmanabhan, 'What is clogging up India's district courts?' The Livemint, 24 July 2019 <<https://www.livemint.com/news/india/what-is-clogging-up-india-s-district-courts-1563952086072.html>>.

<sup>19</sup>Supreme Court of India, Indian Judiciary, Annual Report 2017-18 (October 2018) <<https://main.sci.gov.in/pdf/AnnualReports/Annual%20Report%202018-light.pdf>>.

<sup>20</sup>Alok Prasanna Kumar 'No Case for an All India Judicial Service', The Hindu, 15 August 2017 <<https://www.thehindu.com/opinion/op-ed/no-case-for-an-all-india-judicial-service/article19498261.ece>>.

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into the judicial services end up earning far less than similarly aged peers in the other public services, who joined the services at a tendered age.

Secondly, the commission also observed that the presence of increased regionalism and nepotism in the appointment of judges to the subordinate judiciary through the existing mechanism, which was significantly affecting the caliber of judicial officers throughout the country.

The 116th Law Commission Report of 1986 was even more scathing in its criticism, inter alia, talking about the “inadequacy of talent being attracted”, “ineffective voice of the High Court”, “failure of public service commissions” and “utter and total antipathy of State Governments”.

Although, there have been pay scale revisions and other reforms in the years since the reports of the aforementioned Law Commissions, there is definitely a case to be made with regards to the utility of AIJS in improving pay and attracting better talent to the judicial services.

## **CHALLENGES**

### **Local language**

One of the biggest challenges facing the constitution and institution of AIJS is the issue of language. In fact, this has been a big criticism since the time the idea was first mooted. The powers to prescribe the language to be used in the civil and criminal courts has been given to the State Governments vide the Code of Civil Procedure, 1908 and the Code of Civil Procedure, 1973. And in most States, the language of the state has been prescribed as the language to be used, it is only at the level of the High Courts that English becomes the primary language used in legal parlance.

This issue has been somewhat addressed in the Law Commission Reports, although the satisfactoriness of the answers and solutions are questionable. The 14th Report swept the issue under a rug, terming it a “faint objection”, while the 116th Report pointed out that other All India Services, such as the Indian Administrative Service (IAS) and the Indian Police

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Service (IPS) had faced no trouble in integrating out of state officers after providing them with training in the local language of the state.<sup>21</sup>

However, it must be noted that the Law Commission Reports failed to consider an important distinction between the nature of administrative and judicial services. The aforementioned All India Services are management style posts which involve lesser interactions with the general public. The bureaucrats are only required to know the local language to the extent that they are able to interact with their subordinate officers for the smooth functioning of their office. The role of a judicial officer is much different in this aspect as they have to directly deal with litigants and advocates on a daily basis. The cost of a judge misunderstanding the local language is also way too high.

In addition, it is also difficult for an out of state judge to fully understand and appreciate the local customs that form a part of civil law and in particular, family law. This problem will be exacerbated in states with a large tribal population as it is difficult for out of state judges to have a good understanding of the unique local customs. This issue has already been highlighted by multiple states including Arunachal Pradesh and Meghalaya.<sup>22</sup>

### **Marginalized communities' representation**

Reservation for marginalized communities, i.e., Scheduled Caste (SC) and Scheduled Tribes (ST) has always been a question for consideration when discussing constituting and setting up AIJS. Recent proposals to set up AIJS have always included a component of reservation. This is in the backdrop of recent protest by marginalized communities in favour of AIJS.<sup>23</sup>

It would thus, seem that setting up an AIJS with reservation would be a step in the right direction. However, the truth is not so simple. Many states, such as Delhi, Himachal Pradesh,

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<sup>21</sup>Law Commission of India, Report no. 116(n 9) 9-10.

<sup>22</sup>Q. No. 4881, Salman Khurshid, Minister of Law and Justice, Response in Rajya Sabha on Question Relating to All India Judicial Service (21 May 2012).

<sup>23</sup>Web Bureau, 'Ram Vilas Paswan Pitches For Broader Consensus For Setting Up Judicial Services, Reservation In Judiciary' The Outlook, 26 August 2018 <<https://www.outlookindia.com/website/story/ram-vilas-paswan-pitches-for-broader-consensus-for-setting-up-judicial-services-/315572>>.

