

## **All India Judicial Services: A Step Towards Judicial Reforms**

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### **Abstract**

*The All India Judicial Services is a judicial reform initiative which aims to centralize the appointment of judges at the subordinate judiciary level through an All-India merit selection system. AIJS also strives towards achieving the Constitutional guarantee of Access to Justice and Right to Speedy Justice by making an attempt to overhaul and strengthen the present system of administration of justice. In this study an attempt has been made to analyse the various provisions of the draft bill, impact of their implementation and the arguments raised in favour of and against its formation which forced the Union Government to shelve the proposal. Also, an attempt has been made to suggest changes to overcome the shortcomings and make alive the eclipsed proposal.*

### **Keywords**

*AIJS, Judicial reforms, Constitution, Rule of Law, Under trials.*

Reference to this paper should be made as follows:

**Received: 28.07.2022**

**Approved: 16.09.2022**

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*All India Judicial Services: A Step Towards Judicial Reforms*

*RJPP Apr.22-Sept.22, Vol. XX, No. II,*

*pp.248-256  
Article No. 32*

**Online available at :**

<https://anubooks.com/rjpp-2022-vol-xx-no-2>

## **Introduction**

Justice, social, economic and political is deeply embedded in the Indian Constitution. This idea of access to justice is a constitutional mandate which forms the bedrock of the countries' rule of law but unfortunately the judicial response has failed to cherish and realise this constitutional mandate. There are countless crying for justice and living without this meaningful right. The rule of law is meaningless without access to justice which also includes the right to speedy justice enshrined under Article 21 of the Indian Constitution. In India, the justice delivery mechanism has been obstructed due to lowest judges population ratio and not timely filling up of vacancies leading to huge pendency of cases and delayed justice.

The creation of an All India Judicial Services had been visualised to centralise the process of recruitment of subordinate judges, curb the menace of delayed justice and wipe the sufferings of the under trial prisoners.

This study aims to analyze the historical development and background of the All India Judicial Services and it's need to overhaul the Indian judiciary. The scope of this paper covers the various facets of All India judicial services including the centralised process of appointment of judges in subordinate judiciary and its impact upon judicial autonomy. This study further dwells into and examines the feasibility and viability of AIJS as a mechanism for judicial reforms in India.

## **Background and Significance of AIJS**

With a long and a cherished history the foundation of an All India Judicial Services (AIJS) gained momentum after the Central Government headed by Sri Narendra Modi expressed its readiness to finalize the draft bill to set up an All India Judicial Services, a bill that lingered in the backdrop of the judicial services debate for decades.<sup>1</sup>

The proposal for setting up an All India Judicial Services under Article 312 of the Indian Constitution in lines of All India Judicial Services was proposed by the law Commission in the early 1950's. The law Commission (1<sup>st</sup>, 8<sup>th</sup>, 11<sup>th</sup> and 116<sup>th</sup>) had also suggested the creation of this services and this idea was further augmented by the Chief Justices' Conference in 1961, 1963 and 1965.<sup>2</sup>

AIJS aim to reform the judiciary, to ensure uniformity in the selection process of judges at entry level and continuous induction of young talented students in lower judiciary to fill up timely vacancy. After the Swaran Singh Committee recommendations (1976), the All India Judicial Services was inserted in Article 312 of the Indian Constitution by the 42<sup>nd</sup> Constitutional Amendment Act, 1976.<sup>3</sup>

The Honorable Apex Court in the landmark case of All India Judges Association vs Union of India (1993) stressed the need for setting up of AIJS and directed the government to take requisite steps in this direction.<sup>4</sup> The proposal was considered by the Government in 2012 but due to lack of consensus among various High Courts of India the draft bill was finally dropped. The idea of formation of AIJS was also included in the agenda for the Chief Justices' Conference held in 2015. Further, in 2017 the Honorable Supreme Court bench headed by the then CJI, JS Khehar took suo moto cognizance and favoured the creation of AIJS to centralize the selection process in the subordinate judiciary.<sup>5</sup>

