Updated Value Addition Material 2020

POLITY & CONSTITUTION

SUPREME COURT
SUPREME COURT

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1. Introduction

1.1. Evolution of Indian Judicial System

The history of the present judicial system may be traced back to the 18th century, when the British started to establish their control in India. The promulgation of Regulating Act of 1773 established the Supreme Court at Calcutta as a Court of Record, with full power & authority. It was established to hear and determine all complaints for any crimes and also to entertain, hear and determine any suits or actions in Bengal, Bihar and Orissa. Further, two Supreme Courts were established at Madras and Bombay in 1800 and 1823 respectively.

In 1861, the Indian High Courts Act was enacted, and steps were taken to establish High Courts at Calcutta, Madras and Bombay. The Supreme Courts established earlier were abolished. These High Courts remained the highest courts in both civil and criminal jurisdictions.

Finally, in 1935, the Federal Court of India was established under the Government of India Act 1935. After Independence, the Supreme Court of India was inaugurated on January 28, 1950 succeeding the Federal Court of India.

1.2. Conceptual basis of Indian Judicial System

The Indian Constitution is founded upon the doctrine of separation of powers. As per this doctrine there are three organs viz., Legislature, Judiciary and Executive and all these three organs should discharge their functions independently, none should encroach one upon another. The Judiciary has the task to act as a watchdog and to check whether the executive and the legislature are functioning within their limits under the constitution and not interfering in each other’s functioning. Thus, there are checks and balances in Indian model of separation of powers.

The present Indian Law is largely derived from English common law which was first introduced by the British when they ruled India. Various Acts and Ordinances which were introduced by the British are still in effect today.

1.2.1. Procedure established by Law vs. Due process of Law

The doctrine of ‘Procedure established by Law’ originated in England. It literally means “according to usages and practices as laid down by the statute”. Under this doctrine, the court examines a law from the view of the legislative competence and whether the prescribed procedure has been followed by the legislature while passing the law.

If an action of the executive is challenged before a court of law seeking protection from it then the court will subject the action of executive to following test:

a) Whether there exists a law that authorizes the executive to take such an action; and
b) Whether the legislature was competent to pass such a law; and

c) Whether the legislature followed the established procedure while enacting the law.

If the above tests are satisfied the court will uphold the executive action. The court will not go behind the fair and just nature and reasonableness of the law and cannot declare the law as unconstitutional however arbitrary or oppressive the law may be unless the law was passed without procedural formalities. Thus, the doctrine relies more on the good sense of legislature and the strength of the public opinion in the country. Therefore, this doctrine confers limited powers on the judiciary, which can extend protection for individual only against arbitrary actions of the executive and not against arbitrary actions of the legislature.

On the other hand, doctrine of ‘Due process of law’, which originated in USA confers wider power in hands of judiciary. According to this, if an executive action is challenged before a court of law, then apart from putting the action of the executive to above three tests, the court will also examine the law from the broader angle of inherent goodness of the law by applying the
**principles of natural justice.** Due process of law means that the law passed by the legislature shall also have to be fair, just and reasonable and not fanciful, oppressive and arbitrary. The US Supreme court, while following due process of law, can declare laws violative of rights of citizen not only on substantive grounds of being unlawful but also on procedural grounds of being unreasonable. Thus, it extends protection to an individual against the arbitrary action of both the executive and the legislature.

The India Constitution, under Article 21 provides only for procedure established by law. However, the Supreme Court in Maneka Gandhi vs. GOI, 1978 case interpreted the constitution to include the doctrine of due process of law under it by incorporating the principles of natural justice under Article 21.

**1.2.2. Principle of Natural justice**

There are three rules that govern the principle of natural justice

a) No man should be punished without being heard.

b) No man shall be judge of his own case.

c) An authority shall at bona-fide (in good faith) without any bias.

The object of principles of natural justice is to exclude the chances of arbitrariness and assures a certain degree of fairness in the process of decision making. It demands that actions must be supported by reasons. They aim to humanize the decision-making process. They are based upon human rationality and are universal in nature.

The Supreme Court has ruled that the Principles of Natural Justice are binding on all authorities, including individuals and judiciary itself. Though, they are not incorporated explicitly in our Constitution, but still they are an inherent feature of it. In Maneka Gandhi vs. GOI, 1978 case the Supreme Court held that principles of natural justice are inherently found under Article 21(right to life) of the Constitution and the legislature is bound by the ‘due process of law’. In the Central Inland Water Transport Corporation Ltd. vs. Brojo Nath Ganguly, 1986 case the Supreme Court held that the rules of natural justice are implicit to the right of equality under Article 14. They are one of the principles over which the constitution has been founded. They are so pervasive in the Constitution that they can be regarded as a part of basic structure of the Constitution.

**2. Organisation of Judicial system**

**2.1. General Structure of Judicial System**

Indian Constitution has established an integrated judicial system with Supreme Court at the top, followed by high courts and subordinate courts. This unified judicial system enforces both central laws as well as state laws. This integrated judicial system of India has been adopted from the Government of India Act, 1935.

Articles 124 to 147 of the Indian Constitution deal with organization, independence, jurisdiction, powers, procedures etc. of the Supreme Court. Parliament has the power to make laws regulating constitution, organization, jurisdiction, and powers of the Supreme Court.
The architecture of subordinate judiciary varies across states and are broadly classified as shown in the above figure. At the lowest stage, two branches of justice-civil and criminal are bifurcated. The Panchayat courts are functioning in civil and criminal areas under various regional names like Nyaya Panchayat, Panchayat Adalat, Gram Kutchery etc.

2.2. Seat of Supreme Court

The Constitution of India declares Delhi as the seat of the Supreme Court. But, it also authorises the Chief justice of India to appoint other place or places as seat of the Supreme Court, but only with the approval of the President. This provision is only optional and not compulsory. This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as a seat of the Supreme Court.