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Haryana, Meghalaya and Uttar Pradesh already have reservations for various categories including Other Backward Classes (OBCs).<sup>24</sup>

Therefore, it is not an easy task to setup an AIJS with adequate reservations. The reservations in judicial services already existing in the states need to be kept in mind while formulating an AIJS.

## **CRITICISMS**

### **Judicial Independence**

The biggest criticism and challenge faced by any proposal to set up an AIJS is the question of judicial independence. In the present mechanism, the High Courts exercise a great deal of control over the recruitment process in the subordinate judiciary. The supervising High Court exercises 'control' over the subordinate judiciary, including the District Judges.<sup>25</sup> The independence of the High Court guarantees the independence of the subordinate judiciary as well.

The 14th Law Commission Report did not deal with this aspect at all, while the 116th Law Commission Report suggested a National Judicial Service Committee. However, this would result in an increased concentration of power in the hands of a few. Additionally, the NJAC case<sup>26</sup> has shown that the judiciary does not take kindly to executive interference.

There is no easy way around the problem of ensuring judicial independence in a system of recruitments by AIJS. A radical solution is needed.

## **CONSTITUTIONAL PROVISIONS**

The constitutional basis of any possible All India Judicial Service lies in the 42nd Constitutional Amendment of 1977, based on the Swaran committee report of 1976. The constitutional basis is provided in Article 312 (1) . It reads as follows:

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<sup>24</sup>The National Commission for Scheduled Castes, Reservation in Judiciary  
<<http://ncsc.nic.in/files/Reservation%20in%20Judiciary.pdf>>.

<sup>25</sup>M.M. Gupta And Ors. Etc . v State Of Jammu & Kashmir &Ors (1982) AIR 1579.

<sup>26</sup>Supreme Court Advocates-on-Record Association v Union of India (2015) 6 SCC 408.

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“312. All-India services. —

(1) Notwithstanding anything in 1 [Chapter VI of Part VI or Part XI], if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all India services 2 [(including an all-India judicial service)] common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.”

Thus, the creation of the AIJS needs just a resolution supported by at least two-thirds of the Rajya Sabha and does not require a constitutional amendment.

### **ROLE OF INDIAN JUDICIARY**

The Apex Court of India played a crucial role in bringing about jurisprudence related to appointment of judges. Several members of the judiciary banded together to raise awareness of the bad working circumstances for judges in India after considering their predicament.

- THE ALL-INDIA JUDGES ASSOCIATION was established with certain goals. In 1985, the Association was incorporated. The Association's executives used to meet to brainstorm solutions. The historical writing of 2202 of 1989 was finally submitted to the Hon'ble Supreme Court in the year 1989. Following relief was requested in the letter:

- (a) Consistency across the judicial cadres in the various States and Union Territories.
- (b) A reasonable, raised standard retirement age for judges across the nation.
- (c) Uniform pay scales should be established as much as feasible.
- (d) Every Judicial Officer should be supplied with a residential facility.
- (e) You must give a conveyance allowance and a transportation facility.
- (f) Ample benefits to be offered, including a library allowance, a residential office allowance, and a sumptuary allowance.

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(g) Making provisions for in-service training.

- PROGRESS TOWARDS EFFICIENT JUDICIAL APPOINTMENT

In a 1991 ruling, the Hon. Apex Court recognized the need to improve the working conditions for judges across India and issued the following reliefs:

(a) The Union of India should establish an all-Indian judicial system and take the necessary actions in this direction.

(b) By 31-3-1993, steps must be taken to provide uniformity in the designation of officers on both the civil and criminal sides.

(c) Judicial officials' retirement age will be raised to 60 years, and the necessary actions must be done by December 31, 1992.

(d) The issue of appropriate pay scales for judicial officers should be specifically referred to and taken into consideration as and when the Pay Commissions/ Committees are established in the States and Union Territories.

(e) By June 30, 1992, each judicial official must have a functional library at their home. It is necessary to provide a sumptuary allowance provision.

(f) Every judicial official must have access to residential housing, and the government is required to requisition housing for them by December 31, 1992, until State housing becomes available. A place for an office should be available while offering residential housing.

(g) Every district judge and chief judicial magistrate should have a state vehicle, sets of five judges should have a pool vehicle, and everyone else would be eligible for adequate loans to buy two-wheelers within the allotted time frames.

(h) Inservice Institute should be established at the Central, State, or Union Territory level within a year.