On 31st October 2016, Prime Minister Narendra Modi while celebrating the completion of 50 years of the Delhi High Court revived the debate on creating the All India Judicial Services and since then the most anticipated AIJS made burning headlines across the Nation. The then Chief Justice of India, Justice Bobde had also been a supporter of this idea and suggested to set up a National Academy in lines of National Defence Academy where the young talented individuals after studying law may join the subordinate judiciary at entry level. <sup>6</sup>

But unfortunately, the divergence of opinion among the various State High Courts and the State Governments forced the government to shelve the proposal of an All India Judicial Services. The Honorable Union Minister, law and Justice Shri Kiren Rijju, while addressing the Parliament in June, 2022 informed that "the proposal of setting up of an All India Judicial Services was again discussed on points of eligibility, age, selection criteria, qualification, reservation etc in a meeting chaired by the Minister of law and justice on 16th January, 2017 in the presence of Minister of State for Law and Justice, Attorney General for India, Solicitor General of India, Secretary of Department of Justice legal affairs and Legislative Department. Setting up AIJS was also deliberated in a meeting of the Parliamentary Consultative Committee in March, 2016 and the Parliamentary Committee on the welfare of SC/ ST on 22nd Feb, 2021. In view of the lack of consensus at present there is no proposal to bring All India Judicial Services."<sup>7</sup>

Thus the debate lingering for more than six decades with an aim to centralise the selection process of lower judiciary and to timely fill up vacancies at lower judiciary has been eclipsed due to lack of consensus among the various High Courts and the State Governments.

### **The divergence of opinion has led the Union Government to drop the proposal of AIJS**

The biggest challenge to get all the State Governments and High Courts arrive at a unanimous decision at this issue could not be successfully overcome by the Government and the proposal ultimately met a poor fate.

Out of the 24 states only 2 High Courts and 4 High Courts responded positively. The High Courts of Sikkim and Haryana and the state governments of Haryana, Mizoram, Sikkim and Tripura supported the formation of an All India Judicial Services. Eight States including Maharashtra, Madhya Pradesh, Karnataka, Punjab, Himachal Pradesh, Meghalaya, Nagaland and Arunachal Pradesh vehemently opposed and rejected the idea of AIJS.

Five states didn't oppose the idea but expressed its willingness to adopt the same after implementing changes in the draft bill of AIJS. The state of Bihar desired major revisions in the draft Bill and State of Chhattisgarh demanded for 15% vacancy of subordinate judiciary to be filled by the bar. The Allahabad High Court also wanted to give its nod for AIJS but only after making changes in criteria pertaining to age and qualifications.

The 11 States including Gujarat, Assam, West Bengal, Telangana, Andhra Pradesh, Rajasthan, Tamil Nadu, Kerala, Jharkhand and Goa did not respond to the proposal and kept silence upon this issue.<sup>8</sup>

Therefore, due to different perceptions, conceptions and requirements the proposal failed to win a unanimous decision and the Union Government was forced to drop the idea of setting up an AIJS.

#### **Salient features of the AIJS Bill**

- 1 The Bill sought to recruit officers in the subordinate judiciary through a Pan India Entrance Test similar to the All India Services Examination held by Union Public Service Commission conducted throughout the country. This singular selection process would allow a candidate to apply for more than one state at a time.
- 2 The Bill also sought to achieve the Constitutional guarantee of Right to Speedy Justice, by timely filling up of vacancies and increasing the judges population ratio in the country.
- 3 The Bill also proposed to provide an equal representation of women and the marginalised group of talented individuals in subordinate judiciary.
- 4 The Bill also proposed to eliminate language barriers and facilitate the selection process as it was proposed to conduct the All India Judicial Services Examination in 22 languages listed in the 8th schedule of the Constitution.<sup>9</sup>