2.2.1. Demand of Regional Bench of Supreme Court

Over the period of time, various expert committees have observed the need of regional benches of Supreme Court. The Standing Committees of Parliament recommended in 2004, 2005, and 2006 that Benches of the court be set up elsewhere. In 2008, the Committee suggested that at least one Bench be set up on a trial basis in Chennai.

The Law commission had recommended the division of the Supreme Court into 1) Constitutional court and 2) National court of appeal. It recommended that a Constitution Bench be set up in Delhi to deal with constitutional and allied issues, and four regional Benches in Delhi (north), Chennai/Hyderabad (south), Kolkata (east) and Mumbai (west) to deal with all appellate work arising out of the orders/judgments of the High Courts.

Recently, the Vice President of India has suggested setting up of four Regional Benches of the Supreme Court.

Need for Regional Benches

- Constitutional obligation: Article 39-A directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other
disabilities. Thus, it is essential to ensure that the additional transaction cost of litigation for people of north-eastern states or southern states should be minimal.

- **High pendency of cases:** More than 65,000 cases are pending in the Supreme Court, and disposal of appeals takes many years.

- **Litigation as a measure of well-being:** An empirical study on litigation in India, finds that there is direct correlation between civil case filing and economic prosperity (more prosperous states have higher civil litigation rates). However, in recent years civil case backlog has discouraged civil case filings which may impact India’s future economic growth. Thus, setting up regional bench is a step-in right direction.

- **Higher accessibility:** The accessibility to SC due to its seat in Delhi is less, especially to the poor and those living in far-off places like north-east.

**Issues associated with setting up of regional benches**

- **Dilute the authority of Supreme Court:** Setting up of regional benches may dilute superiority of the Supreme Court’s decisions.
  - However, critics argue that many High Courts in this country have different Benches for meting out justice without ‘justice’ being ‘diluted’. For example, the Bombay High Court has four Benches, in Mumbai, Aurangabad, Nagpur and Panaji (Goa).
  - Also, with the decentralisation being both functional and structural in nature, with only the bench in Delhi dealing with constitutional matters, such concerns may be put to rest.

- **Affect integrated judiciary system:** The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it. The setting up of regional court may dilute this unitary character. In 2010, the Full Court, comprising 27 judges and headed by Chief Justice of India had rejected law commission recommendation for regional Benches citing this reason.
  - However, it has been argued that High Court having different branches has not diluted the integrated judiciary system.

With the rising arrears of cases and practical difficulties being faced by poor litigants, it is about time that the idea of setting up regional benches be explored seriously. Setting up regional benches of the Supreme Court dealing with appeals and a constitutional bench in Delhi is the best way forward.

### 2.2.2. National Court of Appeal (NCA)

The **National Court Appeal** with regional benches in Chennai, Mumbai and Kolkata will be meant to act as final court of justice in dealing with appeals from the decisions of the High Courts and tribunals within their region in civil, criminal, labour and revenue matters.

The **Supreme Court**, as early as in 1986, had recommended establishment of National Court of Appeal. In **V. Vasantha Kumar case, 2016** the Supreme Court referred the matter to a Constitutional Bench for decision on the National Court of Appeal.

Currently, the Supreme Court is **overburdened** with work, much of which comprises appeals from lower courts. Due to this, it is not able to fulfill its primary duty of deciding upon constitutional matters and acting as the final interpreter of the Constitution.

In such a scenario, a much-relieved Supreme Court of India situated in Delhi **would only hear matters of constitutional law and public law.** This is significant as, the number of decisions by Constitutional benches has drastically come down; from about 15% of total decided cases in 1950s to a worryingly paltry 0.12% in last decade.

However, this would fundamentally change the character of Supreme Court, its constitution and also its aura as the Apex court. It would require amending **Article 130** which might not stand the test of basic structure.
Way Forward

National Court of Appeal is a drastic measure, a last resort with lots of practical problems. Till then other measures need to be taken to address the issue - like reducing appellate burden (rationalization of Special Leave Petitions, subordinate judiciary reforms, improving judicial strength, quality, infra etc). For proximity issue benches of SC like that of HC can be set up in 4 important cities.

2.3. Comparison with American Supreme Court

There is a fundamental difference in Indian and American judicial system, as India has a unified judicial system while American judicial system is segregated on federal principle. Still, there are striking similarities due to the democratic setup of polity. These can be seen as:

<table>
<thead>
<tr>
<th></th>
<th>Indian Supreme Court</th>
<th>American Supreme Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Jurisdiction</td>
<td>It is confined to federal cases.</td>
<td>It covers not only federal cases but also cases relating to naval forces, maritime activities, ambassadors, etc.</td>
</tr>
<tr>
<td>Appellate Jurisdiction</td>
<td>It covers constitutional, civil and criminal cases.</td>
<td>It is confined to constitutional cases only.</td>
</tr>
<tr>
<td>Advisory Jurisdiction</td>
<td>It has advisory jurisdiction.</td>
<td>It has no advisory jurisdiction.</td>
</tr>
<tr>
<td>Judicial Review</td>
<td>It defends rights of the citizen according to the ‘procedure established by law’. Thus, its scope of judicial review is limited.</td>
<td>It defends rights of the citizen according to the ‘due process of law’. Thus, its scope of judicial review is wide.</td>
</tr>
<tr>
<td>Change in Jurisdiction</td>
<td>Its jurisdiction and powers can be enlarged by Parliament.</td>
<td>Its jurisdiction and powers are limited to that conferred by the Constitution.</td>
</tr>
<tr>
<td>Control over subordinate courts</td>
<td>It has power of judicial superintendence and control over state high courts due to integrated judicial system.</td>
<td>It has no such power due to double (or separated) judicial system.</td>
</tr>
</tbody>
</table>

Apart from these, the Supreme Court of India has extraordinary power of special leave to entertain appeals without any limitation upon its discretion, from a decision not only of court but also of any tribunal within territory of India. American Supreme Court doesn’t possess such power.

