

ALL INDIA JUDICIAL SERVICES: PROBLEMS AND PROSPECTS

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The Preamble to the Constitution of India promises to all its citizens – social, economic and political justice. However, the judicial machinery configured to administer it has become the biggest hurdle in the dispensation of justice. This paper dwells into the desirability and the feasibility of adopting the idea of All India Judicial Services ('AIJS') to revitalise the lowest tier of judiciary, which is hopelessly plagued by humongous backlog and unmanageable vacancy. For a well-rounded perspective, the paper traces the evolution of AIJS as an idea and analyses the merit of contentions pitted against it. Questions relating to the structure of AIJS, the effect of such a metamorphosis on the role of High Courts, quality of judicial officers, and independence of judiciary are of immense contemporary relevance in India and form the central research theme of this paper.

I. INTRODUCTION

Multiculturalism has been an integral part of the Indian way of life since time immemorial.¹ The diversity of the Indian nation is second to none, and India is linguistically, culturally, and genetically the most diverse entity after the African continent.² One of the most important facets of this diversity is the linguistic diversity of the nation and is aptly reflected by the fact that there is no national language of the country.³ Although Hindi is the most predominantly spoken mother tongue, only about 43.6 percent of the country's population speaks Hindi,⁴ and further, its area is sharply demarcated and is limited to the northern-central

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¹ Dillip Kumar Maharana, *In Defence of Indian Perspective of Multiculturalism*, 71 THE INDIAN JOURNAL OF POLITICAL SCIENCE 1, 69-83 (2010).

² Library of Congress – Federal Research Division, *Country Profile: India*, December 2004, available at <https://www.loc.gov/rr/frd/cs/profiles/India.pdf> (Last visited on November 1, 2018).

³ Art. 343 of the Constitution of India prescribes the Official Language of the Union and Cl. (1) lays down that Hindi in Devanagari script shall be the official language. Also, by virtue of Art. 343(2), English has been given the status of subsidiary official language but since then, it has been the most important language for national, political and commercial communication.

⁴ Central Intelligence Agency, United States of America, *The World Factbook, Field Listing: Languages*, available at <https://www.cia.gov/library/publications/the-world-factbook/fields/402.html> (Last visited on December 4, 2018)

part of the country.⁵ The Eighth Schedule to the Constitution of India prescribes twenty-one more languages as the official languages of the Republic of India.⁶ However, this does not reflect the real diversity of the multinational country as India is a country with 1652 mother tongues and several hundred dialects.⁷

This multiplicity of culture and language in the present day has become a stumbling roadblock in the development of the judicial structure and its integration into one robust system. It is owing to this diversity that there is no uniform single language for the subordinate courts throughout the country,⁸ as is ordinarily the situation in other nations.⁹ There is a sharp division between judicial cadres in different States and Union Territories with respect to the language of the Court, service conditions, salaries, etc., virtually making them alien to each other.¹⁰ This diversity of language has adversely affected attempts made since independence to overhaul the lowest and the most important limb of the judicial structure, before which nearly two crore cases are instituted annually.¹¹ This predicament of ‘docket explosion’ is further amplified by the inadequate number of judicial officers to tackle them. The prevailing state of affairs has virtually made the third tier of the judiciary handicapped, as Indian courts are typically associated with delay and unmanageable number of pending cases, with indifferent and corrupt judges.¹²

In this backdrop, this article presents the idea of a centralised pan-India Judicial Services i.e. All India Judicial Services (‘AIJS’), as a panacea for

⁵ Ashok K. Dutt, *Spatial Pattern of Languages in India: A Culture-Historical Analysis*, 10 GEOJOURNAL 1 (1985), 51, available at www.jstor.org/stable/41143431 (Last visited on August 27, 2018).

⁶ The Government has long been deliberating on the prospect of inclusion of thirty-eight other languages into the Schedule VIII, including languages like Tulu, Rajasthani and Bhojpuri. See Press Information Bureau, Government of India, *Proposals to Include Languages in Eighth Schedule*, March 27, 2012, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=81792> (Last visited on December 1, 2018).

⁷ C.J. DASWANI, LANGUAGE EDUCATION IN MULTILINGUAL INDIA xi (2001).

⁸ The Code of Civil Procedure, 1908; §137 of the Code empowers the State Government to declare as to what shall be the language of the civil courts and in what character applications and the proceedings in such Courts shall be written. Similarly, there is a corresponding provision (§272), under Code of Criminal Procedure, 1973, which confers similar power to the State Government with respect to criminal courts.

⁹ For example, The United States of America does not have any national or official language but still, the proceedings in all of the courts are carried out in English, or more accurately, in ‘legal English’. See U.S. English, *Why is Official English Necessary?*, available at <https://web.archive.org/web/20130607145404/http://www.usenglish.org/view/10> (Last visited on August 28, 2018).

¹⁰ In the Constitution of India, prior to the Forty Second Amendment, 1976, the subject matter of ‘Administration of Justice; Constitution and Organisation of all Courts, except the Supreme Court’ formed a portion of Entry 3, List II (State List), Schedule VII. But after the amendment, it was exported and made into a separate Entry 11A under List III (Concurrent List).

¹¹ In 2015, only 1,90,44,877 cases were instituted before the subordinate courts across the country. Centre for Research and Planning, *Subordinate Courts of India: A Report on Access to Justice*, 17, available at <https://www.sci.gov.in/pdf/AccessToJustice/Subordinate%20Court%20of%20India.pdf> (Last visited on May 20, 2019) (‘Report on Access to Justice’).

¹² P.N. Bhagwati, *System on the Verge of Collapse*, INDIA ABROAD (New York), February 14, 1994.

all the ailments of the lowest tier of the judicial wing. We solicit the transmutation of the method of appointment of District Judges from what it currently is. Such a radical mutation stipulates identification of terminal and chronic flaws of the present system, depicting why the apparatus in its present incarnation cannot be improved. Given that the concept of AIJS has attracted significant criticism from its detractors, the merit of such criticism also needs to be scrutinised before giving the idea any definite shape. Besides, the efficacy and vitality of such a system would be directly dependent upon its legal model. It is important to clothe the concept in a normative legal framework that is tailored to the needs of the Indian judicial system and is workable. Thus, in this paper, we do an in-depth analysis of the prevailing conditions and administrative setup of lower courts. We further enumerate the attempts to revamp the system and their corresponding insufficient yield.

The article has been divided into seven parts. In Part II, after briefly sketching the outline of the process of appointment to subordinate Courts, we put forth the aim of AIJS of centralising the appointments of District Judges, taking away the onus from the High Courts and vesting it in an independent constitutional body. In Part III of this paper, we trace the evolution of AIJS as an idea since it was first recommended. Arguments against the concept coming from the High Courts and State executive have also been perused in this part. Part IV of this paper explores the contemporary framework and is divided into four subheadings. We depict the non-resemblance of rules governing lower judiciary amidst different States, including *inter alia*, different structures of the selection procedure. We attempt to argue that the High Courts have amateurishly failed to fulfil their duty towards their younger sibling and that divesting them of such duty would be in the interest of administration of justice. Furthermore, we assert that the Supreme Court's tinkering with the system has by and large been inconsequential. Part V endeavours to contend that the pre-requisites of knowledge of local language and prior practice at the Bar, portrayed as the biggest hurdle in the implementation of AIJS, are dispensable and rather an obstacle in the efficient functioning of lower Courts. Interlinking the aforementioned points, in Part VI of the article, we provide a pragmatic normative structure for AIJS which is compatible with the idea of Indian federal structure. Ultimately, in Part VII we offer concluding remarks.

II. OBJECTIVE AND PURPOSE

Chapter VI of Part VI of the Constitution of India is dedicated to the subordinate judiciary in which two distinct methodologies for the appointment of District Judges ('DJ')¹³ and 'Judges other than District Judges' are provided. Article 233 of the Constitution of India empowers the Governor to appoint District

¹³ The Constitution of India, Art. 236(a); the Article provides an inclusive definition of 'District Judge', laying down that District Judge includes judges of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Cause Court, Chief

Judges in consultation with the High Court, and the selection process is carried out by conducting Higher Judicial Services ('HJS') Examination by the High Court exclusively. Article 234, which deals with the appointment of Judicial Officers other than District Judges lays down that the selection process has to be performed conjointly by the State Public Service Commission and the High Court before the appointment is made by Governor. Such selections are made under the Provincial Civil Services (Judicial) ('PCS-J') Examination undertaken by the State Public Service Commission in conjunction with the concerned High Court.¹⁴

The idea of AIJS has been mooted since 1958, suggesting a unified and centralised State Judicial Services,¹⁵ but has hitherto remained an abstract concept without any definite scheme. It proposes to create a competent cadre of District Judges which would be recruited centrally through a national level examination, conducted by a central authority.¹⁶ Thereafter, they would be allocated to each State, much like the central civil service examinations. AIJS, as suggested in the present paper, is only a suggested replacement of the HJS Examination for the appointment of District Judges, and does not affect the existence of the PCS-J Examination.¹⁷ It seeks to resolve the problems which have been haunting the subordinate judiciary since its inception, like the unavailability of competent and efficient judicial officers,¹⁸ discrepancy of salary and remunerations,¹⁹ the varying condition of service from State to State,²⁰ and absence of adequate training for judicial officers.²¹

AIJS aims at changing the current practice i.e. selecting personnel proficient at language, and indoctrinating them at law by recruiting people

Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge.

¹⁴ Diksha Sanyal et al., *Report on Ranking Lower Court Appointments*, 9, VIDHI CENTRE FOR LEGAL POLICY (October, 2017) ('Report on Ranking Lower Court Appointments').

¹⁵ Law Commission of India, *Reforms on Judicial Administration*, Report No. 14, Vol. 1, 164, 167 & 184 (September 1958) ('Report on Reforms on Judicial Administration').

¹⁶ Law Commission of India, *Formation of an All-India Judicial Service*, Report No. 116, 7 (November 1986) ('Report on All India Judicial Service').

