

SHOULD AN ALL-INDIA JUDICIAL SERVICE BE CREATED?

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AIJS is a proposed centralised recruitment system for judges at the level of additional district judges and district judges across States. | Photo Credit: The Hindu

Recently, President Droupadi Murmu suggested that an All-India Judicial Service (AIJS) will help diversify the judiciary. In the same way that the Union Public Service Commission conducts a central recruitment exam and assigns successful candidates to cadres, the recruitment of judges of the district judiciary is being proposed to be made central, following which they will be assigned to the States. This idea has been discussed in the past and has also been a part of the Union government's official policy for years. However, there has been no consensus on the proposal either from the High Courts or the State governments. Should an AIJS be created?

Alok Prasanna Kumar and **Bharat Chugh** discuss the question in a conversation moderated by **Aaratrika Bhaumik**. Edited excerpts:

The India Justice Report (IJR) 2022 shows that only 35% of subordinate court judges are women. No State has been able to meet the quotas for Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC) categories in the subordinate judiciary. Is an AIJS the solution to this?

Alok Prasanna Kumar: All the States have been doing better over the years if you see Vidhi's data in the context of the representation of women in the subordinate judiciary. It might take some more time for the SC, ST, and OBC communities to get that level of representation, or at least proportionate to their populations. But the key barrier is the entrance exam; preparing for it is time-consuming. The requirement of seven years of practice to become a district judge also poses a problem because law as a profession is already very difficult if you do not have connections; it is doubly so if you are from an underprivileged community. Many High Courts also place requirements — that you have to have appeared in 'x' number of cases or had an active practice of 'y' number of years. This automatically raises barriers to entry, especially for women and other excluded classes.

Bharat Chugh: The State governments and the High Courts which conduct the various exams have been doing their bit for affirmative action. From personal experience, I can say that for the last few years, the number of women who have joined the judicial services has been more than the number of men.

There is one point where an AIJS may help — different States provide for different patterns of reservations. I think some amount of rationalisation can help.

Since cases in the district courts are argued in regional languages, do you think a central recruitment exam will act as an impediment for candidates who are not well-versed in the regional language? A contrarian perspective is that civil servants overcome this barrier through intensive language training.

Bharat Chugh: Not only are cases argued in the regional language, but there is vast documentation in the regional language. Therefore, an understanding of the regional language and the dialect of the people giving evidence is important. Sometimes, even customs play an important role in judicial decision-making. Intensive language training would take an enormous amount of effort. At the end of the day, we are deciding lives here and the smallest mistake in understanding the issues or the evidence may be irreparable. The need to understand a language is greater in our case than in the case of bureaucrats.

Alok Prasanna Kumar: I think implicit in this assumption is that the Indian Administrative Service has been a wonderful institution. But the way the institution is structured, the way it recruits and promotes people... I am not sure that is a model we want to replicate in the judiciary. I would rather have people with local knowledge serve local needs.

According to the data released this year by the Law Ministry, 5,388 posts of judicial officers are lying vacant in the district judiciary. Do you think a centralised service could tackle the issue of judicial vacancies?

Alok Prasanna Kumar: Judicial vacancies, as a percentage of the total number of judges, is 20-25%. Vacancies in the All India Services (AIS) are also 20-22%. In fact, as per the data of the Union government, of 4 million civilian central posts, 1 million are vacant. There isn't anything inherently superior in a centralised system that will make it necessarily more efficient in filling up the vacancies. The problem has been the ability to conduct these exams in a timely manner.

Bharat Chugh: We have seen the number of vacancies in the AIS as well. I don't see how this can be a solution. The AIJS attempts to induct lawyers between 35 to 45 years to the cadre of district judges. There is a problem. A 35- 45-year-old practicing lawyer who has spent 15-20 years in the profession is likely to be well-established in their State with a steady stream of briefs. If they make it an all-India service, which is again transferable, they may not like to leave their State and family. If the idea was to have a big talent pool, we will be losing out on that as well.

Mr. Chugh, do you think a national service for judges will be an attractive proposition for young lawyers? Additionally, what will be their career progression, since the number of district judges elevated to the High Courts is much lower than those from the Bar?

Bharat Chugh: I don't think a law student or a young lawyer who wants to be a judge is particularly bothered about whether they are serving an all-India service or a State service. More often than not, if there is a prestigious State service, the inclination would always be to join it and be closer to the family. Apart from metros, positions elsewhere in the country are problematic in terms of access to basic facilities. We have seen women judges not having access to even a toilet in some States. It is also time to look at a better pay structure. A successful lawyer on the private side makes in one appearance or a day what a trial court judge makes in a month. This needs to be borne in mind if we are to attract the best talent out there. Lastly, regarding prospects, we have seen that High Court and Supreme Court appointments have been from the Bar. For a young civil judge to enter the system is difficult. There are only a handful of examples

of district judges who have made it to the Supreme Court.

Mr. Alok, a common rebuttal to the creation of an AIJS is that it is an affront to federalism. If such a policy were to be implemented, how can we ensure that State governments as well as the High Courts have a say in the recruitment process?

Alok Prasanna Kumar: It will be very difficult. The High Courts will perhaps determine transfer postings and have some form of disciplinary control. But it is a sub-optimal solution — why should the High Courts accept it? Today, they are in control of everything starting from recruitment to the eventual promotion or transfer of that particular civil judge. The State governments will have even less control. They will just be paying their salaries. The problem is that we assume that if the Centre does it, it will be a good job. There are problems in the system, but they do not require an overturning of everything. I am suspicious of the parts of the Constitution that were introduced in the 42nd Amendment. It was done in controversial circumstances by a government that had no legitimacy. Almost the entire Opposition was put in jail while passing this amendment.

At present, the independence of the district judges from the State governments is guaranteed by the fact that the High Courts play a significant role in their appointment, transfer, and removal. If the AIJS were to be created, how can we ensure that there is judicial independence?

Bharat Chugh: That is the biggest problem. I could pass a lot of decisions back in the day because I knew that even the Governor or the Chief Minister of the State could not take any action if my decision was to be unsympathetic to the government. This is all the more important because the government is the biggest litigant before the courts. It is problematic if the litigant were to decide who is to be appointed as a judge and for what considerations. The present system has worked well and the AIJS doesn't seem to be the better alternative. The way the 42nd Amendment was introduced was constitutionally suspect. All of this has possibly not been challenged because the AIJS never got implemented. But arguably, it is violative of the basic structure of the Constitution.

APK: There are multiple issues with our district judiciary and almost none of them will really be addressed by an AIJS. The need of the hour is to ensure that there is a smooth career path for those who enter the district judiciary to the High Courts and the Supreme Court. I think the real pressing need is the areas outside the metros. There is a serious lack of infrastructure. The judges need to be supported so that they think that they are as much constitutional court judges as the Chief Justice of India.

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Alok Prasanna Kumar is co-founder and lead, Vidhi Karnataka; Bharat Chugh is a lawyer based in Delhi and a former civil judge

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