

1. Judicial legislation leads to the rise of unelected individuals in a democratic country like India. Evaluate?

Judicial legislation refers to the judiciary creating new legal norms or principles through their decisions. This practice can be controversial in democracies like India, where legislative powers are vested in elected representatives.

Judicial Legislation Leading to the rise of Unelected Individuals

1. Undermines Democratic Principles

- **Lack of Representation:** Judges are not elected by the public, raising concerns about the legitimacy of their law-making powers.
- ✓ **Example:** The case of *Vishakha v. State of Rajasthan* (1997) where the Supreme Court laid down guidelines for sexual harassment at the workplace, effectively creating new law.
- **Separation of Powers:** Judicial legislation blurs the lines between the judiciary and legislature, potentially disrupting the balance of power.
- ✓ **Example:** Article 50 of Directive Principles of State Policy (DPSP) emphasize the separation of judiciary from the executive to preserve independence.

2. Lack of Accountability

- **No Direct Accountability:** Judges are not accountable to voters, unlike elected representatives, which can lead to decisions that may not reflect the public's will.
- ✓ **Example:** The National Judicial Appointments Commission (NJAC) was struck down by the Supreme Court in 2015, raising debates on judicial accountability.
- **Irrevocable Decisions:** Judicial decisions can have long-lasting impacts, and reversing them can be a complex process.
- ✓ **Example:** *Golaknath v. State of Punjab* (1967) where the Supreme Court ruled that Parliament could not amend fundamental rights, a decision later reversed by the 24th Amendment.

3. Judicial Overreach

- **Encroachment on Legislative Domain:** Courts may overstep their bounds, taking on roles meant for the legislature.
- ✓ **Example:** The Supreme Court's order in the ban on sale of liquor near highways (2016) impacted policy decisions meant for the legislature.
- **Policy Making:** Judges may make decisions that are more appropriately within the realm of policy-making, a function of the legislature.

Judicial legislation does not give rise to unelected individuals.

1. Protection of Rights

- **Safeguarding Fundamental Rights:** Courts often step in to protect rights and freedoms when the legislature fails to act.
- ✓ **Example:** *Navtej Singh Johar vs Union of India* (2018) where the Supreme Court decriminalized homosexuality, protecting individual rights.
- **Addressing Legislative Inaction:** Judicial interventions can address gaps where legislative actions are insufficient or absent.
- ✓ **Example:** Article 21 Right to life and personal liberty, often expanded by the judiciary to include various rights like privacy (*Justice K.S. Puttaswamy v. Union of India*, 2017).

2. Ensuring Justice

- **Timely Interventions:** Judicial decisions can provide immediate remedies in urgent situations, promoting justice and fairness.

- ✓ **Example:** *Maneka Gandhi v. Union of India* (1978) expanded the interpretation of Article 21 to ensure fair treatment.
- **Correcting Legislative Failures:** Courts can correct unjust or outdated laws, ensuring they align with contemporary values and constitutional principles.
- ✓ **Example:** *Shayara Bano v. Union of India* (2017) where the Supreme Court declared triple talaq unconstitutional, correcting legislative inaction.

3. Checks and Balances

- **Preventing Abuse of Power:** Judicial review acts as a check on the executive and legislative branches, preventing potential abuses of power.
- **Strengthening Democracy:** By ensuring laws adhere to constitutional norms, the judiciary strengthens democratic governance.
- ✓ **Example:** The Basic Structure Doctrine (*Kesavananda Bharati v. State of Kerala*, 1973) ensures that the fundamental framework of the Constitution cannot be altered.

Judicial legislation, while pivotal for safeguarding fundamental rights and addressing legislative lacunae, must be exercised with judicial restraint to avoid undermining democratic ethos and the principle of separation of powers. A balanced approach, respecting constitutional propriety and judicial prudence, can help maintain the integrity of both the judiciary and the legislature in India's constitutional democracy.

2. Discuss the concept of All India Judicial Services (AIJS) and its intended benefits for the Indian judiciary. What are the challenges and opposition faced in implementing AIJS?

The concept of All India Judicial Services (AIJS) aims to create a centralized cadre of judicial officers to ensure uniform standards in the judiciary across India. Proposed under Article 312 of the Indian Constitution, AIJS seeks to address issues like vacancies, quality of judiciary, and delays in justice delivery.

Intended Benefits of AIJS

1. Uniformity in Standards:

- Ensures uniform recruitment, training, and service conditions for judicial officers across states, enhancing the quality of the judiciary.
- **Example:** Similar to the Indian Administrative Service (IAS), AIJS aims to bring consistency in judicial functioning nationwide.

2. Addressing Vacancies:

- Helps in filling the large number of vacancies in the lower judiciary, reducing the burden on the judicial system.
- **Example:** The Law Commission of India highlighted over 5,000 vacancies in subordinate courts.

3. Improved Quality of Judges:

- Ensures that only the most competent candidates are selected through a rigorous and standardized selection process.

4. Reduction in Backlog:

- With more judges in place, the backlog of cases can be addressed more effectively, ensuring timely justice delivery.
- **Example:** As per the National Judicial Data Grid (2021), over 3.5 crore cases are pending in Indian courts.

Challenges and Opposition Faced in Implementing AIJS

1. Federal Structure Concerns:

- States fear loss of control over the appointment and administration of their judiciary, impacting federal autonomy.
- **Example:** Article 233 of the Indian Constitution gives state governments the authority to appoint district judges.

2. Language and Local Laws:

- Judges from different states may face difficulties in dealing with local languages and laws, affecting the quality of justice.
- Example: Each state has unique legal traditions and linguistic nuances that may pose challenges for AIJS officers.

3. Resistance from State Judiciary:

- The existing state judiciary may resist the implementation of AIJS, fearing dilution of their powers and influence.
- Example: High Courts have voiced concerns about losing their role in judicial appointments.

4. Recruitment and Training Issues:

- Establishing a robust recruitment and training framework for AIJS is challenging and requires significant resources.

5. Potential Bureaucratization:

- There are fears that AIJS could lead to the bureaucratization of the judiciary, undermining judicial independence.

Balancing federal concerns, addressing language and local law issues, and ensuring judicial independence are crucial for the successful implementation of AIJS. Careful planning, consultation with stakeholders, and phased implementation can help overcome these challenges and enhance the efficiency and effectiveness of the Indian judiciary.