¹⁷ The Constitution of India, Art. 312(3); the Article explicitly lays down that All India Judicial Services (AIJS) shall not include any post inferior to that of a District Judge, as defined in Art. 236.

¹⁸ The report submitted under the Chairmanship of the erstwhile Attorney General, M.C. Setalvad, lamented the incompetence of judges in ascertaining real issues, and their failure to apply appropriate law on the facts of a case, leading to wastage of precious judicial time and resources. The extent of the problem is such that the report unraveled that nine out of ten problems have their origin in inefficiency, inexperience or inadequacy. See Report on Reforms on Judicial Administration, *supra* note 15, 161.

¹⁹ A Constitution Bench of the Supreme Court noted that there is wide variance in the pay structure prevailing in the various States and Union Territories, and for same nature of work. However, the Court refrained from interfering as it feared that in some States, the perks available might be taken away from judicial officers. See *All India Judges' Assn. (1) v. Union of India*, (1992) 1 SCC 119, 128-129; AIR 1992 SC 165.

²⁰ Report on All India Judicial Service, *supra* note 16, 18, ¶5.1.

²¹ Law Commission of India, *Training of Judicial Officers*, Report No. 117, 6, ¶2.7 (November 1986).

proficient at law, who by virtue of their intellectual capacity can easily be trained at language. This re-organisation is of utmost importance because a sense of confidence in courts is essential to maintain the fabric of order for free people. If people come to believe that inefficiency and delay will drain a just judgment of its value, then this confidence is destroyed, and incalculable damage is done to the society.²² The ‘quality paralysis’ produced, in lower judges, by the extant framework had even shocked the Chief Justice of India (‘CJI’) who was compelled to ask an Additional District Judge (‘ADJ’) arguing his promotion plea in Hindi “You are a judge and you cannot speak English?”²³

In this paper, the concept of AIJS which has been advocated is much more than a mere Centralised Selection Mechanism (‘CSM’), as is advocated temporarily by the Hon’ble Supreme Court.²⁴ It solicits a complete overhaul of the subordinate judiciary by eradicating all the subsisting snags and hiccups, by providing a novel structure. It seeks to change the persisting state of affairs where each State has its own different system of subordinate courts and the method of recruitment also varies from State to State.²⁵ Further, it seeks to replace this by a mechanism under the control of a constitutional or statutory body of the likes of the Union Public Service Commission (‘UPSC’).²⁶

The idea of an All India Services for District Judges has been a relatively old one that comes forth into discussion now and then, before it is made dormant in light of the resistance mounted against it.²⁷ Since it was first mooted in late 1950’s, the state of affairs has been deteriorating, with more cases being

²² Warren E. Burger, What’s Wrong With the Courts: The Chief Justice Speaks Out, 69 U.S. NEWS & WORLD REPORT 8, 68, 71 (August 24, 1970); JOINT COMMITTEE ON INDIAN CONSTITUTIONAL LAW REFORM, *Report of the Joint Committee (Session 1933-34)*, Vol. 1, 201.

²³ Charu Mathur, *English – The Language of Supreme Court of India*, November 12, 2018, available at <https://www.livelaw.in/english-the-language-of-supreme-court-of-india/> (Last visited on December 23, 2018).

²⁴ Central Selection Mechanism for Subordinate Judiciary, In re, 2017 SCC OnLine SC 1694. In this case, a ‘Concept Note on the District Judiciary Recruitment Examination (DJURE)’ was submitted by Sr. Adv. Arvind P. Datar in the capacity of *amicus curiae*. In the suggested Central Selection Mechanism (‘CSM’), he recommended conducting a common examination for all States, and preparing a centralised merit list on the basis of which, along with an interview, appointment will be made by the High Court in the manner it is done presently. The CSM does not in any way amend, alter, or affect the existing structure of the judiciary. *See also* Supreme Court’s order in 2017 SCC OnLine SC 1644, in above-mentioned matter.

²⁵ Abhinav Chandrachud, SUPREME WHISPERS: SUPREME COURT JUDGES, 1980-90, 89 (2018).

²⁶ The UPSC is a constitutional institution mandated under Art. 315 of the Constitution of India, and is charged with the conducting, and recruitment for All India Services and Group A and B of Central Services. It also advises the Union on matters related to transfer, promotion and disciplinary action. Being a constitutional body, it is autonomous and independent. *See* Union Public Service Commission, *Constitutional Provisions*, available at <http://www.upsc.gov.in/about-us/constitutional-provisions> (Last visited on December 13, 2018).

²⁷ Press Trust of India, *Nine High Courts Oppose All-India Judicial Services*, THE TIMES OF INDIA, August 7, 2017, available at <https://www.thehindu.com/todays-paper/tp-national/nine-high-courts-oppose-all-india-judicial-service/article19441450.ece> (Last visited on August 7, 2017).

instituted than being disposed of.²⁸ In a study carried out by Ministry of Finance, it was reckoned that it would take 324 years just to clear the present backlog at the current rate of disposal, tagging huge backlog as a ‘critical logistical and efficiency issue’ for the nation.²⁹ In the opinion of Alok Prasanna Kumar, increasing the number of judges is not at all feasible with the present appointment mechanism to clear this backlog.³⁰ In the light of all these circumstances, it is of utmost importance to reconsider the structure of the existing system and the problems inherent in it which actually prompted S.B. Sinha J., a former judge of the Supreme Court to prophesise that the backlog could multiply from three crores presently to twenty-four crores by 2030.³¹ Implementation of AIJS would, by recruiting better skilled judges by a timely and regular selection procedure, go a long way in tackling the judicial docket efficiently. The question that is now left to answer is, with all its pious objectives, what has kept AIJS from being implemented? In the following sub-part, we delineate the development of concept of the All India Judicial Service while enumerating the arguments put forth by those quarters which question the efficacy and pertinence of AIJS in the light of the concept of ‘separation of power’.

III. BACKGROUND: A HISTORICAL PERSPECTIVE

Proposal of the Indian Judicial Services is a ghost from the past with the first documented sighting in 1958, in the 14th Report by the First Law Commission.³² The idea became increasingly popular among the intellectual circles and was seen as a panacea for *katchehri* (court premises of District and

²⁸ Summary report of India as on December 13, 2018.

PARTICULARS	CIVIL CASES	CRIMINAL CASES	TOTAL CASES
Cases disposed in last month	206055	573725	779780
Cases filed in last month	214470	767814	982214
Pending case above 30 years	29660	36309	65969

Data Sourced from National Judicial Data Grid (District and Taluka Courts of India), available at http://njdg.ecourts.gov.in/njdg_public/main.php (Last visited on December 13, 2018).

²⁹ NITI AAYOG, *Strategy for New India @ 75*, 180, available at https://niti.gov.in/writereaddata/files/Strategy_for_New_India.pdf (Last visited on May 20, 2019) (‘Niti Aayog’).

³⁰ Alok Prasanna Kumar, *How many judges does India really need?*, LIVEMINT, July 12, 2016, available at <https://www.livemint.com/Politics/3B97SMGhseobYhZ6qpAYoN/How-many-judges-does-India-really-need.html> (Last visited on December 13, 2018)

³¹ Press Trust of India, *Pendency of Cases are “Gigantic Problem”: SC Judge*, DNA INDIA, June 13, 2009, available at <https://www.dnaindia.com/india/report-pendency-of-cases-are-gigantic-problems-sc-judge-1264662> (Last visited on June 13, 2009)

³² Report on Reforms on Judicial Administration, *supra* note 15, 167 & 184.

Sessions Court). It was reiterated in the 77th Report³³ and the 116th Report of Law Commission,³⁴ but was looked down upon from all spheres including the executive wing and the judiciary. In the opinion of the Law Commission, the opposition coming from the executive and the judiciary to proposals of AIJS was primarily founded on three grounds. Firstly, inadequate knowledge of regional language would corrode judicial efficiency in appreciating evidence and pronouncing judgments. Secondly, promotional avenues of the members of State services would be severely curtailed. Thirdly, erosion of control of the High Court over the subordinate judiciary would impair its independence.³⁵ The erosion of the High Court's salutary control over lower Courts and its potential impact on judicial independence, exposing courts to executive interference were the two prime reasons for concluding at the Conference of Chief Justices, 1985, that AIJS should not be constituted.³⁶ The idea of Indian Judicial Services was rejected in the Law Minister's Conference in 1960 and could not muster bi-partisan support in the Chief Justices Conference in 1961, where many States and High Courts vehemently opposed it.³⁷ The idea metamorphosed after the Forty-Second Amendment in 1977 when Article 312 was amended on the recommendation of the Swaran Singh Committee (1976) to include All India Judicial Services, vesting the power to create AIJS in Council of States.³⁸

The proposal has been an active matter of debate on the judicial side of the court as well. In *All India Judges' Assn. (1) v. Union of India* (1992),³⁹ the Court directed that All India Judicial Services should be set up. However, the direction was earnestly diluted in the 1993 review petition,⁴⁰ where liberty was afforded to the Union to take initiative in the matter. The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its Fifteenth Report backed the scheme of pan-Indian services and in pursuance of it, a Draft Bill was also prepared. However, in view of the unswerving opposition by Chief

³³ The Law Commission recommended that the formation of an All India Judicial Service of the same rank and same pay scales as the Indian Administrative Service, should receive serious consideration. See Law Commission of India, *Delay and Arrears in Trial Courts*, Report No. 77, 32, (1978).

³⁴ Report on All India Judicial Service, *supra* note 16, 9.

³⁵ *Id.*, ¶3.4.

³⁶ Resolution adopted at the Conference of Chief Justices, convened by Chief Justice of India, 1985. See Report on All India Judicial Service, *supra* note 16, 13, ¶3.5.

³⁷ NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION, *A Consultation Paper on All India Judicial Service*, Vol. 2, 753 (January 2001) ('Consultation Paper on All India Judicial Service').

