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All India Judicial Services Bill: The need of time?

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The Legislature, the Executive, the Judiciary, and the Media are the four main pillars of democracy. As we all know, the Judiciary defines the system of justice. The current Indian judicial system, which was inherited from British rule, is in charge of resolving all conflicts in India, no matter how big or small, civil or criminal, family- or social related. India has a huge population, and the strain on the judiciary is growing daily. Additionally, there are many judge positions that have been vacant for a long time. One of the reasons is the appointment procedure for judges, which plays a significant role in the inferior judiciary. The All-India Judicial Services Examination to be conducted on similar grounds as the Indian Administrative Services and Indian Police Services seems to be the only hope for maintaining the proper number of judges in the country and hence smoothening and regulating the justice delivery system of the country. This article focuses on the merits and demerits of All India Judicial Services along with discussing the historical background and possible future.

Keywords: *judicial service, bill, executive, legislature, judicial system, democracy.*

INTRODUCTION

Whenever a major dispute occurs in India, we often hear people saying that “I will see you in court”, what that person means to say is that he/she will follow a legal procedure to challenge the opposite party by lodging a complaint and then let the court decide the grounds for the

decision to end the dispute, put in the contrast what we see that mostly the decision is not given within expected time frame due to extending dates, adjournments, etc. But what we fail to realize is that the basic framework of appointment and functioning that is the current system of recruitment of judges through the conduction of separate exams by each state. The introduction of All India Judicial Services is the possible solution for reforming, re-establishing, and smoothening the justice delivery system in India.

HOW ARE DISTRICT JUDGES CURRENTLY RECRUITED?

The appointment of district judges is governed by Articles 233 and 234¹ of the Indian Constitution, which gives this authority to the states. Since High Courts have jurisdiction over the state's subordinate judiciary, the selection procedure is carried out by them as well as the relevant High Court. Following the exam, candidates are chosen for appointment through interviews with panels of High Court justices. The Provincial Civil Services (Judicial) exam is used to choose all judges in the lower courts, up to and including district judges. The judicial services exam is also known as PCS(J). According to Articles 124, 217, and 222² of the Indian Constitution, judges had to be appointed to the Supreme Court and the High Court as well as transferred from one High Court to another. The President appoints judges after consulting with the Chief Justice and other justices (Collegium System).

BACKGROUND OF A.I.J.S.

- The AIJS was first proposed by the 14th report of the Law Commission in 1958.
- The Chief Justices Conference first advocated the creation of All India Judicial Services in 1961, 1963, and 1965 as a potential means of eliminating any judicial or executive interference in the selection of judges for the judiciary.
- When certain states and High Courts objected, the proposal was set aside until 1976, when the Indira Gandhi government revised the constitution to include All India Judicial Services under article 312³ as *“The all India Judicial service referred to in clause (1) shall not*

¹ Constitution of India, 1950, art.233 and art.234

² Constitution of India, 1950, art.124, art.217, and art.222

³ Constitution of India, 1950, art.312

include any post inferior to that of a district judge as defined in article 236⁴.⁵, by taking into consideration the Swaran Singh Committee's report.

- The proposal was again revoked by the ruling UPA government in 2012 but the drafted bill was kept aside again when the Chief Justices of some high courts described it as an infringement of their rights.

HOW AIJS WILL LOOK LIKE

- If a candidate is between the ages of 28 and 35, they are entitled to take the exam, as long as they have been practicing law for at least seven years of teaching for the same amount of time at a recognized law school or university.
- The AIJS will concentrate on appointing district judges.
- Civil judges will have the option to advance in their careers by having a set portion of inductions allocated for them.
- The remaining civil judges will be employed by the states and their separate high courts.
- District judges and civil judges or magistrates make up the two tiers of the subordinate judiciary.
- Even active civil judges who have completed the necessary number of years of service may sit for the exam to become an AIJS member.

