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ALL INDIA JUDICIAL SERVICE: CURRENT RELEVANCE AND CHALLENGES

(This article is related to the brief summary of the combined editorials of 'Indian Express', 'The Hindu', 'Jansatta', 'Sansad TV's program Sarokar', monthly magazine 'World Focus' and 'PIB'. In this, the suggestions of the Yojana IAS team This article is specifically related to the 'Indian Polity and Governance' section of the UPSC Civil Services Examination. This article is related to 'All India Judicial Services: Current Relevance and Challenges' under 'Daily Current Affairs'.)

General Studies – Indian Polity and Governance.

Why in discussion?

The first citizen of India and the 15th President of the country, Shrimati Draupadi Murmu, on the occasion of Constitution Day on 26 November 2023, established an All India Judicial Service (AIJS) to ensure equal representation of India's diversity in the judiciary. He also emphasized that the aim of justice is to make it accessible and equitable to all, which is yet to happen in India.

The President said – **“A more diverse representation of India's unique diversity on the Constitutional Bench and Bar Councils certainly helps in better serving the ends of justice. “One way to accelerate this diversification process could be to create a system in which judges can be recruited from diverse backgrounds through a merit-based, competitive and transparent process.”** In such a situation, there could possibly be an All India Judicial Service, which would be able to **“select talented youth from across the country and nurture and promote their talent from lower to higher levels”** to create a larger pool of talent. **“Such a system can also provide opportunities to under-represented social groups,”** She said.

The Government of India has recently proposed to pass a Bill to set up the All India Judicial Service (AIJS) for recruitment of officers for subordinate courts through an entrance examination.

Immediately after independence, provision was made for an All India Judicial Service (AIJS) on the lines of the Indian Administrative Service and the Indian Police Service, but due to certain reasons, the All India Judicial Service has not been created yet.

The idea of AIJS is currently being proposed in the backdrop of judicial reforms, particularly related to checking of vacancies and pending cases in the judiciary. The establishment of AIJS is a positive step, but it faces several constitutional and legal hurdles.



What is All India Judicial Service (AIJS)?

Introduction:

- It is a proposed centralized recruitment system **for judges at the level of Additional District Judges and District Judges** in all states .
- Its aim is to centralize the recruitment of judges, similar to **the Union Public Service Commission (UPSC) model, and hand over charge of states to successful candidates.**
- As per the recommendations of the Law Commission reports of the years **1958 and 1978** , the AIJS aims to address structural issues such as differential pay, recruitment against vacancies and standardized nationwide training.
- The Parliamentary Standing Committee reconsidered the support for the All India Judicial Service in the year 2006.

Constitutional basis:

- **Article 312 of the Constitution** provides for the establishment of the AIJS on a proposal **supported by not less than two-thirds of the members of the Rajya Sabha**, similar to the Central Civil Services .
- However **Article 312(2)** states that the AIJS cannot include any post below the level of **District Judge (defined in Article 236)** .
- **According to Article 236** , a District Judge includes Municipal Civil Court Judge, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Justice of Small Causes Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Session Judge, Additional Session Judge and Assistant Sessions Judge.

Need:

- **AIJS will ensure uniform and high standards** of selection and training of judges , thereby enhancing the quality and efficiency of the judiciary.
- **AIJS will fill the vacancies of judges** in lower courts , currently **around 5,400 posts are vacant in the lower judiciary across the country and 2.78 crore cases** are pending in the lower judiciary mainly due to inordinate delay in conducting regular examinations by the states.
- AIJS will increase the representation and diversity of judges from different regions, genders, castes and communities reflecting the **social structure of the country** .
- **AIJS will reduce the scope for judicial or executive interference** in judicial appointments , thereby ensuring **the independence and accountability of judges** .

- AIJS will create a pool of talented and experienced judges who can be appointed to the higher judiciary, thereby improving the future prospects of judges and their mobility.

Present situation:

- Due to different opinions in this regard among all the major stakeholders in India, no **consensus** has been reached on AIJS till the year 2023.
- This highlights the challenges in achieving consensus on the proposal to establish AIJS.

How are district judges currently recruited?

- The current system consists of **Articles 233 and 234** which empower the states to appoint district judges, which is managed through the State Public Service Commissions and the High Courts, as the High Court exercises jurisdiction over the subordinate judiciary in the state. Is.
- A panel of High Court judges interviews the candidates after the examination and selects them for appointment.
- All judges up to the level of District Judge of the lower judiciary are selected through the Provincial Civil Services (Judicial) Examination. PCS (J) is commonly known as Judicial Services Examination.
- Article 233 deals with **the appointment of District Judges** . The appointment, posting and promotion of District Judges in any State shall be made by **the Governor of the State** in consultation with the High Court exercising jurisdiction over such State.
- **Article 234** deals with **the recruitment of persons other than District Judges** to the judicial service .

What are the concerns regarding AIJS?

- This would be a violation of **the federal structure** and the autonomy of the States and High Courts, which have the constitutional power and responsibility to administer the subordinate judiciary.
- This would lead to conflict of interest and dual control over judges, who would be **answerable to both the Central and State governments** .
- This will disregard the local laws, languages and customs of different states, which are essential for the effective functioning of the judiciary.
- This will impact the morale and motivation of **existing judicial officers** , who will be deprived of opportunities and incentives for career advancement.