³⁸ The Constitution of India, Art. 312. (All-India Services: (1) Notwithstanding anything in Chapter VI of Part VI or Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services (including an all-India judicial service) common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.)

³⁹ *All India Judges' Assn. (1) v. Union of India*, (1992) 1 SCC 119 : AIR 1992 SC 165.

⁴⁰ *All India Judges' Assn. (2) v. Union of India*, (1993) 4 SCC 288.

Justices of High Courts on its orthodox grounds, it could not crystallise.⁴¹ In 2017, a letter written by the Law Minister Ravi Shankar Prasad to the Supreme Court was converted into a *suo motu* writ petition by a bench headed by the erstwhile CJI Deepak Misra, which is currently pending adjudication.⁴² Also, another *suo motu* cognizance has been taken of the vacancies in lower courts by a bench headed by CJI Ranjan Gogoi, which termed it as ‘wholly unacceptable.’⁴³ In our view, the reasoning that is obstructing the path of a pan-India judiciary and has been repeatedly summoned by States and High Courts is something that can be taken care of by providing a system of ‘checks and balance’ to ensure impartiality and is not beyond redressal. The intolerance towards the proposal shown by High Courts and their executive counterpart has reduced AIJS to a mere scholarly topic. In the next part, we attempt to delineate two outgrowths of the existing system which have been elemental, in our opinion, in excluding competent candidates, namely, the imperative of knowledge of regional language and imperative of prior standing at the Bar. We further seek to discuss various facets responsible for the present despicable state of affairs in lower courts in terms of appointment, promotion, and backlog of cases.

IV. CONTEMPORARY FRAMEWORK: THE STATUS QUO

The structure and functions of district level courts today remain much as they were in the colonial period and the changes implemented have been, to a great extent, incremental in nature and superficial in effect.⁴⁴ Following the mandate of the Supreme Court in *All India Judges’ Assn. v. Union of India*,⁴⁵ presently, there are three points of provenance for recruitment. Sixty-five percent of all the posts are filled by regular promotions from the cadre of Civil Judge (Senior Division), ten percent by competitive departmental examination strictly on the basis of merit, and the remaining twenty-five percent by direct recruitment from the Bar Council of India.⁴⁶ In the following sub-parts we examine various facets which are integral to the subordinate judiciary and the corresponding

⁴¹ DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE, *Report of the Committee on Demands for Grants of the Ministry of Law and Justice*, Report No. 15, ¶8.72 (2006-2007).

⁴² Central Selection Mechanism for Subordinate Judiciary, In re, 2017 SCC OnLine SC 1644, available at https://www.sci.gov.in/supremecourt/2017/14892/14892_2017_Order_10-Jul-2017.pdf (Last visited on December 13, 2018).

⁴³ Filling Up of Vacancies, In re, SMW (C) No. 02 of 2018, Order dated October 22, 2018, available at https://www.sci.gov.in/supremecourt/2018/39496/39496_2018_Order_22-Oct-2018.pdf (Last visited on December 13, 2018).

⁴⁴ Robert S. Moog, *Elite-Court Relations in India: An Unsatisfactory Arrangement*, 38 ASIAN SURVEY 4, 410–423 (April, 1998), available at www.jstor.org/stable/2645415 (Last visited on December 13, 2018).

⁴⁵ *All India Judges’ Assn. v. Union of India*, (2010) 15 SCC 170.

⁴⁶ Only those candidates who have at least seven years of standing at Bar are eligible to appear for direct recruitment to the post of District Judge.

predicaments integral to each of these facets. We firstly outline the fallacies of 'governance by rules' framed by High Courts in exercise of their constitutional power. We then, secondly, proceed to depict the non-resemblance and discrepancy in the evaluation scheme of different States, which results in the recruitment of officers of lesser calibre in some States in comparison to others where the criteria are more stringent. Thirdly, the role and function of the High Court in relation to the subordinate judiciary have been examined and the normative position has been juxtaposed with the persisting scenario. Lastly, inadequacy of the guidelines issued by Supreme Court from its judicial side has been illustrated in light of their non-compliance by High Courts.

A. RULES GOVERNING LOWER COURTS

The Constitution grants the power of appointment, posting and promotion of District Judges to the High Court exercising jurisdiction in relation to the State.⁴⁷ In pursuance of the power conferred under Article 233 and 235,⁴⁸ read with the proviso to Article 309, all High Courts have framed rules prescribing standards and regulating its power. It has become a universally accepted fact that there is no uniformity or resemblance in the rules and selection process followed by different States.⁴⁹ For illustration, consider the case of the syllabus prescribed for the examination to appoint District Judges. Whereas the rules of Uttar Pradesh, Assam, Uttarakhand, Tripura, Meghalaya, Mizoram, Manipur, and Arunachal Pradesh prescribe that the candidate shall be tested upon his general knowledge, aptitude, English précis writing skills, and essay writing on information technology, *inter alia*, other States' rules simply do not consider these aspects.⁵⁰ Also, rules relating to the syllabus in Odisha, Chhattisgarh, and Sikkim place more emphasis on local laws of those States in comparison to other States,⁵¹ bringing wide variance in the quality of judges recruited in the different States. This uniformity can only be brought about by a common entrance test, setting a common minimum standard for judges across the country.

⁴⁷ According to Subba Rao, C.J., under the constitutional mandate, the exercise of power or appointment by the Governor is conditioned by his consultation with the High Court. See Chandra Mohan v. State of U.P., AIR 1966 SC 1987.

⁴⁸ Art. 235 of the Constitution of India confers absolute administrative control upon High Courts over District Courts and Courts subordinate thereto.

⁴⁹ Report on All India Judicial Service, *supra* note 16, 5; similar remarks were made by a Bench of the Supreme Court comprising of Khehar, C.J., A.K. Goel & A.M. Khanwilkar, JJ., during the *suo motu* cognizances taken by the Court, based on the letter by the Law Minister to the Supreme Court, asking it to introduce a single-window test for selection of judges. See Amit Anand Choudhary, *Supreme Court for All India Common Test for Selection of Judges for Lower Courts*, THE TIMES OF INDIA, May 9, 2017, available at <https://timesofindia.indiatimes.com/india/supreme-court-for-all-india-common-test-for-selection-of-judges-for-lower-courts/articleshow/58598588.cms> (Last visited on May 9, 2017).

⁵⁰ Diksha Sanyal & Shriyam Gupta, *Discretion and Delay: Challenges in Becoming a District and Civil Judge*, VIDHI CENTRE FOR LEGAL POLICY (December, 2018) ('Sanyal & Gupta').

⁵¹ *Id.*

There is no uniform remuneration prescribed for subordinate judges currently. While there are minimum pay scales, this does not affect the extra benefits bestowed upon the subordinate judges in some States.⁵² Some States give extra emoluments over and above the basic pay scale in view of the variation of quality of life from place to place, and from State to State, both quantitatively and qualitatively.⁵³ This runs in complete contrast to the idea of a uniform salary for the High Court Judges and for Administrative Service members, who should also be subject to the same reasoning but are in fact not.⁵⁴ An appropriately designed remuneration system is required for the recruitment, retention, and motivation of judges to ensure proper administration of justice.⁵⁵ The tragedy of the situation is that this system is absent, pulling the larger system into chaos. Judicial independence cannot be secured by making a mere solemn proclamation – positive steps need to be taken to ensure it.⁵⁶ It was observed long back that for the same or similar work, judicial officers are remunerated differently – this incongruity has to be removed for the betterment of the services.⁵⁷ However, the dilemma still persists.

Moreover, the situation worsens when it comes to promotions, where allegations that the rules relating to promotion have been altered innumerable times in a short span are made frequently. In some States, the condition is in such dismay, that no law or rules of promotion are in existence and promotion is governed by the reports of committees and resolutions.⁵⁸ This setup runs in the teeth of the idea of uniformity, consistency, and the rule of law, as it provides wide discretion to committees in determining the criteria for promotion, which can be easily modified by any subsequent resolution. This leads to uncertainty and affects the morale of judicial officers negatively. In its 116th Report, the Law Commission pointed out the inadequacy of laws dealing with the subordinate judiciary as the key factor, which has resulted in the present distressing situation.⁵⁹

⁵² All India Judges Assn. (2) v. Union of India, (1993) 4 SCC 288.

⁵³ Second National Judicial Pay Commission recommended a thirty percent hike in salary, as interim relief to lower court judges in March 2018. But, the recommendation was not applicable to the Delhi State Judicial Service as they were already drawing remunerations as per the pay scales of 7th Pay Commission since 2016. Implementation of such recommendations varies widely from State to State, denying even the basic minimum pay at one point of time to judges, thereby creating wedges among judicial officers of different States. See Press Trust of India, *Panel Recommends 30-PC Interim Relief for Lower Court Judges*, THE ECONOMIC TIMES, available at <https://economictimes.indiatimes.com/news/politics-and-nation/panel-recommends-30-pc-interim-relief-for-lower-court-judges/articleshow/63369090.cms> (Last visited on March 19, 2018).

⁵⁴ The High Court Judges (Salaries and Conditions of Service) Act, 1954, §13A, as amended by the High Court and Supreme Court Judges (Salaries and Condition of Service) Act, 2017, prescribes a monthly pay of Rs. 2,50,000 to the Chief Justice of a High Court and of Rs. 2,25,000 to the puisne judges of all High Court irrespective of location of the High Court and standard of living associated with that place. For an interesting discussion on uniform salary of Judges of High Courts, see ABHINAV CHANDRACHUD, SUPREME WHISPERS: JUDGES OF SUPREME COURT 1980-89(2018).???

⁵⁵ SECOND NATIONAL JUDICIAL PAY COMMISSION, *Consultation Paper*, 7, ¶5.1 (July, 2018).

⁵⁶ All India Judges' Assn. (2) v. Union of India, (1993) 4 SCC 288 : AIR 1993 SC 2493.