SUPREME COURT'S STAND

In *All India Judges' Association v Union of India*, the Supreme Court (SC) ordered the Centre to establish an AIJS. However, the court freed the Centre to take the lead on the matter in a 1993 review of the ruling. The SC proposed a central selection mechanism in 2017 after taking suo motu cognizance of the issue of district judge appointments.

- Arvind Datar, a senior attorney who was designated by the court as an amicus curia (friend of the court), sent a concept note to all states recommending a common exam rather than separate state exams.

⁴ Constitution of India, 1950, art.236

⁵ Constitution of India, 1950, art.312(3)

- High Courts would then conduct interviews and appoint judges based on the merit list.
- Datar argued that this wouldn't alter the structure of the constitution or reduce the authority of the High Court or the states.

IMPORTANCE OF THE PROPOSAL

The plan is significant since a National Court Management Systems assessment from 2012 predicted that 75,000 judges would be needed to handle the 15 crore cases that would be filed over the next 30 years. According to a 1987 law commission assessment, India should have 50 judges per million people instead of 10.50 judges (then). In terms of sanctioned strength, the number has already surpassed 20 judges, although this still pales in comparison to the US or the UK, which have 107 and 51 judges per million citizens, respectively. As of January 28, 2021, the subordinate judiciary had a working strength of 19,318 compared to a sanctioned strength of 24,247. So, there are still over 5,000 open positions. 3.81 crore cases are still pending in various district and taluka courts across India, according to the National Judicial Data Grid. Over a lakh cases have been unresolved for more than three decades. In contrast to the 10.77 lakh cases that were decided last month, 14.80 lakh cases were filed last month. Due to the Covid-19 pandemic and the lockdown, the situation has gotten worse over the past year.

According to a National Court Management Systems estimate from 2012, 75,000 judges would be needed to handle the 15 crore cases that would be filed in that time. The new all-India judicial service commission will administer a pan-India test, and those who pass will be selected as judicial officers by high courts and various state governments, according to the current proposal. The government plans to use the UPSC to conduct the AIJS test, which will be more or less in the same format as the Indian Administrative Service. Contrary to IAS, which grants state cadre based on the preferences stated by the candidates and their performance in examinations and interviews, the AIJS entrance exam may be held at zonal levels—North, South, East, West, and Central—so that judges are assigned closer to the locations they belong to so as to overcome the language barrier the candidate may face as the working of most of the district courts is in the native state language.

CHALLENGES TO THE PROPOSAL

- Regarding Articles 233 and 312⁶, there is a dichotomy. What was fundamentally intended to be the State's prerogative will now be the Union's prerogative.
- The basic structure theory and the federalism principle may be violated if the States' fundamental authority to establish such rules and control the nomination of district judges is taken away. (Conflict of Center and States)
- Language barrier for judges due to compulsion in some states on working in the native language.
- The subordinate judiciary's career paths would be severely restricted.
- District judge positions are to be filled in half by promotion from the inferior judicial service, leaving the other half free for direct recruitment.

CURRENT SCENARIO WITH RESPECT TO THE GOVERNMENT, THE OPPOSITION, AND THE HIGHER JUDICIARY

We can clearly infer that the political base in form of support of the parties is established for introducing AIJS. It cannot be disputed that the previous UPA governments, from the addition of article 312 to the constitution to the introduction of the AIJS bill in 2012, also focused on introducing the AIJS, especially given that the current NDA government, which holds a majority in the Vidhan Sabha, is emphasizing the application of the AIJS. The obstacle arises when the high courts of several states oppose the proposal on various grounds such as independence of the judiciary, dilution of powers of the high courts to appoint the district judges, the appointment of the high court judges, etc. While the role of the Supreme Court is significant in supporting the proposal, the response of high courts is critical.

WHY ALL INDIA JUDICIAL SERVICES SHOULD BE IMPLEMENTED?