The way forward to move towards solving the problem:

- Dialogue and consultation should be facilitated with states, high courts and legal experts to address concerns and garner support for AIJS.
- Consideration should be given to implementing AIJS on a pilot basis in select states to assess its impact and gradually address the concerns.
- Designing AIJS with flexible mechanisms that allow adaptation to local methods, languages and customs should also ensure effective functioning without neglecting regional nuances.
- Proposing a clearly defined transition period during which existing judicial officers can smoothly adapt to the new system while minimizing disruptions.

- There is a need to put in place a periodic review mechanism to assess the impact of the AIJS on the federal structure, autonomy and effective functioning of the judiciary and make necessary adjustments as required.
- Develop an incentive structure within the AIJS that motivates and recognizes the contributions of existing judicial officers while addressing concerns related to career advancement.

CONSTITUTIONAL PERSPECTIVE FOR AIJS:

- **AIJS was first proposed by the 14th Report of the Law Commission in the year 1958 .**
- By the 42nd Constitutional Amendment in the year 1976, Article 312(1) was amended to empower the Parliament to make laws for the creation of one or more All India Services, including AIJS, with equal powers for both the Union and the States. Is.
- Under Article 312 , the Rajya Sabha is required to pass a resolution supported by at least two-thirds of its members present and voting. After this, Parliament will have to make a law to create AIJS.
- This means that no constitutional amendment will be required for the establishment of AIJS.
- The Supreme Court of India also supported this in the case 'All India Judges Association vs Union of India' (1993) and said that AIJS should be established.

BENEFITS OF AIJS:

- **Number of judges as per population ratio:** A Law Commission report (year 1987) recommended that India should have 50 judges per million population as compared to (then) 10.50 judges.
- This figure exceeds 20 judges in terms of the current sanctioned strength, but is much lower than the US or the UK (107 and 51 judges per million people, respectively).
- AIJS thus envisages bridging the inherent gap in the judicial sector.
- **Higher representation of marginalized sections of the society :** According to the government, AIJS is an ideal solution for equal representation of marginalized and deprived sections of the society.
- **Attracting talent:** The government believes that if such a service comes up, it will help in creating a pool of talented people who can later become part of the higher judiciary.
- **'Bottom-up' approach:** 'Bottom-up' approach in recruitment will also be helpful in dealing with issues like corruption and nepotism in the lower judiciary. This will improve the quality of the justice system in the lower levels of the society.

RELATED CHALLENGES:

- **Dichotomy between Articles 233 and 312:** According to Article 233, recruitment to the subordinate judiciary is the prerogative of the State.
- This has led many states and high courts to oppose the idea as being against federalism.
- If the fundamental power of the states to make such rules and control the appointment of district judges is taken away, it may go against the principle of federalism and the basic structure principle.

NOTE:

- **Article 233 (1) of the Constitution** states that "The appointment of persons to be District Judges in any State and the posting and promotion of District Judges shall be made by the

Governor of that State after consultation with the High Court exercising jurisdiction in relation to such State." Will do."

- **Linguistic barrier:** Since cases are argued in lower courts in local languages, there are apprehensions as to how a person from North India can get a hearing in a southern state. Thus another fundamental concern regarding AIJS is the language barrier.
- **Constitutional Limit:** Clause 3 of Article 312 imposes a restriction that the AIJS shall not include a post not lower than the post of District Judge. Thus the appointment of subordinate judiciary through AIJS may face constitutional hurdles.
- **Weakening the administrative control of the High Court:** The creation of AIJS will lead to erosion of control of the High Courts over the subordinate judiciary, which may affect the independence of the judiciary.

CONCLUSION:

The number of pending cases and crores of prisoners lodged in the jails in the name of 'undertrial' in Indian jails certainly demands the establishment of a clean, transparent, competitive and merit based recruitment system which ensures speedy disposal of cases. To recruit a large number of skilled and qualified judges. However, before AIJS comes into the legislative framework, there is a need to build consensus and take a decisive step towards AIJS. At the same time, governments also need to create mutual coordination between Rajya Sabha and Lok Sabha so that in future All India Judicial Service posts are created. In the direction of creation, the mutual deadlock between the judges appointed by the Collegium and the government should be ended and the way can be paved for positive initiatives towards the creation of posts like All India Judicial Service.

Practice Questions for Preliminary Exam:

Q.1. Consider the following statements with reference to All India Judicial Service in India .

1. The authority for appointment and management of District Judges and Subordinate Courts in India is exercised through the State Public Service Commissions and the High Courts of the respective States.
2. The All India Judicial Service aims to centralize the recruitment of judges, similar to the Union Public Service Commission (UPSC) model, and assign charge of states to successful candidates.
3. Article 312 of the Constitution provides for the establishment of the AIJS on a proposal supported by not less than two-thirds of the members of the Rajya Sabha, similar to the Central Civil Services.
4. AIJS was first proposed by the 14th Report of the Law Commission in the year 1958.

Which of the above statement/statements is correct?

- (a). Only 1, 2 and 3.
- (b). 1, 3 and 4 only.
- (c). None of these .
- (d). all of which.

Answer - (d)

Practice Questions for Mains Exam:

Q.1. Discuss how the establishment of All India Judicial Service in India is a positive step in the field of judiciary in the context of recruitment of judges from diverse backgrounds through merit-based, competitive and transparent process for speedy and accessible justice system in India. ? Describe its current relevance by discussing the constitutional and legal obstacles to its creation.

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