3. Judges of Supreme Court

3.1. Appointment of Judges

3.1.1. Eligibility

A person shall not be qualified for appointment as a Judge of the Supreme Court unless:

1. He is a citizen of India; and
2. He should satisfy one of the following-
   a) He has been judge of a High Court (or of two or more such Courts in succession) for at least five years, or
   b) He has been an Advocate of a High Court (or of two or more such Courts in succession) for at least ten years, or
   c) The person is a distinguished jurist in the opinion of President.

Article 145(3) mandates that minimum 5-judge bench should sit to decide a matter involving ‘substantial question of constitutional law’. Clearly, this mandate is not being followed. For e.g. the Naz Foundation case involving the question of decriminalization of homosexuality, Shreya Singhal case dealing with the illegality of section 66A of IT Act were all decided by 2-judge benches.
It may be noted that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court, nor any fixed period of office. Further, a Judge of a High Court or a retired Judge of the Supreme Court or High Court may be appointed as an ad-hoc Judge of the Supreme Court.

### 3.1.2. Procedure of Appointment

#### Background

The Constitution of India under Article 124 states that

- **Chief Justice of India (CJI)** - is appointed by the President after consulting such judges of the Supreme Court and High Courts as the President deems necessary.
- **Judges other than CJI** - are appointed by the President after consulting with the Chief Justice of India and other SC and HC judges as he considers necessary.

Initially, the Executive had a primacy and role of Judiciary was more advisory, as the word consultation was not binding on the President. Subsequently, the Supreme Court has given different interpretation of the word ‘consultation’ in the three Judges cases. As a result of this, the word ‘consultation’ has more or less acquired the meaning of ‘concurrence’.

#### 3.1.2.1. Collegium System

The Supreme Court created the Collegium system where a committee of the Chief Justice of India, four senior judges of the Supreme Court take decisions related to appointments and transfer of judges in the Supreme Court.

The appointment of Chief Justice of India is done in accordance with the Second Judges case (1993), in which the SC ruled that the senior-most judge should alone be appointed to the office of CJI.

<table>
<thead>
<tr>
<th>Three Judge Cases</th>
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<tbody>
<tr>
<td>• <strong>First Judges Case</strong>, 1981 or S P Gupta Case: The Supreme Court ruled that the recommendation made by the CJI to the President can be refused for ”cogent reasons”, thereby giving greater say to executive.</td>
</tr>
<tr>
<td>• <strong>Second Judges Case</strong>, 1993: It is also known as Supreme Court Advocates-on Record Association vs Union of India. CJI only need to consult two senior-most judges over judicial appointments and transfers. However, on objection raised by executive on appointment, Collegium may or may not change their recommendation, which is binding on executive.</td>
</tr>
<tr>
<td>• <strong>Third Judges Case</strong>, 1998: On the Presidential Reference, the SC gave its judgement. CJI should consult with four senior-most Supreme Court judges to form his opinion on judicial appointments and transfers.</td>
</tr>
</tbody>
</table>

#### Issues with Collegium System of Appointment

- **View of Constituent Assembly**: It had rejected the proposal to vest the Chief Justice with veto power over appointments.
- **Violation of constitutional Provision**: According to 214th Law commission of India Collegium is a clear violation of Article 74 of the Constitution of India which demand President to act on the aid and advice of the Council of Ministers.
- **Undemocratic**: Collegium system is non-transparent and closed in nature as there exists no system of checks and balances which is essential to a democracy.
- **Disturbing Balance of Power** by the Second Judges case as provided by the constitution between executive and judiciary.
- **Uncle Judges Syndrome**: Law Commission in its 230th report said that nepotism, corruption and personal patronage is prevalent in the functioning of the collegium system
- **Merit vs Seniority**: There have been numerous cases where people with better qualifications and better track records have been sidelined to make way for someone incompetent due to seniority rule.
3.1.2.2. National Judicial Appointment Commission (NJAC)

- The government had established National Judicial Appointment Commission by way of 99th Constitutional Amendment.
- It was proposed constitutional body to replace the Collegium system of appointing judges.
  - It was envisaged as an independent commission to appoint and transfer judges of High Court and appoint judges of Supreme Court of India.
  - It was composed of three senior judges, two eminent outsiders and the Law Minister.
- However, before it was notified, it was challenged in Supreme Court as an attempt by government to interfere with the independence of the judiciary.
Supreme Court’s verdict

- The Court struck down the amendment and concluded that NJAC did “not provide an adequate representation, to the judicial component”.
- The new provision in Constitution are insufficient to preserve the primacy of the judiciary in the matter of selection and appointment of Judges
- It was held that the amendment impinged upon the principles of “independence of the judiciary”, as well as, the “separation of powers”.

Primacy of the judiciary is required as

- Government is major litigant: Since the government is a major litigant, giving it an edge in appointments would amount to fixing the courts.
- Independence of Judiciary: It has been regarded as basic structure of constitution and NJAC was termed as violating the independence of judiciary
- To enable Separation of Powers between executive and judiciary as directed by Constitution of India.
After quashing the proposed National Judicial Appointments Commission, Supreme Court’s Constitution Bench had asked the Centre to consult the CJI for drafting the new memorandum for appointments of judges to the higher judiciary. Acting on the above a Group of Ministers (GoM) headed by External Affairs Minister had finalized the new Memorandum of Procedure (MoP) for appointment of Judges

3.1.2.3. Memorandum of Procedure (MOP):

The government drafted a Memorandum of Procedure in 2016 to set a fresh set of guidelines for making appointments to the higher judiciary. However, there is lack of agreement between government and judiciary as of now.

