



# A solution in search of a problem

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## **A solution in search of a problem -The argument that a centralised judicial recruitment process will help the lower judiciary does not hold up**

- 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.
- The AIJS is not a solution to problems and the government would be well advised to reconsider its stance.

### **The facts speak**

- 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.
- 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.

### **Impact on State politics**

- 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.

- As originally enacted, Articles 233 and 234 of the Constitution vested all powers of recruitment and appointment with the State Public Service Commission and High Courts.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.

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