

# A SOLUTION IN SEARCH OF A PROBLEM

Relevant for: Indian Polity & Constitution | Topic: Judiciary in India: its Structure, Organisation & Functioning, Judges of SC & High Courts, Judgements and related Issues

Last week, in its report, 'Strategy for New India@75', the NITI Aayog mooted the creation of an All India Judicial Service (AIJS) for making appointments to the lower judiciary through an all India judicial services examination conducted by the Union Public Service Commission (UPSC) in order to maintain "high standards" in the judiciary.

Similar proposals were made by the Union Law Minister Ravi Shankar Prasad on three different occasions this year as a solution to the problems of vacancies in the lower judiciary and a [lack of representation in the judiciary from marginalised communities](#). This last argument appears to have caught the attention of Dalit leaders such as Ram Vilas Paswan, a Minister in the Central government, who voiced support for the AIJS following the Supreme Court's controversial judgment, earlier this year, that diluted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

In our opinion, the AIJS is not a solution to these problems and the government would be well advised to reconsider its stance. So, how serious is the problem of vacancies, and is centralisation the solution?

The argument that the creation of the AIJS and a centralised recruitment process will help the lower judicial services is based on the assumption that the current federal structure, that vests the recruitment and appointment for the lower judiciary in the hands of State Governors, High Courts and State Public Service Commissions, is broken and inefficient. On facts, however, this assumption does not hold up.

9% growth by 2022 must to generate jobs: NITI Aayog

Going by the latest figures published by the Supreme Court in its publication *Court News* (December 2017 and the last available figures), 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. Those are perfectly acceptable numbers.

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.

Further, the argument that the centralisation of recruitment processes through the UPSC automatically leads to a more efficient recruitment process is flawed and not a guarantee of a solution. For example, the Indian Administrative Service — its recruitments are through the UPSC — reportedly has a vacancy rate of 22%, while the Indian Army's officer cadre, also under a centralised recruitment mechanism, is short of nearly 7,298 officers.

Will the creation of an AIJS lead to more representation from marginalised communities and women? The second argument in support of the AIJS is that its creation, along with provisions of reservations for the marginalised communities and women, will lead to a better represented lower judiciary. Dalit and tribal politicians are supporting the AIJS on these grounds. The fact is that several States already provide for reservations in their lower judicial service.

For example, at least 12 States, which include Madhya Pradesh, Chhattisgarh, Uttar Pradesh, Rajasthan and Kerala, provide for caste-based reservation in the direct recruitment examination for district judges from the bar. In addition, U.P., Karnataka, Rajasthan and Chhattisgarh provide women with special reservations. Karnataka also recognises two additional categories of reservation within caste-based reservation — for those from a rural background and those from Kannada medium backgrounds. Karnataka is an example of how States are best suited to assess the level of intersectional disadvantage of various communities residing in the State.

Unlike States, the Centre almost never provides reservation for women in the all India services. On the issue of caste, an AIJS may provide for SC/ST reservation along with reservation for the Other Backward Classes (OBC) but it should be noted that a recent Supreme Court ruling has held that SC/STs can avail the benefit of reservation in State government jobs only in their home States and not when they have migrated. The same principle is usually followed even for OBC reservations. Thus, instituting an AIJS would mean that nationally dominant SC, ST and OBC groups would be at an advantage as they can compete for posts across the country, which they would otherwise be disqualified from because of the domicile requirement. Thus an AIJS will have consequences for State-level politics.

As originally enacted, Articles 233 and 234 of the Constitution vested all powers of recruitment and appointment with the State Public Service Commission and High Courts. During the Emergency, Parliament amended Article 312 of the Constitution to allow for the Rajya Sabha to pass a resolution, by two-thirds majority, in order to kick-start the process of creating an all India judicial service for the posts of district judge. Once the resolution is passed, Parliament can amend Articles 233 and 234 through a simple law (passed by a simple majority), which law will strip States of their appointment powers. This is unlike a constitutional amendment under Article 368 that would have required ratification by State legislatures. In other words, if Parliament decides to go ahead with the creation of the AIJS, State legislatures can do nothing to stop the process.

*Prashant Reddy T. and Diksha Sanyal work on judicial reforms at the Vidhi Centre for Legal Policy, New Delhi*

The Transgender Persons Bill will do more damage than good if passed without revision

**END**

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com