The procedure of appointment judges by promotion under the MOP has been depicted in the infographic.

Significance of MOP

- It seeks to introduce performance appraisal as a standard for appointing chief justices of high courts and Supreme Court judges.
- It proposes that for appointment of judges in the Supreme Court, the “prime criteria” should be “seniority as chief justice/judge of the high court”.
- The MoP states that up to three judges in the Supreme Court need to be appointed from among the eminent members of the Bar and distinguished jurists with proven track record in their respective fields.
- The Union Law Minister should seek the recommendation of the incumbent CJI for appointment of his successor at least one month prior to his retirement.
- A notice for vacancies of judges should be put up on the website of the high courts at the beginning of the year for appointments.
- National security and public interest have been included as the new ground of objection to appoint a candidate as a judge. If the government has objections on the ground of national security and public interest, it will convey the same to the collegium. The collegium will then take a final call.
3.1.2.4. SC Collegium Proceedings in Public Domain:

Background
Supreme Court collegium decided that it would upload its decisions on the appointment and transfer of judges of the Supreme court and High Courts on the Supreme Court’s website. These details would be available as collegium resolutions. This means every time the collegium forwards the names of candidates to the government for appointment as judges, it would automatically place the names and the reasons for the recommendation before the public.

Rationale behind the decision
- **Moral Obligation**: The Judiciary fulfilled its moral obligation especially after it struck down NJAC.
- **Right to Information**: The proactive disclosure by the judiciary is a welcome step in spirit of Right to Information act, 2005.
- **Openness in procedure**: It not only means openness in the functioning of the executive arms of the state but also in judicial apparatus including judicial appointments and transfers.
  - This is expected to counter allegations that the collegium has, under political pressure, cleared the names of individuals who turned out to be inefficient and sometimes corrupt.
- **Right to know**: The step strengthens democratic processes and fundamental right of freedom of speech as the right to know is an inherent part of it. The secretive collegium system was violating that till now.

Criticism
- **Limited Transparency**: The decisions should be made public on the websites ideally, at the stage when the High Court makes the recommendation not after when the process is complete when nothing can be done.
- **Lack of clear criteria**: Eligibility criteria to judge the performance and suitability must be formulated objectively and must be made public. The reasons for appointment or non-appointment can be only understood well only in the context of that criteria.
- **Personal and Professional Reputation**: Rejection of candidatures on the ground of “unsuitability” may dent their professional and personal reputations as they are either serving judicial officers or eminent lawyers.

What should be done in future?
- **Power Balance**: Law Commission, in its 2008 and 2009 reports, suggested that Parliament should pass a law restoring the primacy of the CJI, while ensuring that the executive played a role in making judicial appointments.
- **System to ensure judicial primacy but not judicial exclusivity**: The new system should ensure independence, accommodate the federal concept of diversity, demonstrate professional competence and integrity. The trend across liberal, constitutional democracies is towards such a commission which preserves judiciary’s primacy while also divorcing its membership from the executive.
- **Criteria for Appointment**: Eligibility criteria to judge the performance and suitability must be formulated objectively and must be made public. The reasons for appointment or non-appointment can be only understood well in the context of such a criterion. Recently Supreme Court Collegium has decided to put all its recommendations in Public Domain indicating the reasons.
- **Early Finalisation of Memorandum of Procedure (MoP)**: SC in Justice Karnan case underlined the need to revisit the process of selection and appointment of judges to the constitutional court.
3.1.3. Other Judges of Supreme Court

3.1.3.1. Acting Chief Justice of India (Article 126)

In case the office of the Chief Justice is vacant or the CJI is temporarily absent or is unable to perform his duties, the President can appoint a judge of the Supreme Court as an acting Chief Justice of India.

3.1.3.2. Ad hoc Judges (Article 127)

In case of a lack of quorum of the permanent judges to hold or continue any session of the Supreme court, the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period, provided the judge so appointed should be qualified for appointment as a judge of the Supreme court and this can be done only after consulting with the Chief justice of the concerned High Court with the prior consent of the President. It is the duty of the judge so appointed to attend the sitting of the Supreme Court, in priority to other duties of his office and while so attending he enjoys all the jurisdiction, powers and privileges of a judge of the Supreme Court.

3.1.3.3. Retired Judges (Article 128)

The Chief Justice of India can request a retired judge of the Supreme Court or High Court to act as a judge of the Supreme Court for a temporary period. The President’s previous consent is necessary. Such a person will enjoy all the jurisdiction, powers and privileges of a Supreme Court Judge. But he will not otherwise be deemed to be a judge of the Supreme Court.

3.1.4. Number of Judges for Supreme Court

Originally, under Article 124 of the Indian Constitution the strength of Supreme Court was fixed at eight (one chief justice and seven other judges).

- Article 124 (1) provides the power to the Parliament to increase the number of judges if it deems necessary.
- The Parliament through the Supreme Court (Number of Judges) Act, 1956 increased the strength of Supreme Court to ten. The Act was last amended in 2009 to increase the judges’ strength from 25 to 31.
- Recently, Parliament has passed the legislation to increase the sanctioned strength of the Supreme Court from 31 to 34 including the Chief Justice of India.

3.2. Oath of Judge

A person appointed as a judge of the Supreme Court, before entering upon his Office, has to make and subscribe an oath or affirmation before the President, or some person appointed by him for this purpose.

In his oath, a judge of the Supreme Court swears:

- to bear true faith and allegiance to the Constitution of India;
- to uphold the sovereignty and integrity of India;
- to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will; and
- to uphold the Constitution and the laws.