An All India Judicial Service would increase the judiciary's professionalism, fairness, and accountability. One-third of the judges would join the high courts by promotion from lower courts, which would raise the standard of judicial officers in high courts. The high courts are

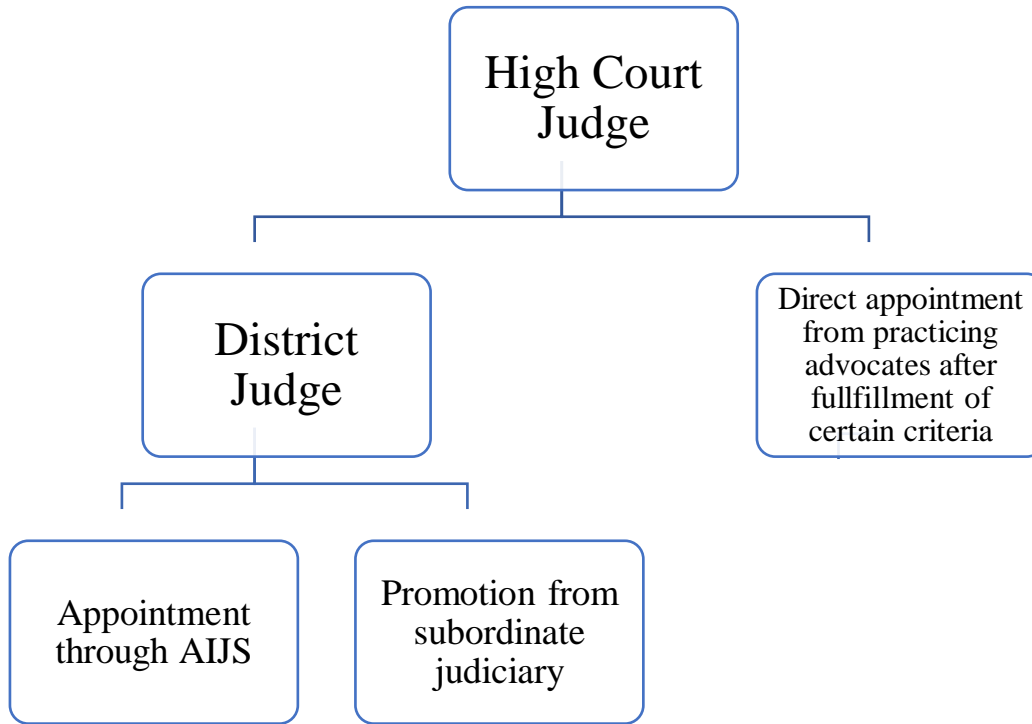
⁶ Constitution of India, 1950, art.233 and art.312

used to select Supreme Court justices. The individuals who would be ultimately chosen for the courts would have a track record of competence. From the lowest to the highest levels of the legal system, the quality of decision-making and the administration of justice would experience fundamental changes. This may have significant effects on both the standard of justice and the accessibility of justice for all parties. It will draw qualified law students who currently avoid using state courts due to the inconveniences involved to the judiciary. Such a step is likely to help reduce pendency given that the strength of the judiciary in subordinate courts is more than a fifth below the overall number of sanctioned posts.

Only judges with a track record of competence will preside over the benches, which will reduce the possibilities for bias, arbitrary decision-making, and nepotism in the legal system. Maintaining the necessary judge strength in district courts and high courts is particularly challenging without AIJS. The Union Public Service Commission's recruitment process would guarantee the greatest objectivity and transparency in the hiring process. India can study the French system, where a career judicial service runs the judiciary. Additionally, this will put an end to the ongoing turf battle over judicial appointments between the executive and judicial branches.

