

General Studies-2; Topic– Structure, organization and functioning of the Executive and the Judiciary

All India Judicial Service (AIJS)

1) Introduction

- Niti Aayog in its report, 'Strategy for New India@75', mooted the creation of an All India Judicial Service (AIJS) for making appointments to the lower judiciary.
- It is through an all India judicial services examination conducted by the UPSC in order to maintain "high standards" in the judiciary.
- Similar proposals were made by the Union Law Minister as a solution to the problems of vacancies in the lower judiciary and a lack of representation in the judiciary from marginalised communities.

2) Highlights of the Report

- The report claimed that the move will attract young and bright law graduates and help build a new cadre "that can enhance accountability in the governance system".
- It suggested the introduction of an administrative cadre in the judicial system to streamline processes.
- To maintain judicial independence, the cadre should report to the Chief Justice in each High Court.
- A performance index for judges should be considered and a separate state-wide index for "ease of getting justice" should be prepared.
- It said there is a need to facilitate the availability and usage of video-conferencing facilities to assist in speedy access to justice and to minimise logistical issues.

3) Arguments for the creation of AIJS

- The creation of the AIJS and a centralised recruitment process will help the lower judicial services.
- Centralisation of recruitment processes through the UPSC leads to a more efficient recruitment process.
- This can have far-reaching impact on the quality of justice and on people's access to justice as well.
- Given the strength of the judiciary in subordinate courts is over a fifth short of the total number of the sanctioned posts, such a move is likely to help ease pendency.
- Only the judges of proven competence will preside over the benches and it will minimise the scope of aberration, arbitrariness and nepotism in judiciary
- India can look in to the French model, where the judiciary is operated by a career judicial service.
- Reservations for the marginalised communities and women, will lead to a better represented lower judiciary.
- Several States already provide for reservations in their lower judicial service.
- At least 12 States provide for caste-based reservation in the direct recruitment examination for district judges.
- In addition, U.P., Karnataka, Rajasthan and Chhattisgarh provide women with special reservations.

4) Recommendations for AIJS

- The creation of an AIJS was first proposed in 1960.
- First Law Commission of India (LCI) in its 14th Report on Reforms on the Judicial Administration, recommended an AIJS in the interests of efficiency of the judiciary.
- In its 77th Report, dealing with "Delay and arrears in trial courts", the LCI once again said the AIJS needed serious consideration.

- The Constitution (Forty-second Amendment) Act 1976 inserted an “all-India judicial services” provision into Article 312 that lays down the legal ground for creation of All-India Services.

5) Present Issues

- The Indian legal service has quality challenges.
- There are also a large number of vacancies in lower courts (5,000 at least).
- The judiciary is not representative.
- Study shows that women judges constitute barely 9% of the current working strength in high courts of the country.
- In 2014, the National Commission for Scheduled Castes demanded that reservations should be provided in the judiciary because of almost no representation for such groups across the judicial services.

6) Vacancies across different States

- Going by the latest figures published by the Supreme Court, many States are doing a very efficient job when it comes to recruiting lower court judges.
- In Maharashtra, of the 2,280 sanctioned posts, only 64 were vacant.
- In West Bengal, of the 1,013 sanctioned posts, only 80 were vacant.
- However, there are States such as Uttar Pradesh where the situation is shocking. Of the 3,204 sanctioned posts, 1,348 are vacant, i.e. 42% vacancies.
- These numbers show that the problem of vacancies is not uniform across different States.
- The solution is to pressure poorly performing States into performing more efficiently.
- The argument that the centralisation of recruitment processes through the UPSC automatically leads to a more efficient recruitment process is not a guarantee of a solution.
- For example, the IAS — its recruitments are through the UPSC — reportedly has a vacancy rate of 22%
- The Indian Army’s officer cadre, also under a centralised recruitment mechanism, is short of nearly 7,298 officers.

7) Way Forward

- The Centre, state governments and the judiciary need to find out ways of improving the quality of intake of Judges.
- Conduct transparent performance evaluations based on disposal of cases by a judge, the quality of judgments and legal reasoning, knowledge of the law, behaviour towards lawyers in court proceedings, independence and transparency.
- There is an urgent need for the judiciary to revisit the manner in which cases are heard and decided.