In the case of Review Petition All India Judges' Association v. Union of India, a second Supreme Court three-judge panel rendered its decision on August 24, 1993, adding new

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reliefs while reducing parts of the previous relief granted. Among other things, P.B. Sawant J., who spoke for the Bench, noted:

"The Judicial Service is not service in the sense of 'employment.' The judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of the public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature, and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State-power are the ministers, the legislators and the judges, and not the members of their staff who implement or assist in implementing their decisions."

He also observed: "Further, since the work of the judicial officers throughout the country is of the same nature, the service conditions have to be uniform." Finally, his Lordship pointed out: "We have also emphasised earlier the necessity of entrusting the work of prescribing the service conditions for the judicial officers to a separate Pay Commission exclusively set up for the purpose. Hence we reiterate the importance of such separate Commission and also of the desirability of prescribing uniform pay scales to the judges all over the country. Since such pay scales will be the minimum deserved by the judicial officers, the argument that some of the States may not be able to bear the financial burden is irrelevant." The greatest relief of all was to appoint a commission.

In 2017, the SC proposed a central selection mechanism after taking suo moto note of the problem of district judge appointment. Arvind Datar, a senior attorney who was designated by the court as an amicus curiae, sent a concept note to all states recommending a unified exam rather than separate state exams. High Courts would then conduct interviews and select judges based on the merit list. Datar argued that this would not alter the structure of the constitution or reduce the authority of the Supreme Court or the states.

In *Brij Mohan Lal v. Union of India*, the Supreme Court ordered the formation of an extra 10% of the current cadre of positions considering the need for more judges and the

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constitutional requirement to deliver a fair and prompt trial. In a perfect world, the High Courts or State Governments would have taken such a step. Furthermore, this trend can only be described as a patchwork because, unless the Apex Court is sought once more, this requirement will undoubtedly come back after some time and be ignored once more by the system.

A Supreme Court panel led by Ranjan Gogoi, C.J., Sanjay Kishan Kaul, and K.M. Joseph, JJ., issued an order in November 2018 outlining State-specific guidelines (different guidelines designed for the current scenarios of eight different States) regarding the appointment of judges, infrastructure, and insufficient support staff in each State.

### **ISSUES RAISED AND CRITICAL ANALYSIS**

- **LANGUAGE BARRIER**

While it would be unfair to single out one cause for the appalling state of things in subordinate courts, the requirements for regional language proficiency and bar experience have been a major barrier to entry for worthy applicants.

- **EXPERIENCE AND ELIGIBILITY**

According to Article 233(2), a District Judge can only be nominated if they have worked as an advocate or a pleader for at least seven years. This obligation has caused a great deal of harm in its current form. P.B. Gajendragadkar, J., has adequately emphasized the drawbacks of the "age barrier" in his opinion that many attorneys who take such an examination after seven or ten years of practice will fail. The argument for the opinion is that a successful lawyer will not be able to handle the possibility of occasionally being moved to serve as a subordinate judge. This requirement undermines the goal of attracting more deserving candidates. Making the examination process more rigorous, realistic, and open would have been a better alternative strategy to ensuring that only the best prevails.

- **AIJS AND THE FEDERALISM DEBATE**

The Supreme Court of India has ruled that "federalism" is one of the aspects of the Indian Constitution's "fundamental structure," even though the word "federal" or "federalism" is

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avoided in the document. Single judiciary: While the Constitution was being written, there seems to have been widespread support for a "single judiciary," in which one court system would uphold both federal and state laws. The Federal Judiciary and the State Judiciaries in the United States are distinct from and independent of one another. The Indian Federation, although having a dual political system, lacks a dual judiciary. Any issues originating under constitutional law, civil law, or criminal law are subject to the jurisdiction and remedies of the High Courts and the Supreme Court, which together make up one integrated judiciary. According to Ambedkar, unlike other federal countries like the United States where the federal unit and state units each have their own individual judiciaries, the Indian system is unique. Normally, only state law conflicts may be heard by the state court, whereas only federal law disputes may be heard by the federal judiciary.

Article 233 of the constitution bestows jurisdiction upon the governor to exert supervision over the district courts in respect of all the appointments and promotions made therein in collaboration with the relevant High Courts. It should be emphasized that article 309 of the constitution must be cited when changing hiring policies or service requirements. A practice or law would be considered ultra vires if it were not in accordance with article 233 of the constitution.