3.3. Salary and Allowances

Article 125 of the Indian Constitution leaves it to the Indian Parliament to determine the salary, other allowances, leave of absence, pension, etc. of the Supreme Court judges. However, the Parliament cannot alter any of these privileges and rights to the judge’s disadvantage after his appointment. Salaries, allowances and pensions of the judges of Supreme Court are charged on the Consolidated Fund of India and are non-votable by the Parliament.
3.4. Tenure

Once appointed, a Judge of the Supreme Court may cease to be so on happening of any one of the following contingencies (other than death)

(a) On attaining the age of 65 years.
(b) On resigning by addressing his resignation to the President.
(c) On being removed by the President by the procedure prescribed in Article 124(4) (impeachment) of the Constitution of India on ground of proved misbehaviour or incapacity.

3.5. Removal of Judges

Background

The Constitution of India under Article 124(4) states that a Judge of Supreme Court can be removed only by the President on ground of ‘proved misbehaviour’ or ‘incapacity’ only after a motion to this effect is passed by both the Houses of Parliament by special majority.

The Constitution also requires that misbehaviour or incapacity shall be proved by an impartial Tribunal whose composition is decided under Judges Enquiry Act 1968.

Issues in removal

- **Lack of Enforcement**: The Act has only been invoked three times since 1950.
  - Interestingly, no judge of the SC or HC has been impeached so far. The few cases taken up by the Parliament were Justice V. Ramaswami (1991-93), Justice Soumitra Sen, Justice P.D. Dinakaran.
  - Recently, Chief Justice of India has written to Prime Minister to initiate a motion for removal of a judge of Allahabad High Court.

- **Lack of Clarity**: The law does not define what misbehaviour is and hence ultimately fails to recognize the wide range of misbehaviour.

- **Lack of Transparency**: The proceedings are wrapped in secrecy and the judge continues to hold the post.
  - Both the Constitution and the Judges (Inquiry) Act of 1968 are silent on whether a judge facing impeachment motion should recuse from judicial and administrative work till he is cleared of the charges against him.
  - The Judge under investigation is not prohibited from discharging his duties in court of law.

- **Cumbersome Process**: Impeachment process is tedious and lengthy, judges have virtually no accountability.

- **It also involves political considerations**: Only Parliament can take cognizance of a case of a tainted judge. No space is given to a common man. For example, the Congress abstained
from voting on the resolution when the motion for removal of Justice V. Ramaswami was moved in 1993 resulting in failure of the process.

- **Judiciary removing itself**: Contempt of court ruling may amount to removing him as a judge, thus, amounting to judicially-ordered impeachment.

<table>
<thead>
<tr>
<th>Can chairman reject impeachment motion?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 3 of Judges (Inquiry) Act, 1968,</strong> says the presiding officer may admit or refuse to admit the motion after holding consultations with such persons as he thinks fit, and considering the material before him.</td>
</tr>
<tr>
<td>Earlier also impeachment motions having been shot down. For e.g.: motion moved against Supreme Court judge J.C. Shah was rejected by the then Lok Sabha Speaker, G.S. Dhillon, in 1970.</td>
</tr>
<tr>
<td>The job of the Chairman is not just procedural to see the required no of signatures but to also see whether there is a prima facie case, whether the notice for motion is based on substantial grounds, before admitting or rejecting.</td>
</tr>
<tr>
<td>Even mere admission of an impeachment motion can cause incalculable damage to reputation in this perception-driven world. Thus, motion needs to be admitted very carefully.</td>
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**What should be done in future?**

- **Bringing a new Judicial standards and accountability bill** along the lines of Judicial Standards and Accountability Bill 2010 (which lapsed) to establish a set of legally enforceable standards to uphold the dignity of superior judiciary and establish a new architecture to process the public complaints leveled against the judges.
  - The **Judges (Inquiry) Bill, 2006** also proposed establishment of a National Judicial Council (NJC) to conduct inquiries into allegations of incapacity or misbehaviour by High Court and Supreme Court judges.
- **Appointment**: the collegium should take adequate safeguards so that only judges of high caliber and impeccable integrity are appointed to the higher courts. This requires infusion of greater transparency in the selection of judges.
- **Greater Internal regulation**: There were several instances where the Judge behaved inappropriately, disciplinary actions should have been taken promptly at very first instance of such misconduct. For this, a **National Judicial Oversight Committee** should be created by parliament which shall develop its own procedures to scrutinizing the complaints and investigation. The composition of such committee should not affect judicial independence.

**4. Procedure of Supreme Court**

The Supreme Court can make rules regulating the general practice and procedure to be followed by court, which are **only subject to laws made by Parliament and the Constitution**.

- The **constitutional cases** or references made by the President under **Article 143** (advisory jurisdiction of Supreme Court) are decided by a bench consisting of atleast five judges (constitutional bench). All other cases are usually decided by a bench consisting of not less than three judges.
- The judgements are delivered by the **open court**.
- All judgements are by **majority vote** but if differing, then judges can give dissenting judgements or opinions.
- The law declared by the Supreme Court is **binding on all courts** within the territory of India.
- All authorities, civil & judicial, in the territory of India, are required to act in aid of the Supreme Court
- The Chief Justice of India has an exclusive power in the matter of appointment of officers and servants of the Court and administrative expenses of Supreme Court, including all salaries, allowances and pensions payable to or in respect of officers and servants of the Court is charged upon the consolidated fund of India.
5. Independence of Supreme Court

Independence of Supreme court judge is secured in a number of ways. Some of them are as follows:

- The Judges of Supreme Court are appointed by the President in consultation with the collegiums headed by the Chief Justice of Supreme Court.
- By laying down that Judges of Supreme Court shall not be removed except by an order of President after an address by the Parliament (supported by majority of the membership of the house and not less than two thirds of the members present and voting) is presented to him. (Art.124(4))
- The salaries, allowances, privileges, leave and pension of judges of Supreme Court are determined from time to time by Parliament. They cannot be varied to the disadvantage of the judges.
- The salaries, allowances and pensions of the staff are charged on the Consolidated Fund of India and thus are non-votable by the Parliament. (Art. 146)
- The conduct of judges in the discharge of their duties cannot be discussed in Parliament or in a state legislature except when an impeachment motion is under consideration.
- The Retired Judges are prohibited from pleading or acting in any court or before any authority within the territory of India. This removes the chances of any biased decision for any future favour.
- The Supreme Court can punish anyone for its contempt. Its actions, thus, cannot be criticized or opposed by anybody. It ensures authority, Dignity and Honour of Supreme Court.
- The Chief Justice of India can appoint officers and staff of Supreme Court without any interference from the executive.
- The parliament cannot curtail the jurisdiction and powers of the Supreme Court; however, the parliament can extend its power and jurisdiction.
- The Constitution directs the state to separate judiciary from executive in the public services (Art 50). For its implementation, judicial powers of executives are taken away after enactment of Cr.P.C.

6. Jurisdiction of Supreme Court

The Supreme Court has original, writ, appellate and advisory jurisdiction - Articles 32, Articles 131-144. It is not only a Federal Court but also the final court of Appeal, final interpreter of Constitution and guarantor of Fundamental Rights of Citizens. Further, it has advisory and supervisory powers.

6.1. Original jurisdiction

The court has exclusive original jurisdiction over under Article 131:

1. Dispute between the Government of India and one or more States
2. Dispute between the Government of India and any State or States on one side and one or more States on the other.
3. Between two or more States, if the dispute involves any question on which the existence or extent of a legal right depends.

This means no other court can entertain such a dispute. A dispute to qualify under Article 131, it has to necessarily be between states and the Centre and must involve a question of law or fact on which the existence of a legal right of the state or the Centre depends.

- In the State of Karnataka v Union of India, Case, 1978 Justice P N Bhagwati had said that for the Supreme Court to accept a suit under Article 131, the state need not show that its legal right is violated, but only that the dispute involves a legal question.
• It cannot be used to settle political differences between state and central governments headed by different parties.

Election Disputes- The Supreme Court decides the disputes regarding the election of the President and the Vice-president. In this regard, it has the original, exclusive and final authority.

This jurisdiction of the Supreme Court does not extend to the following:

a) Inter-State Water disputes;
b) matters referred to the Finance Commission;
c) adjustment of expenses between the Centre and the States;
d) ordinary dispute of commercial nature;
e) dispute arising out of pre-Constitution treaty or agreement;
f) any treaty or agreement, which specifically provides that that the said jurisdiction does not extend to the dispute.

Recent Development
Recently Kerala and Chhattisgarh have filed a suit in the Supreme court challenging the constitutional validity of various central laws such as Citizenship Amendment Act 2019 (Kerala) and the National Investigation Agency Act 2008 (Chhattisgarh), under Article 131 of the Indian Constitution.

Why the states have challenged the Centre under article 131?

Kerala:
- Kerala has filed a suit to challenge the Citizenship (Amendment) Act, 2019, stating that it is violative of Articles 14 (equality before the law), 21 (protection of life and personal liberty) and 25 (freedom of religion) as well as against the secular fabric of the nation.
- It also challenges the Passport (Entry to India) Amendment Rules 2015, and Foreigners (Amendment) Order 2015, which had regularised the stay of non-Muslim migrants from Pakistan, Bangladesh and Afghanistan, who had entered India before December 31, 2014, on the condition that they had fled religious persecution from their home countries.

Chhattisgarh:
- It has sought a declaration that the NIA Act, 2008, is unconstitutional on the ground that it is “beyond the legislative competence of Parliament”.
- As ‘Police’ is a subject reserved for the States, having a central police agency, which has overriding powers over the State police, with no provision for consent from the State government for its operations, is against the division of legislative powers between the Centre and the States.
- And thus NIA, is against the federal spirit of the Constitution.

Significance of Article 131

• India's quasi-federal constitutional structure: Inter- governmental disputes are not uncommon; therefore, the framers of the Constitution expected such differences, and added the exclusive original jurisdiction of the Supreme Court for their resolution.

• Resolve disputes between states: Unlike individuals, State governments cannot complain of fundamental rights being violated or cannot move to the courts under article 32 (Remedies for enforcement of rights). Therefore, the Constitution provides that whenever a State feels that its legal rights are under threat or have been violated, it can take the “dispute” to the Supreme Court.

Way forward
Supreme Court should constitute a larger bench to decide the question whether the suits challenging central laws are maintainable under article 131 or not. In that case, if the suits are declared maintainable, the same bench may also adjudicate the disputes.

6.2. Writ jurisdiction

The Supreme Court has writ jurisdiction (concurrent with high courts, not exclusive) in regard to enforcement of Fundamental Rights. The Supreme Court is empowered to issue directions or
orders or writs, including writs in the nature of *Habeas corpus, mandamus, prohibition, quo warranto and certiorari*, whichever may be appropriate for the enforcement of fundamental rights conferred by the Constitution (Article 32).

In this regard, the Supreme Court has **original jurisdiction** in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. (The difference in the Writ jurisdiction of Supreme Court and High Court is explained later).

Putatively by law can confer on the Supreme Court, power to issue directions or orders or writs for other purposes (than enforcement of fundamental rights) as well. (Article 139)

### 6.3. Appellate jurisdiction

The Supreme Court replaced the *British Privy Council* as the highest Court of Appeal after independence. The Appellate jurisdiction can be classified under the following four heads:

1. **Constitutional Matters**: The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court in a case that involves substantial questions of law that requires the interpretation of the Constitution - **Articles 132**

2. **Civil Matters**: Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies that the case involves a substantial question of law of general importance, and in High Court’s opinion, it needs to be decided by the Supreme Court (Article 133).