⁵⁷ First National Judicial Pay Commission, *Recommendations*, ¶15.26; See *supra* note 55, ¶6.2, 11.

⁵⁸ Vinay Kumar v. High Court of Gujarat, Special Civil Application (SCA) No. 8793 of 2015, Order dated July 15, 2015, ¶10 (Guj) (UR).

⁵⁹ Report on All India Judicial Service, *supra* note 16, 5, ¶ 2.7.

The Supreme Court in *Indravadan H. Shah v. State of Gujarat*,⁶⁰ struck down Rules 6(4) (i) & (iii) (a) of the Gujarat Judicial Service Recruitment (Amendment Rules), 1979, which provided an age restriction with regard to the appointment of Assistant Judge by promotion, as being archaic, unreasonable and irrational.⁶¹ The Court pointed out the discrepancy, stating that similar rules in other States were deleted and discontinued but were allowed to continue in the State of Gujarat.⁶² Furthermore, judicial officers often remain oblivious to the criteria for promotion prevailing at any point of the time and are not intimated about it, thereby seriously jeopardising their promotion prospects.⁶³ There is no uniform set of rules or guidelines for promotion and each appraisal committee of the High Court during its tenure evolves its own criteria on which judicial officers are evaluated for promotion.⁶⁴ The variance would become more evident when promotion criteria of different High Courts are juxtaposed. This practice has an overwhelmingly negative impact on the aspirations and avenues of the promotion of judicial officers, as the criteria can be changed abruptly and frequently, affecting their legitimate expectations. In the succeeding sub-part, we juxtapose the prevailing structure of examination in the different States and analyse the consequences of such variance.

B. THE CURRENT STRUCTURE OF EXAMINATION

The criteria of evaluation for direct recruitment to the higher judiciary of different High Courts are distinct in terms of uniformity. The most striking and fundamental difference in the method of recruitment of distinct States lies in the fact that some States including Kerala, West Bengal and Odisha, follow a two-tier process (written examination and interview) whereas others like Uttarakhand, Karnataka and Uttar Pradesh follow a three-tier process (preliminary examination, written test, and interview).⁶⁵ This distinction alone has the potential to yield different results in terms of the quality of officers recruited. Also, of all the States, only twelve have specified the syllabus in their rules for the 'mains' stage of recruitment.⁶⁶ Other States disclose the basic outlines of the

⁶⁰ *Indravadan H. Shah v. State of Gujarat*, 1986 Supp SCC 254 : AIR 1986 SC 1035.

⁶¹ *Id.*, ¶ 15.

⁶² *Id.*, ¶ 13.

⁶³ The above mentioned grievances were put before the Delhi High Court in *Sujata Kohli v. High Court of Delhi*, 2018 SCC OnLine Del 10697, albeit the High Court rejected the contention with a somewhat odd and bizarre reasoning. The Court opined, "given the solemn nature of judging, service in the judicial department is a mission, and all judges – District Judges being no exception, are expected to perform at their optimum levels to the best of their ability and competence. The argument that if one is made aware that a higher threshold of performance is expected, she would work better, cannot be countenanced. An incumbent cannot be heard to say that her work was not up to the mark (promotion threshold) as she was not aware that the best performance would result in selection as District Judge."

⁶⁴ *Sujata Kohli v. High Court of Delhi*, 2018 SCC OnLine Del 10697, ¶ 25.

⁶⁵ Report on Ranking Lower Court Appointments, *supra* note 14, 18.

⁶⁶ Rules in Nagaland, Odisha, Uttarakhand, Chhattisgarh, Tripura, Mizoram, Uttar Pradesh, Meghalaya, Sikkim, Assam, Arunachal Pradesh, Manipur outline the specific syllabus of mains examination.

syllabus, breakdown of marks, and mode of evaluation through advertisements or notifications released at the beginning of the recruitment process. Of these two practices, having a definite syllabus mentioned in the rules is more preferable as it ensures transparency and would enable candidates to prepare for examination in a better manner in advance.⁶⁷ In the ensuing table, we depict the major discrepancies and differences in the structure of examination of various States.

Table I

S. NO.	STATE	NO. OF PAPERS	TOTAL MARKS	TIME DURATION	TIER PROCESS
01.	Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006. ⁶⁸	2	200	3 hours each	2-tier process
02.	Uttar Pradesh Higher Judicial Services, 1975. ⁶⁹	5	800	3 hours each	3-tier process
03.	Kerala State Higher Judicial Service, 1961 ⁷⁰	2	300	3 hours each	2-tier process
04.	Uttarakhand Higher Judicial Service Rules, 2004. ⁷¹	4	400	90 minutes for preliminary examination and 2 hours each for mains paper.	3-tier process
05.	Gujarat State Judicial Service Rules, 2005. ⁷²	1	200	2 hours	2-tier process
06.	Haryana Superior Judicial Service Rules, 2007 ⁷³	-	750	-	2-tier process

⁶⁷ Sanyal & Gupta, *supra* note 50, 17.

⁶⁸ Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006, Schedule-III, R. 5(1)(c).

⁶⁹ Uttar Pradesh Higher Judicial Service Rules, 1975, Appendix G, R. 18.

⁷⁰ Kerala State Higher Judicial Service Rules, 1961, R. 2(1)(c).

⁷¹ Uttarakhand Higher Judicial Service Rules, 2004, Appendix B, See R. 4(3).

⁷² Gujarat State Judicial Service Rules, 2005, R. 3(1)(i).

⁷³ Haryana Superior Judicial Service Rules, 2007, R. 7.

07.	Rajasthan Judicial Service Rules, 2010. ⁷⁴	2	250	-	2-tier process
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*(Information not provided in the Rules is furnished by the High Court in the advertisement or notification of vacancy)

From the above-mentioned information, it becomes apparent that there is no resemblance in the structure of the examination of the States discussed above. This wide variation leads to the recruitment of candidates with different competence and intelligence. The underlying rationale of our argument is that, a criterion/factor that is relevant for the recruitment of judicial officers in one State cannot *ipso facto* become irrelevant in the case of other States and vice versa. Ideally, the best system, which picks the best candidates, should be devised and implemented uniformly, country-wide.

C. ROLE OF THE HIGH COURTS

Article 233 of the Constitution of India mandates that the appointment of a person to the post of a District Judge be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. This article, read with Article 235 which vests the control over the subordinate courts in the High Court, brings the latter in the centre of every transaction related to the subordinate judiciary.⁷⁵ Senior Advocate Arvind Datar has accused High Courts of bringing uncertainty and irregularity, as the Higher Judicial Services Examination for direct recruitments are conducted in an *ad-hoc* fashion, instead of on a regular basis (annually or biennially).⁷⁶ This procrastination on part of High Courts has contributed immensely to the shortage of judicial officers at requisite levels presently. The efficiency and sincerity with which High Courts have taken up this responsibility can be ascertained from the current number of vacancies. Currently, out of sanctioned strength of 22,704 judges, 5,676 posts are lying vacant.⁷⁷ Also, the examination is conducted in such a cumbersome manner that it usually takes up to two to three years to complete the examination process,

⁷⁴ Rajasthan Judicial Service Rules, 2010, Sch. VI, R. 39.

⁷⁵ The control envisaged under Art. 235 over subordinate judiciary covers matters relating to posting, promotion, grant of leave. By pronouncements of the Supreme Court, the control has been further extended over the conduct of judges, transfer, and initiation of disciplinary inquiry. See, *State of W.B. v. Nripendra Nath Bagchi*, AIR 1966 SC 447; *State of Assam v. Ranga Muhammad*, AIR 1967 SC 903; *Punjab and Haryana High Court v. State of Haryana*, (1975) 1 SCC 843 : AIR 1975 SC 613.

⁷⁶ Rules framed by different High Courts, laying down the framework of direct recruitment process, use the phrase “direct recruitment ‘as far as possible’ should be made annually”, providing adequate liberty and discretion to appointing authority. Also, in some other rules, conducting examination has been made contingent on certain factors. See, *West Bengal Judicial (Condition of Service) Rules, 2004*, R. 26(1), Second *Proviso* to sub-cl. (c).

⁷⁷ Supreme Court of India, *Court News*, Vol. XII (4), 2017, available at https://www.sci.gov.in/pdf/CourtNews/COURT_NEWS_OCTOBER-DECEMBER_2017.pdf (Last visited on December 13, 2018).

which upon completion is often made contingent on the final outcome of a plethora of pending litigation.⁷⁸

There has been a blatant ignorance of the dictum of the Supreme Court, which had reprimanded the High Courts and ordered that all the vacancies should be filled in that year in strict adherence to the time schedule prescribed in *Malik Mazhar Sultan v. U.P. Public Service Commission*⁷⁹ and should not be carried forward.⁸⁰ However, the blame can also not be put on the High Court altogether, as they are working under a huge constraint posed by a humongous backlog, with insufficient manpower.⁸¹ The foregoing facts reflect that the High Courts are not in a position to do justice to the status of nodal authority for the appointment of District Judges. This responsibility should be entrusted to a body, dedicated to this job exclusively, which has adequate time and resources for the same. Also, it must be borne in mind that the power of appointment and control of judges emanates from the different constitutional provisions, i.e. Articles 233 and 235 respectively. It is with regard to latter only, that the concern of independence of the lower judiciary is attached.⁸² Taking away the power of appointment from the High Court does not *ipso facto* affect the independence of the judiciary, as the control under Article 235 remains intact.

D. THE SUPREME COURT: DICTUM AND ITS IMPLEMENTATION

The Supreme Court has been trying to create uniformity and to streamline the process of selection of lower court judges by issuing directions,⁸³ although the directions have been more of a patchwork, being given on a case to case basis.

