All India Judicial Service

Why in News

The central government is preparing to give a fresh push to the establishment of an **All India Judicial Service (AIJS)** on the lines of the central civil services.

Key Points

- **About:**
  - The AIJS is a **reform push to centralise the recruitment of judges** at the level of **additional district judges and district judges** for all states.
  - In the same way that the **Union Public Service Commission** conducts a central recruitment process and assigns successful candidates to cadres, judges of the lower judiciary are proposed to be recruited centrally and assigned to states.
- **Previous Proposals:**
  - The AIJS was first **proposed by the 14th report of the** Law Commission **in 1958.**
    - A statutory or constitutional body such as the UPSC to conduct a standard, centralised exam to recruit and train judges was discussed.
  - The idea was **proposed again in the Law Commission Report of 1978**, which discussed delays and arrears of cases in the lower courts.
  - In 2006, the **Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 15th Report** backed the idea of a pan-Indian judicial service, and also prepared a draft Bill.
- **Supreme Court's Stand**:
  - In 1992, the **Supreme Court (SC)** in ***All India Judges' Association v. The Union of India*** directed the Centre to set up an AIJS.
  - In a 1993 review of the judgment, however, the **court left the Centre at liberty to take the initiative on the issue.**
  - In 2017, the SC took suo motu cognizance of the issue of appointment of district judges, and **mooted a Central Selection Mechanism.**
    - Senior advocate Arvind Datar, who was appointed amicus curiae (friend of the court) by the court, circulated a concept note to all states in which he **recommended conducting a common examination** instead of separate state exams.
    - Based on the merit list, High Courts would then hold interviews and appoint judges. Datar submitted that this would not change the constitutional framework or take away the powers of the states or High Courts.
- **Benefits of AIJS:**
  - **Efficient Judiciary**: It will **ensure an efficient subordinate judiciary,** to address **structural issues** such as varying pay and remuneration across states, to **fill vacancies faster**, and to ensure standard training across states.

- **Ease of Doing Business**: The government has targeted the reform of lower judiciary in its effort to improve **India's** Ease of Doing Business ranking, as efficient dispute resolution is one of the key indices in determining the rank.
- **Addressing Judges To Population Ratio**: A Law Commission report (1987) recommended that India should have 50 judges per million population as against 10.50 judges (then).
    - Now, the figure has crossed 20 judges in terms of the sanctioned strength, but it's nothing compared to the US or the UK — 107 and 51 judges per million people, respectively.
- **Higher Representation of Marginalised Sections of Society**: According to the Government, the AIJS to be an **ideal solution for equal representation** of the marginalised and deprived sections of society.
- **Attracting Talent Pool:** The government believes that if such a service comes up, it would **help create a pool of talented people** who could later become a part of the higher judiciary
- **Bottoms-Up Approach:** The bottoms-up approach in the recruitment would also **address issues like corruption and nepotism in the lower judiciary**.

- **Criticism:**
    - **Encroaching States Power**: A centralised recruitment process is seen as an **affront to** federalism **and an encroachment on the powers of states** granted by the Constitution.
    - **Wont Address Unique Issues:** This is the main contention of several states, which have also argued that **central recruitment would not be able to address the unique concerns** that individual states may have.
        - **Language and representation**, for example, are key concerns highlighted by states.
        - Judicial business is conducted in regional languages, which could be affected by central recruitment.
    - **Not Good For Local Reservation:** Also, **reservations** based on caste, and even for rural candidates or linguistic minorities in the state, could be **diluted in a central test.**
    - **Against Separation of Powers**: The opposition is also based on the **constitutional concept of the** separation of powers. A central test could give the executive a foot in the door for the appointment of district judges, and dilute the say that High Courts have in the process.
    - **Wont Address Structural Issues:** The creation of **AIJS will not address the structural issues** plaguing the lower judiciary.
        - The issue of different scales of pay and remuneration has been **addressed by the SC in the *1993 All India Judges Association case*** by bringing in uniformity across states.
        - Experts argue that **increasing pay across the board** and ensuring that a f**raction of High Court judges are picked from the lower judiciary,** may help better than a central exam to attract quality talent.

Current Appointment Method

- **Articles 233 and 234** of the Constitution of India deal with the **appointment of district judges**, and place it in the domain of the states.
- The **selection process is conducted by the State Public Service Commissions** and the concerned High Court, since High Courts exercise jurisdiction over the subordinate judiciary in the state.
- Panels of **High Court judges interview candidates** after the exam and select them for appointment.
- All judges of the lower judiciary up to the level of district judge are selected through the **Provincial Civil Services (Judicial) exam. PCS(J)** is commonly referred to as the judicial services exam.
- The **Appointment of Judges of the Supreme Court and the High Court and the transfer of**

judges from one High Court to another had to be made **in accordance with Articles 124, 217 and 222 of the Constitution of India.** The appointment of judges is made by the President in consultation with the Chief Justice and other judges **(Collegium System)**.

Constitutional Provision For Bringing the Change:

- The **42nd Constitutional amendment in 1976** amended **Article 312 (1)** empowering Parliament to make laws for the creation of one or more All-India Services, including an AIJS, common to the Union and the States.
    - Under **Article 312**, Rajya Sabha is required to pass a resolution supported by not less than two-thirds of its members present and voting. Thereafter, Parliament has to enact a law creating the AIJS.
    - This means **no constitutional amendment will be required for establishment of AIJS.**

Way Forward

- The insurmountable **number of pending cases calls for establishment of a recruitment system that recruits efficient judges in large numbers** for speedy dispensation of cases.
- However, before AIJS gets into the legislative framework, there is a **need to build consensus and take a decisive step towards the AIJS.**

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