#### **AIJS and Judicial Autonomy**

The Bill proposed to constitute an Oversight Committee headed by a Supreme Court Judge, High Court Judges, Legal Academicians and Legal Representatives from the UPSC to over view the examination and the syllabus

pattern. The introduction of the Government interference in the selection process and determining the terms and conditions of services rules, salary and transfer etc has been looked upon by the judiciary as a step to curtail its independency and freedom.<sup>10</sup>

The Indian Constitution under Article 50 provides for Separation of Powers. The judiciary enjoys the judicial autonomy with freedom to exercise judicial powers without any influences interference and controls by the legislature and the executive. The lack of articulation in the constitution, structure and administration of the oversight committee the AIJS has been perceived by the judiciary as a threat upon its independence and autonomy.

#### **AIJS and Timely Filling up the Vacancies**

Judicial vacancies are unique to each state. According to the Supreme court's 2018-2019 Annual Report, vacancies across the states are not uniform. At present there are around 5,000 judicial posts lying vacant across the country but these number of vacant posts in the judiciary vary from state to state. According to this report, the state of Uttar Pradesh has the highest post lying vacant which contribute to around 27.58% of the overall vacancies this is followed by Bihar at 13-5%. Thirteen States contributed lesser than 1.5% of the total vacancies throughout the country.<sup>11</sup>

It is not only the lesser number of judges but there are other factors too that contribute towards the rising vacancies. The Honorable Allahabad High Court while pleading a case before The Honorable Apex Court on the issue of vacancies filed an affidavit mentioning the fact that the lack of infrastructure and court rooms to adjust additional Judges is a hurdle in filling up the posts lying vacant which is further responsible for creating backlog of pending cases and delays in imparting justice. Thus the Honorable High Court was of the opinion that the issue of judicial vacancy cannot be managed through a centralized mechanism.<sup>12</sup>

The another argument against the justification of filling up of timely vacancies through AIJS is that the idea of AIJS excludes from its purview the Judges at the entry level of judiciary ( the Judicial Officer s posted below the rank of Additional District Judges) which is a major segment responsible for delays and rising vacancies.

Although the creation of AIJS should not be viewed as a silver bullet to address all the problems of large number of vacant post in subordinate judiciary but slowly and gradually it may facilitate a continuous availability of young legal talent in the subordinate judiciary.

### **AIJS and Equal Representation of all Communities**

The proposal of an All India Judicial Services was presented to ensure 25% reservation for OBC's, SC / ST as a solution to address the equal representation of all Communities, marginalized and deprived sections of the society. However 12 States which include Uttar Pradesh, Madhya Pradesh, Chattisgarh, Rajasthan , Kerela, Karnataka already provided for reservation for people from OBC's, SC/ ST's ,women and persons with disabilities. Many communities oppose the creation of an AIJS because the community recognised as OBC by State governments may or may not fall under a reserved category under the central government. The opponents perceived the proposed recruitment system as disadvantageous to the various communities residing in their states.<sup>13</sup>

### **AIJS and Language Barriers**

The language barrier has been considered as a major hurdle in adopting the idea of the formation of AIJS. For proper appreciation of evidences and adjudication of a case/ suit the judges must have knowledge of the native language and customs. The judges are expected to be well proficient in local languages because they have to impart justice without any errors and any judicial error and misunderstanding of a fact due to lack of knowledge of the native language may deprive litigant from justice leading to miscarriage of Justice.<sup>14</sup> Against this justification, one must not lose site of the fact that the AIJS Bill ( now a dropped Idea) proposed to conduct the AIJS examination in 22 languages listed in the 8th Schedule of the Indian Constitution. However, the language is not actually a barrier as perceived by the opponent States and High Courts. Moreover talking in practical sense, the knowledge of local languages is not a prerequisite before selection and it can be learnt by the judicial officer during the training process after recruitment. Also, it is not necessary to conduct the examination on the basis of regional languages. Thus the objections raised by the opponent States and the High Courts pertaining to the knowledge of native language can be overcome and will not be an obstruction in the way of implementing this centralised examination scheme.