3. **Criminal Matters**: In criminal cases, an appeal lies to the Supreme Court if the High Court (Article 134)
   a) Has reversed an order of acquittal of an accused on appeal and sentenced him to death (Parliament may by law expand the situation, where certificate is not required, to imprisonment for life or for 10 years)
   b) Has taken before itself any case for trial from any subordinate Court and has convicted the accused and sentenced him to death (Parliament may by law expand the situation, where certificate is not required, to imprisonment for life or for 10 years).
   c) Certifies that the case is a fit one for appeal to the Supreme Court

4. Parliament is authorized to confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court. (Article 134(2))

5. **Appeal by Special Leave**: The Supreme Court can also grant special leave to appeal from a judgement or order of any non-military Indian court or tribunal- **Article 136(1)**. Such leave for appeal will be discretionary power of Supreme Court and may be related to any matter. The scope of this provision is very wide and it vests the Supreme Court with plenary jurisdiction to hear appeals. On the exercise of this power, SC itself held that “being an exceptional and overriding power, it has to be exercised sparingly and with caution and only in special extraordinary situations”.

### 6.4. Advisory jurisdiction

The Supreme Court has special advisory jurisdiction in matters, which may specifically be referred to it by the President of India – (Article 143). These matters fall in two categories

a. On any question of law or fact of public importance, which has arisen or which is likely to arise.

b. On any dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, sanad or other similar instruments.

In the first case, the Supreme Court may advice or may refuse to tender its advice, while in the second case the Supreme Court must tender its opinion to the president. However, in both the cases opinion of the Supreme Court is not binding upon the President. He may or may not follow the opinion of Supreme Court.
There are provisions for reference or appeal to this Court under article 317(1) (for removal of a member of Public Service Commission) of the Constitution and several other Acts of Parliament as well.

6.5. Supreme Court as a court of record (Article 129)

It has two powers as a Court of Record:

a) The judgments, proceedings and acts of the Supreme Court are recorded as memory and testimony. These records are recognized as legal precedents and references. These records can be admitted as evidences and cannot be questioned when produced before any court.

b) It has power to punish for contempt of court, either with simple imprisonment for a term upto six months or with fine up to 2000 or with both. It can punish for contempt not only of itself but also of high courts, subordinate courts and tribunals in the entire country. There can be civil or criminal contempt. Civil contempt means willful disobedience to any judgment, order, writ or other process of court or willful breach of undertaking given to the court. Criminal contempt means the publication of any matter or doing any act, which scandalizes or lowers the authority of a court; prejudices or interferes with due course of judicial proceeding; obstructs or interferes the administration of justice in any manner.

6.6. Review of judgements or orders (Revisory jurisdiction)

The Supreme Court has power to review any judgment pronounced or order made by it. (Article 137). While this article doesn’t limit the grounds for review of the judgment however, grounds for exercising this power can be restricted by Parliamentary legislation or Rules made by the Supreme Court itself under Article 145.

The petition filed to review its judgement is called ‘Review Petition’ while second review petition is called ‘Curative Petition’. It is filed when a party thinks that justice was not done to it or the Court has failed to take certain facts into consideration while deciding the case. E.g. the landmark case of Rupa Ashok Hurra vs Ashok Hurra 2002 and the recent example of Delhi Gang Rape Case were taken up under this jurisdiction.

6.7. Power of Judicial review

The Supreme Court can declare legislative enactments of the Centre and states and any executive orders as null and void if they violate the Constitution (ultra-vires in nature). Judicial review serves the purpose of upholding supremacy of constitution, maintaining federal equilibrium, and to protect the fundamental rights of citizens. The Supreme Court used this power (Judicial activism) in various cases like Golaknath case (1967), The Bank Nationalization case (1970), The Kesavananda Bharati case (1973), the Minerva Mills case(1980), etc.

The constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court on the following three grounds:

i. It infringes the fundamental rights (Part III);

ii. It is outside the competence of the authority, which has framed it; and

iii. It is repugnant to the constitutional provision.

Interestingly, though the phrase ‘Judicial Review’ has nowhere been used in the Constitution, the provisions of several articles explicitly confers the power of judicial review on the Supreme Court.

To understand the process and basis of judicial review we need to know the details of the two doctrines, namely ‘Procedure established by Law’ and ‘Due process of Law’, which are discussed earlier.
Some other important doctrines, which are used in case of judicial review are:

**Doctrine of Severability**

Article 13(1) and (2) use the words to the extent of inconsistency or contravention, while stating that a law violating a fundamental right shall be void. The words ‘to the extent’ restrict the effect of inconsistency or contravention. These words have made it clear that only that part of law would become void which is repugnant, subject to the doctrine of **Severability**. The doctrine of **Severability** is that if the offending provision of an Act, which is contrary to a fundamental right or is unconstitutional, is severable from rest of the act, only the offending provision would be declared null and void and not the whole act.

**Doctrine of Progressive Interpretation**

This means that the Constitution cannot be interpreted in the same way as an ordinary statute. Rather, it must be read within the context of society to ensure that it adapts and reflects changes. If constitutional interpretation adheres to the framer’s intent and remains rooted in the past, the Constitution would not be reflective of the society and eventually fall into disuse. The Supreme Court follows the doctrine of progressive interpretation and that is quite evident in the case of Art. 21; interpretation of Article 21, the Right to Life, has been changing consistently according to the society.

### 6.8. Other Powers of Supreme Court

- **Highest Court of Law** - It is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the Constitution and the verbiage used in the Constitution. Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court. E.g. The SC convicted a high court Judge, Justice CS Karnan of Calcutta High Court. The judge had earlier sentenced Chief Justice of India and six other judges of the Supreme Court to five years in jail under the SC/ST act.

- **Control over subordinate courts** - It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court. It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.

- **Self-correcting agency** - It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare. For example, in the Kesavananda Bharati case (1973), the Supreme Court departed from its previous judgement in the Golak Nath case (1967).