⁷⁸ There is no tentative time schedule mandated by the HJS Rules of the High Courts, within which the selection process has to be completed, as is the case with PCS (J) exam. The following examples are illustrious: the final result of Delhi Higher Judicial Service Examination (DHJSE), 2015, was declared on December 5, 2017, on the website of Delhi High Court; *See* The High Court of Delhi, *Delhi Higher Judicial Service Examination, 2015*, available at http://delhihighcourt.nic.in/writereaddata/upload/Recruitments/Results/ResultFile_4SYET89R.PDF (Last visited on August 31, 2018). Similarly, in Bihar, the result of examination for the post of District Judge (Entry Level) 2016, could only be declared on March 21, 2018, on the Patna High Court's website; *See* The High Court of Judicature at Patna, *Notice*, available at <http://patnahighcourt.gov.in/ViewPDF.aspx?File=UPLOADED/2317.PDF> (Last visited on August 31, 2018).

⁷⁹ *Malik Mazhar Sultan v. U.P. Public Service Commission*, (2010) 15 SCC 184.

⁸⁰ *All India Judges' Assn. v. Union of India*, (2010) 15 SCC 170.

⁸¹ As per a statement released by the Department of Justice, Government of India, as on August 31, 2018, out of 1079 total permanent and additional posts of High Court Judges, 427 are lying vacant, making vacancies just shy of forty percent of the sanctioned strength. Furthermore, even post the appointment of Chief Justices of various High Courts recently, three are still functioning with an Acting Chief Justice. *See* The Department of Justice, *Vacant Positions*, available at <http://doj.gov.in/appointment-of-judges/vacancy-positions> (Last visited on December 13, 2018).

⁸² M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 465 (7th ed., 2014).

⁸³ *See*, *All India Judges' Assn. (1) v. Union of India*, (1992) 1 SCC 119; AIR 1992 SC 165; *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745; *All India Judges' Assn. v. Union of India*, (2002) 4 SCC 247; *Brij Mohan Lal v. Union of India*, (2002) 5 SCC 1.

For instance, in *Brij Mohan Lal v. Union of India*⁸⁴ the Supreme Court, in view of the need for additional judges, and the constitutional mandate to provide a fair and expeditious trial, directed for the creation of an additional ten percent posts of the existing cadre. Ideally, such an initiative should have been taken by State Governments and/or the High Courts. Moreover, this direction can merely be called as a patchwork because after some time, such need will surely resurrect and the system will yet again ignore this need unless the Apex Court is approached again. This direction therefore, could be said to have a temporary effect only. In November 2018, a bench of the Supreme Court comprising of Ranjan Gogoi, C.J., and Sanjay Kishan Kaul, K.M. Joseph, JJ., passed an order laying down State-specific guidelines (distinct guidelines tailored for the existing scenarios of eight different States) with regard to the appointment of judges, infrastructure, and inadequate support staff in each State.⁸⁵

What is even more astonishing is that quite frequently, such sacred dictums are not given effect to by State Governments and the High Courts. The instance of directions issued by the Supreme Court in *All India Judges' Assn. v. Union of India* (2002) can be cited. In this case, the Court dealt with questions relating to the implementation of recommendations of 1st National Judicial Pay Commission and source of recruitment to the post of judicial officer in the cadre of HJS.⁸⁶ The Court accepted the recommendations with modifications and added the category of twenty-five percent promotion-cum-merit as a method of recruitment to the HJS. The Uttar Pradesh Higher Judicial Service Rules, 1975, were amended in 2006 in view of the judgment, but due to sheer callousness, only partial compliance of the judgment was made and not all of the guidelines were implemented.⁸⁷ Such an attitude, which is widely prevalent, puts a question mark on the accountability and efficacy of the whole system. Moreover, in *Malik Mazhar Sultan v. Union of India*⁸⁸ a case arising out of a dispute regarding the eligibility of some candidate in terms of age, the Court remarked that fixed time schedules are indispensable to determine and fill vacancies at all the levels. The Court was of the opinion that filling the vacancies timely will help better tackle pendency.⁸⁹ The Supreme Court, in this case, laid down a strict time schedule for the recruitment

⁸⁴ *Brij Mohan Lal v. Union of India*, (2012) 6 SCC 502, ¶146.

⁸⁵ For 125 advertised vacancies in the Higher Judicial Services (HJS) in Uttar Pradesh, the Court pushed for the process to be completed before the deadline of March 31, 2019. Furthermore, the Court was extremely critical of the lack of infrastructure provided to the judiciary by the State government of all States. See National News, *Subordinate Judiciary Appointments and Infrastructure: Supreme Court Issues Directions to Eight High Courts/States*, available at: <https://lawgupshup.com/2018/11/subordinate-judiciary-appointments-and-infrastructure-supreme-court-issues-directions-to-eight-high-courts-states/> (Last visited on December 22, 2018).

⁸⁶ *All India Judges' Assn. v. Union of India*, (2002) 4 SCC 247.

⁸⁷ Observation was made with regard to the Uttar Pradesh Higher Judicial Services (Sixth Amendment) Rules, 2006, which only made partial compliance of the dictum of the Supreme Court, and no amendment in terms of ¶29 of *All India' Judges Assn. case*, (2002) 4 SCC 247 took place. See *Premkala Singh v. High Court of Judicature at Allahabad*, 2017 SCC OnLine All 2640 : (2017) 8 ADJ 253, ¶11.

⁸⁸ *Malik Mazhar Sultan v. U.P. Public Service Commission*, (2006) 9 SCC 507.

⁸⁹ *Malik Mazhar Sultan (3) v. U.P. Public Service Commission*, (2008) 17 SCC 703, ¶1.

of District Judges, which said that a two-tier recruitment procedure should take 153 days whereas a three-tier procedure should take 273 days from the notification of vacancies to the last date of joining.⁹⁰ Even after the detailed step-by-step time frame given by the Supreme Court, there are unwarranted delays, with some States like Bihar and Delhi on an average taking 604 and 567 days respectively, to complete their recruitment process.⁹¹

While Judicial Pay Commissions were further established by the Supreme Court in the said judgment, in an attempt to harmonise the basic pay of judicial officers of all State cadres, some States failed to implement the recommendations.⁹² The establishment of the National Judicial Pay Commission (NJPC) by the Supreme Court was an ambitious step, but delayed implementation by the States of the NJPC's recommendations and the unreasonable gap between its successive recommendations have left much to be desired.⁹³ The efforts of the Supreme Court have been unable to bring about any substantial change, as the fallacies are too much in number to be tackled individually. For illustration, if the Supreme Court issues guidelines with regard to hike in housing allowance/rent allowance in view of inflation, the implementation of this judgment by State Governments individually will take such time, that by the time it becomes operational in whole of India, it will become obsolete. By the time of its complete implementation, another petition would be knocking at the door of Supreme Court, seeking fresh direction with regard to same subject matter in view of new developments. For the sake of efficiency, it is therefore desirable to have a body having power to persistently monitor and review conditions of service for the judicial officers of whole country. In the ensuing part, the main obstacle in the way of AIJS and the prime reason for non-recruitment of competent judicial officers are unearthed. We argue that the same are superfluous and can be done away with, giving way to AIJS.

V. THE RAISON D'ÊTRE

While it would be unjust to condemn any factor exclusively for the deplorable state of affairs in subordinate courts, the prerequisites of knowledge of regional language and experience at the Bar have played a dominant role in obstructing deserving candidates from entering the Service.⁹⁴ These prerequisites

⁹⁰ *Id.*

⁹¹ Report on Ranking Lower Court Appointments, *supra* note 14, 18.

⁹² All India Judges' Assn. v. Union of India, 2015 SCC OnLine SC 310 : AIR 2015 SC 2731.

⁹³ Before the Supreme Court accepted the recommendations of Second National Judicial Pay Commission (NJPC) for thirty percent hike as 'interim relief' for judges of subordinate judiciary in March 2018, their salary was last hiked in 2010. However, the arrears will be payable with effect from January 1, 2016. See FE Online, *SC Directs 30 Percent Interim Hike in Salaries of Judges of Subordinate Judiciary*, FINANCIAL EXPRESS, available at <https://www.financialexpress.com/india-news/sc-directs-30-percent-interim-hike-in-salaries-of-judges-of-subordinate-judiciary/1115109/> (Last visited on December 13, 2018).

⁹⁴ Report on Reforms on Judicial Administration, *supra* note 15, 165 & 191.

seriously limit the quality of applicants, denying judiciary of its fair share. The problem of judicial administration is by and large the problem of finding capable and competent judicial officers.⁹⁵ In some States, the recruitment process ended without a judge being appointed due to lack of competent aspirants.⁹⁶ In this part of the paper, we attempt to locate the rationale behind considering the knowledge of regional language and standing at the Bar as imperative and whether they really are a *sine qua non*, as is claimed, for lower courts. In the succeeding sub-part, we argue in favour of removing the pre-requisite of knowledge of regional language.

A. LANGUAGE RESTRICTION

Extant rules prescribe knowledge of regional language as the minimum criterion to be eligible for the Higher Judicial Examination.⁹⁷ To create a pan-India judicial service, it is important to do away with this prevailing curtailment, as the *raison d'être* of the current despotic condition of the lower courts are akin to that of the legal framework. The removal of the rule of eligibility requiring prior knowledge of the language of the respective State, will go a long way in curing the impairment of the subordinate judiciary. It is unwise to be under the impression that judicial officers from other States cannot assimilate a general language which is spoken and read by everyone in that particular State irrespective of their intellect. Moreover, Indian Administrative Service officers are posted in non-native States and no such difficulty is faced by them. It is not unusual for litigants and witnesses to testify in their local dialect and in a diverse country like India where there are hundreds of dialects even in a particular State, by no stretch of imagination would it be possible for a person native of some other part of the State to comprehend even a minority of those dialects. Hence, judges from other parts of a State anyway have to frequently rely on advocates and their clerks for translation.⁹⁸

Moreover, prior to the reorganisation of States on a linguistic basis in 1956, there were provinces like Bombay, Bengal, and Madras, which comprised of more than one major linguistic group. For example, the Province

⁹⁵ Report on Reforms on Judicial Administration, *supra* note 15.

