



We don't need career judges India

This article is related to General Studies-
Paper II (Governance).

Indian Express

Writer - Ameen Jauhar (Senior Resident
Fellow, Vidhi Centre for Legal Policy)

05 Jan., 2019

"NITI Aayog's proposal for All India Judicial Service is ill-judged."

The vision document titled 'Strategy for New India @ 75', released by the NITI Aayog in December last, amongst other things, proposes a spate of judicial reforms. The think-tank has come out batting for the creation of an All India Judicial Service, akin to the other central services like the IAS and the IPS. However, in a reductionist policy format, this document attempts to deal with this complex issue without addressing some crucial aspects of the debate.

The idea of an All India Judicial Service (AIJS) has been deliberated since Independence. In fact, the first law commission — 14th Report on Reform of Judicial Administration — alluded to the need for creating a separate all-India service for judicial officers. This report favoured an AIJS to ensure that subordinate court judges are paid salaries and given perks at parity with government bureaucrats, thereby incentivising the option of the state judiciary as a viable career prospect. Subsequently, a crucial step towards formalising the process for setting up an AIJS was taken under the infamous 42nd Constitutional Amendment during the Emergency in 1976. Herein, Article 312 was amended to confer power on the Rajya Sabha to initiate the process for setting up an AIJS, by passing a resolution supported by two-thirds majority in the upper house. It is noteworthy that the said provision also restrained the composition of such a service to the rank of district judges — defined under Article 236 — while excluding the lower subordinate judiciary.

Given this mandate under Article 312, the creation of an AIJS is, prima facie, constitutionally permissible. Presently, the appointments to the subordinate judiciary are made under Articles 233 and 234 of the Constitution. However, the amended Article 312 commences with a non-obstante clause, overriding these provisions. Therefore, any appointments made to the post of district judges, in terms of a law enacted under Article 312 would not conflict with the existing process. Furthermore, entry 70 of the Union List (List I Schedule VII) provides Parliament exclusive authority to enact a law creating such an AIJS, and all connected matters. Hence, should the Rajya Sabha initiate the process for setting up an AIJS such a law would not be assailable for want of legislative competence.

Despite the constitutional permit, the road to setting up an AIJS is ridden with numerous concerns, which remain unaddressed in the NITI Aayog's trite proposal. The foremost is the logic offered as the *raison d'être* by the government think-tank. The AIJS is being proposed as a panacea to cure the chronic vacancy crisis plaguing the Indian subordinate judiciary. Given the limited extent to which the Constitution only permits the appointments of district judges to such a prospective AIJS, it will not magically remedy this crisis. At best, what an all India service potentially offers is a more streamlined and regularised recruitment process for the limited number of vacancies for district judges in the country.

The second concern is the much wider composition of the AIJS proposed by NITI Aayog, than what is permissible under Article 312. The top government think-tank has rather ambitiously pitched an omnibus service to covering entry level civil judges, prosecutors and legal advisers to comprise the service. Such a sweeping mandate would require considerable amendments to the Constitution, especially with respect to the appointments process for the lower subordinate judiciary (that is, all ranks below that of a district judge). These amendments, establishing a centralised appointments mechanism, may arguably be constitutionally untenable and vulnerable to being struck down as flagrant violations of the basic structure doctrine and judicial federalism.



The final contention against the NITI Aayog's proposal for an AIJS is the oversimplification of a complex legal and political issue into a punchline reform, manifested through its rhetorical brevity. The idea of an AIJS has been significantly contentious within the legal fraternity and other concerned stakeholders. Last year, on a reported internal note prepared by the Department of Justice on the feasibility of an AIJS, there was vehement disagreement by almost half the high courts in the country. Similar challenges have also been witnessed by state judiciaries in two ongoing petitions in the Supreme Court, focusing on filling up the lower vacancies (namely, suo motu W.P. (C) 1 of 2017, and suo motu W.P. (C) 2 of 2018). Be it the need to familiarise oneself with the local languages, customs, and laws of the state where a potential judicial officer will be posted, or the need to ensure reservation for locally domiciled citizens, these central selection mechanisms have thrown up grave concerns impugning their utility and legality as judicial reforms.

In this background, the proposal of NITI Aayog leaves much to be desired, both in terms of research rigour, as well as the presentation and articulation of a complex policy challenge. While policy-vision statements are typically broad and hyperbolic, being the government's chief policy think-tank, the onus rests on the NITI Aayog to accurately project the scope and limitations of its solutions, in order to facilitate a responsible deliberative process to address these concerns.

GS World Team...

Strategy for New India @ 75

Why in the discussion?

- Recently, the NITI Aayog released the comprehensive national strategy for India on December 19, 2018.
- It has clearly defined the objectives for 2022-23.
- While preparing it, discussions were held with over 800 stakeholders and about 550 external experts. within the government - at the Central State and District level.

What is it?

