



Mains Marathon

Day 34: "The creation of All-India Judicial Service (AIJS) appears to be an urgent necessity given the growing backlog of court cases". In this context discuss the advantages and issues with the implementation of the All-India Judicial Service (AIJS)? (250 Words)

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Approach / Explanation / Answer

- Start your answer by giving a brief introduction about All-India Judicial Service (AIJS).
- Discuss the advantages of All-India Judicial Service (AIJS).
- Discuss the issues with the All-India Judicial Service (AIJS).
- Write an appropriate conclusion.

Answer:

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 the 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:** India has the shortage of judges in the judiciary which leads to arrears of work. Thus, AIJS envisages bridge the underlying gap in judicial vacancies.
- **Higher Representation of Marginalized Sections of Society:** According to the Government, the AIJS to be an ideal solution for equal representation of the marginalized 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 bottom-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.

- **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.
- **Ease of Doing Business:** The government has targeted the reform of lower judiciary in its effort to improve **India's Ease of Doing Business ranking**, as efficient dispute resolution is one of the key indices in determining the rank.

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.
- **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 the 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.

The insurmountable number of pending cases calls for the 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.

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