⁹⁶ Report on Ranking Lower Court Appointments, *supra* note 14; Diksha Sanyal, et al., *What is to Blame for the Mounting Shortage of District Court Judges in India? Scroll*, January 13, 2018, available at <https://scroll.in/article/862475/what-is-to-blame-for-the-mounting-shortage-of-district-court-judges-in-india> (Last visited on December 13, 2018).

⁹⁷ Such prerequisites are regular features of the rules framed by the various High Courts. Maharashtra Judicial Services Rules makes the knowledge of Marathi as the prerequisite to be recruited as District Judge and a certification to that effect is necessary by a Principal Judge where the advocate practices or resides; see Table 'C', column 4, Rule 1(d) Maharashtra Judicial Services Rules, 2008. The advertisement no. 1654-RG issued by High Court at Calcutta with regard to the examination for direct recruitment to the cadre of District Judge (entry level) prescribes 'translation from Bengali to English' as syllabus for written paper 1; see High Court of Calcutta, *Examination for Direct Recruitment from Members of the Bar to the Cadre of District Judge (Entry Level)*, available at https://advocatanmoy.files.wordpress.com/2018/04/adv_1654_rg_drb_l6042018.pdf (Last visited on December 13, 2018).

⁹⁸ Robert S. Moog, *Delays in the Indian Courts: Why the Judges Don't Take Control* 16 THE JUSTICE SYSTEM JOURNAL 1, 19-36 (1992).

of Bombay comprised of Gujarati, Marathi and Kannada speaking populations, whereas the Province of Madras had Tamil, Telugu and Malayalam areas. The Law Commission has opined that if no perplexity was found, in posting a judicial officer in an area where different language was spoken, at that time then it should not become a problem for Indian Judicial Services (IJS).⁹⁹ This clearly depicts that prior to selection, no such knowledge of local language is indispensable, and can be learned by the judicial officer during his training. This implies that objections by the States and High Courts with regard to the knowledge of native language¹⁰⁰ can be overcome and hence, will not be a predicament if a national level common examination is placed which does not test the examinee on the basis of regional language.

B. EXPERIENCE AND ELIGIBILITY CRITERION

Article 233(2) mandates that only a person who has been an advocate or a pleader for not less than seven years shall be eligible to be appointed as a District Judge.¹⁰¹ This requirement, in its present form, has also done considerable damage. The demerits of the 'age barrier' have been aptly highlighted by P.B. Gajendragadkar, J., where he opines that the lawyers appearing for such examination after seven or ten years of practice would largely be the unsuccessful ones. The opinion is based on the rationale that a successful lawyer will not stand the prospect of getting transferred as a subordinate judge from time to time.¹⁰² This qualification defeats the very purpose of getting more deserving candidates. A better alternative approach would have been making the examination process more rigorous, practical and open, in order to ensure that only the best triumphs.¹⁰³ For example, in France, a candidate is competent and eligible to enter judicial services without any previous standing at the Bar. To eliminate possible allegiance to senior members of the Bar or attachment to private interests which provide legal framework to the inductee, the qualification of 'previous practice at Bar' has been kept at bay. The objective is to eliminate the hazardous waiting period at the Bar, thereby attracting young and talented candidates.¹⁰⁴ There, the competitive exam for recruitment into judicial services is undertaken 'annually'. The examination is divided into two limbs, written and oral. Written examination consists of essays on various branches of law, while the oral test analysing candidates on legal subjects also test their knowledge of foreign language. Selected candidates are trained for

⁹⁹ The difficulty was overcome by making it obligatory for each judge to learn one more language over and above his mother tongue, and to pass a language proficiency examination for that language. See Report on All India Judicial Service, *supra* note 16, 9.

¹⁰⁰ See discussion in Part III.

¹⁰¹ The Constitution of India, Art. 233(2).

¹⁰² P.B. Gajendragadkar, J., Chairman, Law Commission of India, Report No. 116 submitted his views in his personal capacity. (November, 1986); See Report on All India Judicial Service, *supra* note 16, 5.

¹⁰³ See discussion in Part VI for an alternative approach.

¹⁰⁴ David Annoussamy, *Judiciary in France*, JOURNAL OF THE BAR COUNCIL OF INDIA 8, 296 (1981).

twenty-eight months (including periods of practical training and special training) at the National Academy for the Judiciary, an autonomous body.¹⁰⁵

In light of this, it is safe to infer that this pre-requirement of practice at the Bar has been one of the prime factors in keeping away meritorious lawyers, who either prefer to continue their prospering practice as a lawyer or altogether abandon this lengthy, time-taking process and choose lucrative jobs at private firms instead. Hence, the waiting period at the Bar must be completely done away with, as even reducing it to any extent will serve no purpose. Albeit the pre-requisite of seven years standing at Bar is mentioned in Article 233 of the Constitution of India itself, removing it will not be deemed to be an amendment to the Constitution. A resolution passed by the Council of States dispensing with prior standing at Bar as a precondition, in pursuance of establishing AIJS, shall not be deemed to be an amendment to the Constitution by virtue of Article 312(4).¹⁰⁶ Though the two reasons mentioned in the foregoing paragraphs are the primary changes that need to be omitted, there are other changes as well that need to be implemented to ensure independence and effectiveness of judicial officers. In the following part, we attempt to lay down a detailed workable structure of All India Judicial Services. We provide a legal framework in which the concept of AIJS is feasible, outlining the nodal authority which would be charged with carrying out the recruitment process, the structure of examination, training of recruited officers, promotion from lower cadres, and position and role of High Court in the new system. We have endeavoured to highlight the important features, which in our view are indispensable for workable national judicial services, without going into nitty-gritty details.

VI. PROPOSED STRUCTURE: INDIAN JUDICIAL SERVICES

Although there is no concrete data reflecting the meticulous number of vacancies of District Judges, according to Senior Advocate Arvind P. Datar, it can be assumed that twenty-five percent of total vacancies i.e. 4800, are of District Judges.¹⁰⁷ This brings the approximate number of vacancies of District Judges to 1200, of which twenty-five percent are to be recruited through direct recruitment

¹⁰⁵ *Id.*

¹⁰⁶ The Constitution of India, Art. 312(4) (The law providing for the creation of All India Judicial Service may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provision of that law and no such law shall be deemed to be an amendment to the Constitution for the purpose of Art. 368).

¹⁰⁷ Albeit this estimation is based on the existing contemplation that twenty-five percent of the total vacancies are to be filled by direct recruitment. In the proposed structure, the number will swell to 'six hundred' annually as fifty-percent of the total vacancies will be filled through AIJS. See Arvind P. Datar, *Concept Note on the District Judiciary Recruitment Examination (DJURE)*, 2 (Annexure B) (2017), available at <https://www.sci.gov.in/pdf/LU/Concept%20Note.pdf> (Last visited on December 13, 2018) ('Datar').

as per the dictum in *All India Judges' Assn. v. Union of India* (2010).¹⁰⁸ This means that there are, annually, 300 vacancies to be filled by direct recruitment.¹⁰⁹ To salvage what is left of the subordinate judiciary, a major reform is the need of the hour. Introducing a mere Central Selection Mechanism ('CSM'), while not touching upon rules and regulations in vogue in different States with regard to appointments, would defeat the very *raison d'être* for such a change.¹¹⁰ A complete overhaul is needed in qualifications, method of recruitment, training, cadre allocation, promotion and appointing authority, if the faith of people in the judiciary is to be restored. The AIJS is focused on attracting a larger pool of candidates to increase the probability of getting peerless judicial officers, as quality comes with quantity.¹¹¹ The components of the proposed structured are discussed hereunder. In the ensuing sub-part, we argue that the Union Public Service Commission is the most apt body to be entrusted with this responsibility.

A. APPOINTING AUTHORITY

When Indian Judicial Services becomes a reality, the first and foremost predicament staring in the eye would be the designation of a body capable enough to handle this delicate perforation into the judicial wing. Suggestions have been to entrust the task to bodies like the Union Public Service Commission ('UPSC'),¹¹² a separate National Judicial Service Commission ('NJSC'),¹¹³ or the Supreme Court. The debate further dives down into diaphanous questions – in case the UPSC is chosen for this role, should there be a separate examination? Alternatively, in case the NJSC is adopted, the composition of the body as well as the suitability of the judicial element in such a body in substantial numbers, become bones of contention. The most preferable system, in our view, would be a separate examination conducted by the UPSC for the recruitment of judicial officers. The UPSC would be the most appropriate body to undertake this task instead of the NJSC since, firstly, the main concern is that of efficiency. After all, the UPSC is equipped with the long experience of holding the toughest examination of the nation,¹¹⁴ a feat that may be hard to be replicated by a novel National

¹⁰⁸ *All India Judges' Assn. v. Union of India*, (2010) 15 SCC 170.

¹⁰⁹ Datar, *supra* note 107.

¹¹⁰ In *Central Selection Mechanism for Subordinate Judiciary, In re*, 2017 SCC OnLine SC 1644, a three-judge Bench headed by the Chief Justice of India noted that the Central Selection Mechanism (CSM) deliberated upon, will be carried out substantially in consonance with prevalent rules. The process contemplated is more like a single window system for candidates to apply to all the State judiciaries. Its objective is to make recruitment a 'regular reoccurring feature.'

¹¹¹ Datar, *supra* note 107, 2-3.

¹¹² It was suggested that the person could be selected through a combined Indian Administrative Service or other allied service. The candidates were to be law graduates and would have to choose at least two optional papers in law. The suggested age bracket was to be confined to 21-25 years only. See Report on Reforms on Judicial Administration, *supra* note 15, 184.

¹¹³ Report on All India Judicial Service, *supra* note 16, 18; The Justice K. Jagannatha Shetty Commission suggested that the task could be entrusted to either of the National Judicial Commission or the Union Public Service Commission.