THE IDEAL POSSIBLE MODEL

If the High Courts have the authority to appoint District judges through AIJS, i.e., the authority to conduct interviews and make decisions regarding the transfer of District judges, etc., then the high courts' objection regarding a potential reduction in their appointment authority will be perfectly satisfied. A mechanism similar to that used for the appointment and promotion of District collectors and deputy collectors would be followed for the filling of the vacancies for District judges, with AIJS filling 50% of them and state-conducted PCS(J) exams filling the other 50%. Additionally, 50% of the High Court judges will be appointed through High Court proposal and appointment authority, and the remaining 50% will be promoted from among the District Judges.



WHY THE ALL INDIA JUDICIAL SERVICE BILL IS DIFFICULT TO IMPLEMENT?

- Dilution of powers of State Government** – Federalism is an important part of any democracy. India is a democracy that has many states along with their unique culture and tradition. Any complex democracy like India must follow a federal structure in order to suit central as well as local needs. Federalism is a basic part of the Constitution that cannot be removed at any cost. This has been upheld in the case of *KesavanandaBharati v State of Kerala*. The judgment of the court read as “all provisions of the constitution, including Fundamental Rights can be amended. However, the Parliament cannot alter the basic structure of the constitution like secularism, democracy, federalism, and separation of powers.”⁷ As per the bill, the judges will be recruited centrally through an all - India examination. So the central government will come into play in selecting the judges and it will limit the power of the state government to select the judge. As per **Article 233 (1)**⁸ of the Indian constitution, (1) “Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State

⁷ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225

⁸ Constitution of India, 1950, art.233(1)

in consultation with the High Court exercising jurisdiction in relation to such State.” Besides that Article 234 read, “Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him on that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State”⁹. So as per articles 233 and 234, it is clear that the recruitment of district judges is a matter of the State government. So with the implementation of the bill, this power of recruitment of the district court by the state government will be limited or reduced to nil.

- **Dilution of power of High Courts** – There is a concept of the federal judiciary. A federal judiciary means a judiciary that is capable to interpret laws of federalism and can ensure equal rights given to each state and recognise their independence from the central nation. In order to achieve that, it is important that both High Court and Supreme Court are given equal powers to ensure stability and non- misuse of powers. The power of the High court to appoint judges of the High court is vested by **Articles 233(1) and (2)**¹⁰. Article 233 (2) read, “A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment”¹¹. Therefore the power of the High Court will be limited when this bill will be implemented and it might be off-track from the achievement of the federal judiciary. That’s why many high courts have rejected the proposal for establishing the All India Judicial examination as their power to interview judges and recruit them at district court will be limited.
- **Averse to Separation of Powers**– In India, a doctrine of separation of powers is being followed. There are three bodies of government – legislature, executive, and judiciary. Legislature makes law for the nation. The executive implements the law made by the legislature. Lastly, judiciary punishes those who break the law. All the three bodies work independently and ensure check on other bodies as well. This system of check and

⁹ Constitution of India, 1950, art.234

¹⁰ Constitution of India, 1950, art.233(1) and (2)

¹¹ Constitution of India, 1950, art.233(2)

balance is needed to ensure power stability between the three bodies. This doctrine has been upheld by many Supreme Court judgments like *Ram Jawaya Kapoor V State of Punjab*¹², *Indira Nehru Gandhi V Raj Narain*¹³, *P Kannadasan V State of Tamil Nadu*¹⁴, etc. Also, it is the basic part of the constitution that cannot be amended by the Parliament as per the Kesavananda Bharti case. So as per this doctrine, no one can interfere with the matters of the judiciary. Judiciary is an independent organistaion. A landmark judgment of *S.P. Gupta v Union of India*¹⁵ read, “Judges should be of stern stuff and tough fiber, unbending before power, economic or political, and they must uphold the core principle of the rule of law which says Be you ever so high, the law is above you. This is the principle of independence of the judiciary which is vital for the establishment of real participatory democracy, maintenance of the rule of law as a dynamic concept, and delivery of social justice to the vulnerable sections of the community. It is this principle of independence of the judiciary which we roust keep in mind while interpreting the relevant provisions of the Constitution.” Even in the appointment of judges, Judiciary plays a prominent role and President is bound by it as per the amendment of Article 124 and Article 217¹⁶. This ensures independence of the judiciary and executives only have a ceremonial role in it. However, as per AIJS Bill, the centre may have a say in the process of recruiting and appointing judges even in district courts by diluting the powers of both state government and the High Court as discussed above. This interference by the executive is a threat to the independence of the judiciary. This danger could lead to the judiciary being a puppet of the executive which had come true in some countries. For example in the **USA**, the central recruitment of judges is being followed. Some research studies observed that because of this process and composition of judges, US Supreme Court is more likely to struck down state legislation rather than nationwide legislation. Usually, the composition of judges is such it suits the need of the central government. This trend is observed in **Nigeria** as well where the apex court supports the rights of the central government over