## CONCLUSION

In conclusion, the establishment of an All-India Judicial Service (AIJS) has been a topic of debate and discussion for many years in India. Proponents argue that it would help to address the issue of vacancies and improve the efficiency of the judiciary, while opponents raise concerns about federalism, diversity, and the potential for a centralized judiciary to undermine the independence of the judiciary.

The AIJS has been promoted as a remedy for judge openings, a lack of marginalized representation on the bench, and the inability to recruit the most qualified applicant. This paper demonstrates how many of these problems have received inaccurate diagnoses.

While the Supreme Court further created judicial pay commissions in All India Judges' Assn. v. Union of India in an effort to standardize the basic compensation of judicial officials across all State cadres, several States failed to put the recommendations into practice. The National

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Judicial Pay Commission's formation (NJPC) by the Supreme Court was a bold move, but the States' slow response to the NJPC's recommendations and the disproportionate time that passed between each of its subsequent recommendations have left much to be desired. As there are too many fallacies to address them all individually, the Supreme Court's efforts have not been able to result in any significant change.

After reviewing the literature and analyzing the various perspectives, it can be concluded that the establishment of an AIJS may be a viable solution to address the issue of vacancies and improve the efficiency of the judiciary. However, this must be done with careful consideration of the concerns raised by opponents, particularly with regards to maintaining diversity and safeguarding the independence of the judiciary.

Further research and consultations with relevant stakeholders will be necessary to determine the best way to establish an AIJS that addresses these concerns while also ensuring that the judiciary remains accountable and responsive to the needs of the people it serves. Ultimately, the establishment of an AIJS should be viewed as a step towards strengthening India's judicial system and upholding the principles of justice, equality, and the rule of law.

But at the same time, it is preferable to have a system where federalism thrives while making sure that the gaps are closed rather than focusing on AIJS. It is true that the entire process of hiring judges for the lower judiciary takes a lot of time, and there is no consistency in the hiring process, but it is preferable to make sure that the gaps are filled than to adopt a centralized system.

### **WAY FORWARD**

The construction of a recruiting mechanism that attracts effective judges in large numbers is required due to the overwhelming volume of cases that need to be resolved. But first, there must be unanimity and a strong move towards the AIJS before it enters the legislative framework.

Considering this, it is safe to assume that this prerequisite of practicing at the Bar has been one of the main reasons to turn away talented attorneys, who either prefer to continue their successful legal careers as attorneys or completely forgo this drawn-out, time-consuming

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process in favour of lucrative jobs at private firms. So, the Bar's waiting period must be fully eliminated because even a slight reduction would be useless. Although Article 233 of the Indian Constitution specifically mentions the need of seven years of bar experience, its removal will not be regarded as a constitutional amendment.

The establishment of AIJS has been a subject of debate and discussion for many years, and there have been several recommendations made by various committees and commissions.

Here are some possible steps that could be taken to move forward with the establishment of AIJS:

- a. **Constitution of a committee:** The first step could be to constitute a committee comprising legal experts, representatives of the judiciary, and members of civil society to examine the feasibility and modalities of establishing AIJS.
- b. **Conduct a feasibility study:** The committee could undertake a detailed feasibility study on the establishment of AIJS, which could include an analysis of the legal, administrative, and financial aspects of the proposed system.
- c. **Consultation with stakeholders:** The committee could also consult with various stakeholders, including state governments, high courts, and bar associations, to seek their views and suggestions on the proposed system.
- d. **Drafting of a bill:** Based on the findings of the feasibility study and consultations with stakeholders, the committee could draft a bill for the establishment of AIJS. The bill could be introduced in Parliament for discussion and debate.
- e. **Pilot project:** Before the implementation of AIJS on a pan-India basis, a pilot project could be initiated in a few states to assess the effectiveness and feasibility of the proposed system.
- f. **Capacity building:** There is a need for capacity building of judges and judicial officers to ensure that they possess the necessary skills and knowledge to function effectively in a centralized system. Therefore, training programs could be conducted for judges and judicial officers to equip them with the required skills and knowledge.

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g. Implementation: Once the AIJS is established, there will be a need for effective implementation and monitoring of the system. A monitoring mechanism could be set up to ensure that the system functions efficiently and effectively.

Overall, the establishment of AIJS has the potential to improve the quality of justice delivery in the country. However, the process of establishing AIJS requires careful consideration of various legal, administrative, and financial aspects, as well as consultation with various stakeholders, to ensure that it is feasible and effective.



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