



All India Judicial Service

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This article is based on **“Will a national judiciary work?”** which was published in The Hindu on 06/07/2021. It talks about the arguments in favour and against the establishment of All-India Judicial Service.

The government of India has recently proposed to pass a bill to establish an All-India Judicial Service (AIJS) to recruit officers for subordinate courts through an entrance test.

The provision of an all-India judicial service (AIJS) on the lines of the Indian Administrative Service and the Indian Police Service was mooted soon after Independence.

In the present times, the idea of AIJS is being proposed in the **backdrop of judicial reforms**, especially to check persisting vacancies in judiciary and pendency of cases. The establishment of AIJS is a positive step, but faces many constitutional and legal hurdles.

Constitutional Perspective To AIJS

- The AIJS was first proposed by the 14th report of the Law Commission in 1958.
- The 42nd Constitutional amendment in 1976 amended Article 312 (1) empowering Parliament to make laws for the creation of one or more All-India Services, including an AIJS, common to the Union and the States.
- Under Article 312, Rajya Sabha is required to pass a resolution supported by not less than two-thirds of its members present and voting. Thereafter, Parliament has to enact a law creating the AIJS.

This means no constitutional amendment will be required for establishment of AIJS.

- The Supreme Court of India also endorsed the same in the All India Judges Association vs. Union of India' case (1993) laying down that AIJS should be set up.

Advantages of AIJS

- **Addressing Judges To Population Ratio:** A Law Commission report (1987) recommended that India should have 50 judges per million population as against 10.50 judges (then).
 - Now, the figure has crossed 20 judges in terms of the sanctioned strength, but it's nothing compared to the US or the UK — 107 and 51 judges per million people, respectively.
 - Thus, AIJS envisages to bridge the underlying gap in judicial vacancies.
- **Higher Representation of Marginalised Sections of Society:** According to the Government, the AIJS to be an ideal solution for equal representation of the marginalised and deprived sections of society.
- **Attracting Talent Pool:** The government believes that if such a service comes up, it would help create a pool of talented people who could later become a part of the higher judiciary
- **Bottoms-Up Approach:** The bottoms-up approach in the recruitment would also address issues like corruption and nepotism in the lower judiciary. It will improve the quality of justice dispensation in the lower levels of society.

Associated Challenges

Dichotomy Between Articles 233 and 312: As per Article 233, recruitment to subordinate judiciary is the prerogative of the State.

- Due to this, many states and high courts have opposed the idea on the ground that it would go against federalism.
- If the fundamental power of the States to make such rules and govern the appointment of district judges is taken away, it may be against the principle of federalism and the basic structure doctrine.

Note

Article 233(1) of the Constitution lays down that “appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State”.

- **Language Barrier:** Since cases in lower courts are argued in local languages, there have been apprehensions as to how a person from north India can hold hearings in a southern state.

Thus, another fundamental concern regarding AIJS is the language barrier.
- **Constitutional Limitation:** Clause 3 of Article 312 places a restriction that AIJS shall not include a post inferior to that of a district judge.

Thus, appointment of subordinate judiciary through AIJS, may face a constitutional barrier.

- **Dilution of Administrative Control of High Court:** Creation of AIJS would lead to an erosion of control of the High Courts over the subordinate judiciary, which might affect the judiciary's independence.

Conclusion

The insurmountable number of pending cases calls for establishment of a recruitment system that recruits efficient judges in large numbers for speedy dispensation of cases. However, before AIJS gets into the legislative framework, there is a need to build consensus and take a decisive step towards the AIJS.

Drishti Mains Question

The establishment of All India Judicial Service is a positive step but faces many constitutional and legal hurdles. Discuss.