### **AIJS and the Under Trials**

“In our criminal justice system the process is the punishment”

-CJI, R V Ramana

“The long delay in our criminal justice system from arrest to bail is turning out to be the biggest punishment for under trials prisoners whose population accounts were nearly 80% of the jails in our country” stated by CJI, NV Ramanna while inaugurating the 18th Edition of the All India Legal Services meet in Jaipur.<sup>15</sup> He further added that the backlog of pending cases and large number of vacancies at all

levels of Indian judiciary are two distinct but intertwined problems. He as a strong supporter and voice of the under trials' right also favoured the formation of an All India Judicial Services.

An Under trial is defined in the Oxford dictionary as "a person who is on trial in a Court of law". The 78<sup>th</sup> Law Commission also includes a person who is in judicial custody or demand during investigation in the definition of an under trial.<sup>16</sup> The troubles and tribulations of the under trials languishing in jails, who are presumed to be innocent until proven guilty is an alarming cause of concern.

In our criminal justice system fundamental rights of the under trials have been guaranteed by the Constitution of India and the various pronouncements of the Honorable Apex Court has widened the scope of prisoners' rights in India such as the Right to Equality (Article 14), the Right to life and personal liberties (Article 21), the Right to protection against self incrimination (Article 20(3)), the Right to protection from double jeopardy (Article 20(2)) Right to protection against illegal arrest and detention (Article 22), Right to fair and Speedy investigation and Right to speedy trial (Article 21). Despite these Constitutional safeguards and other statutory protections, the sufferings of under trials are on a rise.

The Right to speedy trial was recognised as a fundamental right by the Honorable Apex Court in *Hussainara Khatoon versus state of Bihar* (1980),<sup>17</sup> again in *Kartar Singh versus State of Punjab* (1994), the speedy trial was declared as an essential part of fundamental right to life and liberty.<sup>18</sup> In the landmark case of *Supreme Court Legal Aid Committee versus Union of India* (1994), the Honorable Apex Court has expressed the need to appoint judges and fill up vacancies in order to preserve the valuable fundamental right of under trials i.e. the right to speedy trial "since the number of courts constituted to try offences under the acts are not sufficient and the appointment of judges to man these Courts were delayed, cases piled up and the provisions in regard to the enlargement on bail being strict the offenders have to had to languish in jails for want of trials"<sup>19</sup>

Thus, this landmark judgment of the Honorable Apex Court has drawn a necessary corollary between the shortage of judges, piling up of cases and delay in trials ultimately leading to a rise in number of under trials languishing in jails. Despite all this, the proposal to set up and AIJS which aimed to strengthen the justice delivery mechanism and to fulfill the vacant judicial posts to deliver timely justice has been out rightly rejected.

### **Suggestions and Conclusion**

The proposed Bill/dropped Bill needs to be reconsidered after making certain recommendations to make it acceptable by majority of States.

The lack of clarity on certain aspects of the bill like how much control and influence the Oversight Committee will exercise in the judicial functioning? the issues pertaining to the salary ,transfer promotion etc of the judicial Officers have not been well identified and addressed in the draft Bill which led the opponents to raise their contentions against the formation of AIJS and perceived the same as an encroachment on their rights and independence. The above issues need to be revisited and revised to bring vividity in the proposals of the dropped proposed Bill. It is the duty of the framers of the Bill and the Union Government to identify and address the justified demands and suggestions of the opponents and try and bring harmony in the proposed bill (now a dropped idea) and the expectations of the opponents.

The streamlined recruitment process would certainly ensure a transparent and an efficient influx of judicial officers for vacant posts which would reduce the backlog of pending cases and achieve the Constitutional goal of access to timely justice. It will also create a meritocratic judicial service with young pool of talent which will make a more equitable ,more accountable, more professional and a robust judiciary ready to meet the challenges of the changing society.

Therefore, the Union Government after revising the Bill must start afresh and make necessary amendments to reach a consensus with the State Governments and the High Courts to make this judicial reform initiative alive.

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