¹¹⁴ India Today, *7 Toughest Exams to Crack in India*, February 4, 2017 (New Delhi), available at <https://www.indiatoday.in/education-today/featureophilia/story/toughest-exams-958805-2017-02-04>

Judicial Service Commission. Making a Judicial Service Commission, manned and headed by judges of the higher judiciary would further strengthen the allegations of an unaccountable parallel government by judges, which is certainly a deplorable concept in a democracy.¹¹⁵ Secondly, the idea of a common examination for judicial services and other pan-India services is entirely unfeasible due to a sweeping difference between the parameters on which candidates need to be adjudicated upon. Adding judicial vacancy to the existing All India Services examination setup would leave out many essential parameters on which an aspiring Judge needs to be tested upon. Hence, a separate examination scheme handcrafted to recruit men best fitted to be judges would only justify the consequential step of introducing AIJS.

The argument that giving the responsibility to the UPSC would seriously thwart and impair the independence of the judiciary is also fundamentally flawed and meritless. There is no point, in authors' view, in alleging that the executive will try to taint the whole selection process of district-level judges for some ulterior motive. The threat to the independence of the subordinate judiciary is not imminent at the time of appointment, which is the case with judges of the higher judiciary. This inference is based on the logic that, the nature of a majority of the cases that judges of the lower judiciary handle are such that the government seldom has a direct interest involved in them. While such interest can arise during the continuance of service, if in case a sensitive matter comes before any particular judge,¹¹⁶ even then the higher judiciary can protect its younger sibling by taking *suo motu* cognizance of such allegations of interference in open Court. Also, it must be kept in mind that the vivavoce of the candidates would be taken solely by the sitting judges of the High Courts, further eliminating any possibility of success of an executive endeavour to soil the piousness of the process.

(Last visited on May 20, 2019).

¹¹⁵ In Italy, in a similar attempt, the Judicial Council (*Consiglio Superiore Dellsa Magistratura*) was created in 1958 to insulate the entire judiciary from political control. Initially, a majority of the members were appointed by judges but later, the composition was altered yielding more power in favor of the Parliament in 2002, on the question of external accountability of judiciary. See Patrizia Pederzoli, *The Reform of the Judiciary in ITALIAN POLITICS: QUO VADIS 153-71* (2004); Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, 57 AMERICAN JOURNAL OF COMPARATIVE LAW, 103 (2009).

¹¹⁶ See for e.g., in *Bombay Lawyers' Assn. v. State of Maharashtra*, Writ Petition (Civil) No. 19 of 2018(plz chk), the case related to the death of CBI Special Judge Loya, the opening statement of Written Submissions on behalf of the Petitioners read, "this group of petitions raise very serious questions of general importance as to [the] independence of judiciary and subordinate judiciary against any kind of threat or attack on its members." It was so alleged because at the time of his death, the deceased judge was handling a politically sensitive matter. See *Bombay Lawyers' Assn. v. State of Maharashtra*, Written Submissions on behalf of the Petitioners,(plz chk) available at <https://barandbench.com/wp-content/uploads/2018/02/Judge-Loya-case-Written-Submissions-by-Dushant-Dave.pdf> (Last visited on December 22, 2018)

B. STRUCTURE OF EXAMINATION

The examination for AIJS would be conducted in three steps like the current examination, namely – a preliminary examination (which should be a qualification examination), the mains examination (a written examination) and viva voce (the interview). Further, the examination should be strictly concerned with legal knowledge and aptitude evaluation. The entire syllabus related to language must be eliminated, since the language proficiency test will take place after the Trainee Judicial Officers (‘TJOs’) prepare for it in the State Judicial Academy. The aspirant’s general knowledge, aptitude, knowledge of substantive laws and procedural laws must be tested in three papers, where general knowledge and aptitude will be incorporated in a single paper. The process must test the judgment-writing skills of the aspirants. Since the examination would be open to a much wider array of aspirants as the *raison d’être* is to get the most brilliant candidate by separating wheat from chaff, the academic qualification, to be fixed by the authority conducting the examination, should be made more rigorous. The examination could be conducted in languages on which the UPSC finds itself capable of conducting examinations. Aspirants would be given the option to write the examination in any language of their choice, amongst the ones specified by the appointing authority, thereby removing language paralysis of any kind.

C. RECRUITMENT AND PROMOTION

The present three sources of recruitment for District Judges i.e., filling sixty-five percent vacancies by promotion from Civil Judges (senior level), twenty-five percent by direct recruitment, and ten percent by conducting a departmental examination among judges strictly on the basis of merit, in our opinion, is superfluous. It is our submission that recruitment should only be from two sources i.e., by direct recruitment and by promotion of lower judges, and the distribution of the vacancy should be even between them to the greatest extent possible i.e. fifty percent recruitments from both the sources. Additionally, to ensure merit does not suffer, sitting judges of lower courts should be permitted to appear for AIJS examination and accordingly, necessary changes in the Constitution should be made.¹¹⁷ This framework will balance the interest of lower officers by giving them due chances of promotion and the system by ensuring that AIJS does not remain a mere relic with only too few judges being recruited by it.

The judges recruited by AIJS should first be kept on probation for an emblematic period of one year, extendable to two years, during which they will be posted as Civil Judge (senior judge)/Judicial Magistrate (first class). Thereafter, they will be posted as Assistant District Judge/Assistant Sessions Judge, giving them adequate time and experience to prepare for the leadership role of the

¹¹⁷ The Constitution of India, Art. 233(2) makes a person already in the service of the Union or of the State ineligible to be appointed as a District Judge.

Principal District Judge. Also, such young officers, if of extraordinary merit and talent in the eyes of the Collegium, would be in a position to become Supreme Court judges, with age not being an obstacle in their elevation. Anecdotal evidence suggests that less than a third of the seats of High Courts are filled by judges of district cadre and further, District Judges are appointed later in their career in comparison to those who are directly elevated from the Bar.¹¹⁸ This fresh recruiting ground will usher in new candidates not only in the subordinate judiciary but also in the higher courts, exterminating the conception that judges of subordinate courts remain subordinate till eternity. The novel system will act as a provocateur for judicial officers to perform better in view of better opportunities.

D. TRAINING & TUTELAGE

Training would be the backbone and panache of AIJS when and if it ever becomes a reality. A disorganised and ineffective training system can have the effect of making the whole exercise a futile practice. AIJS aims at changing the current practice of recruiting people who already have knowledge of language and then training them at law, by substituting it with the recruitment of people proficient at law and then training them at language. The training of direct recruits under AIJS would compulsorily be a two-tier system, having a national phase and a State phase.¹¹⁹ The current training structure is a single-tier system where the judicial officers are trained in State Judicial Academies. The syllabus and the training periods vary from State to State, but it is typically around twelve months. For example, the tentative Academic Calendar for the Induction Training Course at Chandigarh Judicial Academy for the year 2016-17 consists of two limbs, namely, institutional training, spanning 184 days (six months four days) and field training, spanning 183 days (six months three days).¹²⁰

The new system of training should be much similar to the training structure of Indian Administrative Services ('IAS') wherein under tier-I (National Training, for all State Cadres) candidates all over the country will be trained initially at one academy under a special induction program.¹²¹ The training period at the National Academy would ideally span twenty-four to thirty weeks, unlike

¹¹⁸ Alok Prasanna Kumar, *Absence of Diversity in the Higher Judiciary*, Law and Society, 51 ECONOMIC & POLITICAL WEEKLY 8, 10 (2016).

¹¹⁹ See, Delhi Judicial Academy, *Training Calendar 2018*, 33, available at <http://164.100.235.75/upload/asset/DJA2018.pdf> (Last visited on May 20, 2019).

¹²⁰ Chandigarh Judicial Academy, *Tentative Academic Calendar for the Induction Training Course of Trainee Judicial Officers (PCS & HCS)*, available at <http://www.cja.gov.in/Academic%20Calendar%202016-17.pdf> (Last visited on May 20, 2019).

¹²¹ Training of Administrative Service Officers is divided into the Foundation Course (*fifteen* weeks) which is common for the IAS, IPS and IFS, followed by IAS Professional Course, Phase I (*twenty-two* weeks) at Lal Bahadur Shastri National Academy of Administration (LBSNAA). Post that, trainees are sent for District Training (*fifty-two* weeks) according to their respective cadre. After their District Training, the trainee IAS's come back to the academy for the IAS Professional Course, Phase II (six weeks). This training pattern, referred to as the 'sandwich pattern', has been in place since 1969. See Lal Bahadur Shastri National Academy of Administration, *Training*,

the present period which at maximum spans for seven days with no specifically designed program for fresh recruits.¹²² The focus should be on teaching how the judiciary is supposed to be like versus what it really is and pragmatism should lie in its core. This training would be followed by cadre allocation, which would be also in line with the cadre allocation policy of the IAS.¹²³ Trainee Officers under the new scheme would also not be appointed at their home State, making the services pan India in its true essence.

After the conclusion of tier-I, the TJOs would move to the State Judicial Academy (tier-II) where the training would ideally span for one year or more. The objective would be to make TJOs conversant with the judicial system and the language of the State. During this whole period or for a specific period, each one of them would be posted as a law clerk to one Principle District Judge, placing him under the direct supervision of experienced judges. Also, this scheme would extend a helping hand to the overworked lower courts, where the trainee judge would share the workload of the supervising officer as a law clerk. At the end of the training period of tier-II, there would be an examination for language proficiency. The TJOs would be given three attempts to clear the examination during the time period of which, they would be kept on probation. Failure to clear the examination will result in termination of their service. Furthermore, there would be compulsory training for junior judicial officers before they are promoted to the post of District Judge, to ensure that there is no separate class in terms of efficiency. While recommending the All India Judicial Services Examination on a ranking basis to maintain high standards in the judiciary, the NITI Aayog put special emphasis on the continuous training of judicial officers, use of technology and the internet, and a multi-faceted training faculty for judicial academies.¹²⁴

E. CONTROL OF HIGH COURTS

The High Court's control envisaged under Article 235 is not of mere general superintendence over the working of subordinate courts, that is to say, it is not limited merely to supervise the lower Court's day-to-day work. The control is complete and comprehends a wide variety of matters. It is exclusive in nature,

available at <http://www.lbsnaa.gov.in/cms/training-courses.php> (Last visited on December 13, 2018).