¹² *Ram Jawaya Kapoor State of Punjab* (1955) 2 SCR 225

¹³ *Indira Nehru Gandhi v Raj Narain* (1975) 3 SCR 333

¹⁴ *P Kannadasan v State of Tamil Nadu* (1996)5 SCC 670

¹⁵ *S.P. Gupta v Union of India* (1982) 2 SCC 831

¹⁶ Constitution of India, 1950, art.124 and art.217

the state government in matters of mining. Such dangerous trends need to be stopped immediately and any proposal which can lead to this shouldn't be supported unless changes are made in it with respect to the appointment of judges.

- **Other difficulties** – Apart from legal challenges, the AIJS bill has certain other challenges as well. These are as follows:-

a) Issue of less pay – As per *All India Judges Association v Union of India*¹⁷, the Supreme Court ordered the government to set up pay commissions in every state to address the issue of non – uniformity in paycheck and fringe benefits of judges for the same work. However, even after two decades, the wide variation in paycheck still exists. As per a report, the salary of a judge at Jodhpur is around 45000 rupees but a judge at Patna is paid around 26000 rupees for the same work. This nonuniformity of paycheck is one of the main causes of the substandard situation of the lower judiciary. AIJS bill doesn't address this.

b) Issue of reservation – Reservation for a certain category of people is important in order to ensure equity and upliftment of a certain class. States have their own reservation policy depending upon their local needs. Usually, reservation policy is followed in the executive and legislature due to constitutional amendments. However, there is no reservation policy for the judiciary. Because of these, the representation of women and people belonging to the backward class is abysmally low. There are only 4 women on Supreme Court out of total strength of 34. Such a level of gender discrimination leads to non – the sensitivity of judges in sensitive issues like rape, sexual assault, molestation, etc.

Therefore, the All India Judicial Service Bill shouldn't be implemented without addressing the above issues. There is a need to bring changes in the present bill in order to incorporate solutions for other issues like reservations and paycheck.

¹⁷ *All India Judges Association v Union of India* (1993), AIR 2493

CONCLUSION

The establishment of an Indian judicial service is a good concept if we want to build a strong subordinate judiciary and a large talent pool for the selection of high court and, later, Supreme Court judges. Speedy and impartial justice in India can only be guaranteed by a meritocratic service with competitive recruiting, top-notch uniform training, and guaranteed norms of probity and efficiency. With the rising level of pending cases and vacancies of judges, there is a need to tackle these challenges in order to ensure the stability of the justice delivery system. However, the current appointment of judges is plagued by corruption and non – uniformity of examinations conducted at the state level. So the All India Judicial Service bill is promising in the sense that it replaces exams taken by state with pan-India examinations. But the bill also suffers from some defects like diluting the power of the High Court and putting an executive foot in the process. So first amendments need to be made in the bill like keeping the power of the High Court to select judges at the district level, keeping the power of the Collegium system to select judges at the High Court & Supreme Court, and lastly minimizing the interference of the executive in the independent functioning of the judiciary in all matters. After all,

“An independent judiciary is the crown jewel of our constitutional republic.”

-Brett Kavanaugh (Associate Justice of US Supreme Court)