- This is a detailed description of 41 important areas.
- It recognizes progress that has already happened, identifies binding blockages and gives suggestions on the direction of clearly achieving the stated objectives.

How is the strategy prepared?

- The participative approach has been followed by the NITI Aayog in preparing this strategy.
- All of the stakeholders of such as business persons, scientists, educationists and government officials were consulted for the in depth discussion by the NITI Aayog in every field.
- There after discussion were held at the Vice Chairman level of the 7 sets of the state holders among the key persons of the diverse groups
- These prominent persons included scientists and innovators, farmers, social organizations, think tank, representatives of workers and representatives of labor organizations and industry.
- The draft of each chapter was distributed for discussion and the Union Ministers were also consulted for getting information, suggestions and comments.
- The draft of this document was also distributed in all the States and Union Territories from where the valuable suggestions received were included in it.

Four section of the strategy

- 41 chapters of the document are divided into four sections, respectively Drivers, infrastructure, inclusion and governance.
- The **first section** focused on Drivers on the methods of economic performance, growth and employment, doubling of farmers income, upgrading the science, technology and innovation ecosystem and promoting emerging sectors such as finitex and tourism.

The following are the major recommendations of this section:

- Steadily accelerate the economy to achieve a GDP growth rate of about 8% during 2018-23.
- This will raise the economy's size in real terms from \$ 2.7 trillion in 2017-18 to nearly \$ 4 trillion by 2022-23.
- Increase the investment rate as measured by gross fixed capital formation (GFCF) from the present 29% to 36% of GDP by 2022.
- In the field of agriculture, emphasis on converting farmers into agripreneurs by further expanding national agriculture market and replacing the Agricultural Produce Marketing Committee Act with the Agricultural Produce and Livestock Marketing Act.
- Giving a strong push to zero budget natural farming technique that reduces cost improve land quality and increase farmers incomes. This has emerged as a tested method for putting environmental carbon back into the land.
- To initiate the 'Explor in India' mission to reconstruct the Mining Exploration and Licensing Policy.
- The **second segment** is related to infrastructure which mentions the physical bases of development.



Its major recommendations are as follows:

- To accelerate the establishment of the already approved Railway Development Authority (RDA). Which will give consultation or make informed decisions. regarding the integrated, transparent and dynamic pricing system for RDA Railways.
- Double the share of freight transport by coastal shipping and inland waterways. Viable gap funding will be provided in the beginning until the infrastructure is fully prepared.
- With the completion of Bharat Net Program in 2019, 2.5 lakh Gram Panchayats will be digitally connected. The target is to provide all government services at the state, district and village panchayat levels by the year 2022-23.
- The **third section** related to inclusion is related to the urgent work of investment in the capabilities of all Indian citizens.

Its recommendations are as follows:

- Successful implementation of the Ayushman Bharat program, including the establishment of 150,000 health and wellness centers across the country and the launch of the Prime Minister's Public Health Campaign (PM-JAY).
- Create a focal points for public health at the central

level with state counterparts. Promoting consolidated medical curriculum.

- By 2020, by establishing at least 10,000 Atal Tinkering Labs, improving the quality of school education system and skills while creating new innovative system at the grassroots level.
- Conceptualize an Electronic National Educational Registry for tracking each child's learning outcomes.
- The **last section** is related to governance.

Some of its major recommendations are as follows:

- Implementation of the recommendations of the Second Administrative Reform Commission before appointing successor of reforms between the changing context of emerging technologies and the growing complexities of the economy.
- Establishment of new autonomous bodies such as the Indian Arbitration Council of India to assess arbitral institutions and accredited arbitrators to make the arbitration process economical and quick and replace the need for court intervention.
- Address the backlog of pending cases- shift part of workload out of regular court system.
- Extending the scope of Clean India Mission covering areas of landfills, plastic waste and waste of municipal corporation to create wealth from waste.

Expected Questions (Prelims Exams)

1. Consider the following statements-
 1. The articles-233 and 234 of Indian constitution is related to the appointment of subordinate judiciary.
 2. By the 42nd Constitutional Amendment, the steps were taken to establish AIJS.Which of the above statements is/are correct?
(a) Only 1 (b) Only 2
(c) Both 1 and 2 (d) Neither 1 nor 2
2. Consider the following statements regarding the strategy for Abhinava Bharat @75-
 1. This strategy is issued by NITI Aayog.
 2. This strategy includes 41 important sectors related to transportation, construction, inclusion and governance.Which of the above statements is/are correct?
(a) Only 1 (b) Only 2
(c) Both 1 and 2 (d) Neither 1 nor 2

Expected Questions (Mains Exams)

- Q.1:-**What do you understand by the 'All India Judicial Services'? How will it play a helpful role in the direction of judicial reform? Discuss. **(250 Words)**

Note: Answer of Prelims Expected Question given on 4 Jan. is 1(c).