¹²² National Judicial Academy, Bhopal, *Academic Calendar 2018-2019*, available at [http://www.nja.nic.in/Academic_Calendars/Academic_Calendar_2018-19_\(31-08-2018\).pdf](http://www.nja.nic.in/Academic_Calendars/Academic_Calendar_2018-19_(31-08-2018).pdf) (Last visited on December 13, 2018).

¹²³ The Central Government has introduced a new cadre allocation policy where all of the States have been consolidated into five zones. Under it, candidates will have to give preference in descending order among all zones. Thereafter, the candidates will have to choose one cadre from each preferred zone. Similarly, the candidate will indicate their second cadre preference from the preferred zone and this cycle shall continue till all cadres are exhausted. *See*, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, *Office Memorandum*, September 5, 2017, available at <http://persmin.gov.in/aisl/Docs/cadre-policy2017.pdf> (Last visited on May 20, 2019)

¹²⁴ Niti Aayog, *supra* note 29, 181.

comprehensive in extent and effective in operation.¹²⁵ It covers the entire spectrum of administrative control and includes control over the conduct of District Judges,¹²⁶ promotions,¹²⁷ transfers,¹²⁸ and power to initiate disciplinary inquiries.¹²⁹ The concept of AIJS does not contemplate usurpation of the control vested by Article 235 in High Courts over the subordinate judiciary. It had been clarified by the Government that control of the High Court would remain intact under AIJS.¹³⁰ Albeit, the concept of AIJS does suggest a more concentrated version of the Central Selection Mechanism,¹³¹ suggesting a more substantial role for an independent body, it does not affect the constitutional powers of High Courts. The proposed body merely takes away the additional responsibilities of High Courts so that they can focus better on the judicial side and existing backlogs. The appointing authority will be in charge of the selection process till the TJOs join the service, thereby ensuring efficiency in the system. Once the selection process is over, the High Courts will resume its control over the AIJS appointees for all practical purposes like any ordinary officer of the State judiciary, in order to ensure independence from the executive. The High Court will consider the case of each judicial officer for the purpose of promotion, transfer, and disciplinary action.

It is imperative to note that the rules regarding the abovementioned activities of transfer, promotion and disciplinary action would be framed by the appointing authority in consultation with the Supreme Court of India, reducing the role of High Courts to the application of those rules to individual factual cases. This will ensure uniformity and certainty by eliminating arbitrary rules, the presence of which has been conspicuous. An aspersion was casted on AIJS by the National Commission to Review the Working of the Constitution (Justice Venkatchaliah Commission), that its creation may further erode the power of the State.¹³² Though the trepidation is unreasonable as the High Courts are already overworked on the judicial side leaving little attention and time to be spared for the lower judiciary, a balance should be maintained in the proposed system by retaining some powers with High Courts.

F. JUDICIAL INFRASTRUCTURE & REMUNERATIONS

Senior Advocate Rajeev Dhawan, elucidating Alexander Hamilton's remark in the Indian context has mockingly referred to the Indian courts as the

¹²⁵ Anil Kumar Vitthal Shete v. State of Maharashtra, (2006) 12 SCC 148; Chief Justice of A.P. v. L.V.A. Dixitulu, (1979) 2 SCC 34; AIR 1979 SC 193, 201; High Court of Judicature for Rajasthan v. P.P. Singh, (2003) 4 SCC 239; Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1.

¹²⁶ State of W.B. v. Nripendra Nath Bagchi, AIR 1966 SC 447.

¹²⁷ Joginder Nath v. Union of India, (1975) 3 SCC 459; AIR 1975 SC 511.

¹²⁸ State of Assam v. Ranga Muhammad, AIR 1967 SC 903.

¹²⁹ High Court of Punjab and Haryana v. State of Haryana, (1975) 1 SCC 843; AIR 1975 SC 613.

¹³⁰ Report on All India Judicial Service, *supra* note 16, 8, ¶3.3.

¹³¹ See *supra* text accompanying note 24.

¹³² The Commission was of the view that the All India Judicial Service would not be a better alternative than the present system. See Consultation Paper on All India Judicial Service, *supra* note 37.

“least expensive branch.”¹³³ The allocation for the administration of justice has always been an average of 0.4 percent of the total budgetary allocation, financially strangling the judicial wing.¹³⁴ If the Holy Grail is to be achieved, then it has to be kept in mind that more financial resources will have to be allocated to attract the best talent, fresh from law school. Moreover, the current financial and other perks that are given in reality to law officers are wholly inadequate for the proper functioning of the system.¹³⁵ There is a deficiency of 5,018 court rooms, 41,775 support staff for courts, and 8,538 residential accommodations for judicial officers, resulting in undesirable working conditions.¹³⁶ These indicators also have adverse consequences on the effectiveness of the courts and much of the blame can be attributed to the State Government’s ignorance. The Chief Justice of India, Ranjan Gogoi, rebuked the State of West Bengal for its lackadaisical approach towards providing court rooms and halls to its ill equipped State judiciary.¹³⁷

VII. CONCLUSION

The paramount object of the judiciary is to administer justice to the people, and to act as an instrument against oppression and unjustness. However, when courts inadvertently cease to discharge their role of dispensing justice, the nation begins its march towards anarchy. The faith of the populace in justice dispensation is a *sine qua non* for maintaining law and order in the society, and it is unfortunate that the masses of our country have completely lost their faith in the subordinate judiciary, which is often viewed as an impotent ideogram of justice. It is the need of the hour to adopt such measures that not only thwart the shortcomings but also send a message to the people at large, because trust in the legal system is elemental in the administration of justice.

The model proposed in the foregoing paragraphs for the creation of All India Judicial Services aims at creating such a system and the corresponding trust. Attempts have been made since independence to improve the state of affairs in lower courts but they, by and large, ended in failure. What has changed today from the past is that new blood is being infused by reformation in legal education, making law more professional. The time is ripe to take a decisive action regarding the other side of the bench to reform *katchehri*. It has become evident from

¹³³ Rajeev Dhavan, *LITIGATION EXPLOSION IN INDIA* 68 (1986).

¹³⁴ LiveLaw News Network, *Sidelined Again? Judiciary Gets Just Rs 1,744.13 Cr in Budget*, LIVE LAW, February 2, 2017, available at <https://www.livelaw.in/sidelined-judiciary-gets-just-rs-1744-13-cr-budget/> (Last visited on December 13, 2018).

¹³⁵ Report on Access to Justice, *supra* note 11, 5.

¹³⁶ *Id.*

¹³⁷ Mehal Jain, *Where will the Judges Sit and Work? SC Rebukes WB Govt. and Calcutta HC for Lackadaisical Approach towards the Severely-Inadequate Judicial Infrastructure in the State*, LIVE LAW, December 5, 2018, available at <https://www.livelaw.in/where-will-the-judges-sit-and-work-sc-rebuked-wb-govt-calcutta-hc-for-lackadaisical-approach-towards-the-severely-inadequate-judicial-infrastructure-in-the-state/> (Last visited on December 23, 2018).

unsuccessful bits and pieces of attempts made by the Supreme Court and other stakeholders, that it would take nothing short of an overhaul changing the face of the judiciary in its entirety. All India Judicial Services has been solicited by doyens of the Indian judiciary, such as the likes of M.C. Setalvad, Senior Advocate. K. Parasaran, Senior Advocate Salman Khursheed, H.R. Khanna J., D.A. Desai J., and B. Jeevana Reddy J. However, till date, AIJS has been a distant dream due to the opposition mounted by an inefficient Bar. In our opinion, advocates, blindfolded by their self-interest, have started to see the Higher Judicial Services as a contingency career insurance.

All the arguments given against the AIJS, in our opinion, are a facade. With the framework suggested in the foregoing article, AIJS has the capacity to make lower courts more efficient. Those who oppose the AIJS with fallacious arguments, such as that it would extinguish the control of High Courts, often forget that the control conferred upon High Courts is only a means to achieve the end and not an end in itself. The end is to ensure the rule of law and legal security for individuals in the most efficient way. The control was invested in the High Courts to ensure the independence of the lower judiciary from executive coercion,¹³⁸ but what good is an independent court to a litigant, when it lingers his case for fifteen to twenty years without any justification? The desideratum to discharge the duty comes before the requirement of discharging the duty 'independently'. While independence is also of paramount significance (and it is to that end in the above-stated proposed structure, that the control of the subordinate judiciary has been vested with the High Court) but in principle, independence should not be achieved at the cost of making system utterly inefficient.

It can be said that being recalcitrant about the utility of AIJS is not a one-stop solution to all of the problems that have excruciated the lower Courts, however, the truth is that it forms the heart of those reforms. It is yielded that it will have to be supplemented with quality legal education, proper infrastructure for courts, and a generous Collegium willing to give opportunity to judges of the lower judiciary. This consequence of having younger judges after implementing AIJS, who will be ripe for consideration for appointment to the High Court, was highlighted by the Justice Venkatachaliah Commission.¹³⁹ AIJS is a means to streamline the incomprehensible nexus of piecemeal Rules and patchwork judicial pronouncements, which have made the working of lower courts unreasonably labyrinthine. Debate regarding the AIJS has been alive for sixty years, not because it is a fancy theoretical project that engages the interest of scholars, but because it promises to realise a constitutional guarantee which has long been denied – the right to speedy justice.

¹³⁸ CONSTITUENT ASSEMBLY DEBATES, Vol. IX, September 16, 1949, *speech by* DR. B.R. AMBEDKAR.

¹³⁹ Consultation Paper on All India Judicial Service, *supra* note 37.