- **Enquiry of Conduct** - It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President.

- **Contempt of Court** - It can issue notice and punish anyone including Judges of the High Court for its contempt or contempt of any subordinate courts.

- **Complete Justice** - It may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

The Supreme Court’s jurisdiction and powers with respect to matters in the Union list can be enlarged by the Parliament. Further, its jurisdiction and powers with respect to other matters can be enlarged by a special agreement of the Centre and the states.

### 7. Supreme Court Advocates

Every advocate is not allowed to practice law in the Supreme court. Only the following three categories of advocates are entitled to do so-
7.1. Senior Advocates

The Supreme Court of India or any High Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction.

- A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India.
- He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

7.2. Advocates-on-Record

Only these advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

7.3. Other Advocates

These are advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court.

8. Issues faced in the India Judicial System

8.1. Judicial Pendency and Delay

Background

Recently the Delhi High Court has released the report on its pilot project titled "Zero Pendency Courts" which has highlighted that pendency of cases in the courts is the biggest challenge that Indian Judiciary is facing today.
Reasons for Judicial Pendency

- **Shortage of judges** - India has only 17 judges per million population and nearly 5000 posts in subordinate courts are vacant. In contrast, US has 151 and China has 170 judges for a million population.
  - The Law Commission in 1987 had proposed 50 judges per million population.
Impasses over appointments of judges: Memorandum of Procedures for appointment of judges remains work in progress while vacancies in various High Courts have reached nearly 50% of their sanctioned strength.

Huge workload: Judges in high courts hear between 20 and 150 cases every day, or an average of 70 hearings daily. The average time that the judges have for each hearing could be as little as 2 minutes.

Government the biggest litigant: 46% of all litigation across courts were cases or appeals filed by state or central governments.

Increasing admission of SLP: The Special Leave Petition cases in the Supreme Court, currently comprises to 40% of the court’s pendency. Which eventually leads to reduced time for the cases related to constitutional issues.

Frequent adjournments: The laid down procedure of allowing a maximum of three adjournments per case is not followed in over 50 per cent of the matters being heard by courts, leading to rising pendency of cases.

Judges Vacation: SC works on average for 188 days a year, while apex court rules specify minimum of 225 days of work. Recently, at least 15 judges of the Supreme Court decided that they will be sitting in the forthcoming summer vacation to deal with three cases of Constitutional importance.

Low budgetary allocation leading to poor infrastructure: India spends only about 0.09% of its GDP to maintain the judicial infrastructure. Infrastructure status of lower courts of the country is miserably grim due to which they fail to deliver quality judgements.

Lack of court management systems: Courts have created dedicated posts for court managers to help improve court operations, optimize case movement and judicial time. However only few courts have filled up such posts so far.

Not utilizing the court managers potential: Courts have created dedicated posts for court managers to help improve court operations, optimize case movement and judicial time. But more often their duties are restricted to organizing court events and running errands.

Inefficient investigation: Police lacks training for scientific collection of evidences and also police and prison official often fail to fulfil their duty leading to long delays in trial.

Increasing legal literacy: With people becoming more aware of their rights and the obligations of the State towards them, they approach the courts more frequently in case of any violation.

Impacts of Judicial Pendency

Denial of ‘timely justice’ amounts to denial of ‘justice’ itself: Timely disposal of cases is essential to maintain rule of law and provide access to justice. Speedy trial is a part of right to life and liberty guaranteed under Article 21 of the Constitution.

Erodes social infrastructure: a weak judiciary has a negative effect on social development, which leads to lower per capita income; higher poverty rates; poorer public infrastructure; and, higher crime rates.

Overcrowding of the prisons, already infrastructure deficient, in some cases beyond 150% of the capacity, results in “violation of human rights”.

Affects the economy of the country as it was estimated that judicial delays cost India around 1.5% of its Gross Domestic Product annually.

As per the Economic Survey 2017-18 pendency hampers dispute resolution, contract enforcement, discourage investments, stall projects, hamper tax collection and escalate legal costs which leads to Increasing cost of doing business.

Violation of Fundamental Right: Supreme Court has said that Article 21 of the Constitution
entitles prisoners to a fair and speedy trial as part of their fundamental right to life and liberty.

- **Quality of judgement suffers**: It is not uncommon to see over 100 matters listed before a judge in a day leading to very less time on analyzing every facts of the case.

**Steps taken**

- **Legal Information Management & Briefing System (LIMBS)** - It is a web-based portal developed by Ministry of Law & Justice for monitoring and handling of various court cases of Government Departments and Ministries.

- **Time bound hearing** - The Supreme Court issued guidelines for fixed time-bound hearing and disposing of criminal cases.

**Measures which can be taken**

- **Improving infrastructure for quality justice** - The Parliamentary Standing Committee which presented its report on Infrastructure Development and Strengthening of Subordinate Courts, suggested:
  - States should provide suitable land for construction of court buildings etc. It should undertake vertical construction in light of shortage of land.
  - Timeline set out for computerisation of all the courts, as a necessary step towards setting up of e-courts.

- **Addressing the Issue of Vacancies** - Ensure the appointments of the judges be done in an efficient way by arriving at an optimal judge strength to handle the cases pending in the system. The 120th Law Commission of India report for the first time, suggested a judge strength fixation formula.
  - Supreme Court and High Courts should appoint efficient and experienced judges as Ad-hoc judges in accordance with the Constitution.
  - All India Judicial Service, which would benefit the subordinate judiciary by increasing quality of judges and help reduce the pendency.

- **Annual targets and action plans** must be fixed for the judicial officers to dispose of old cases where accused is in custody for over two years.

- **Setting standards of judicial recruitment examinations** to improve the quality of district judges.

- Implement the **concept of evening courts** where the services of the retired judges may be taken along with the law graduates to train the young incumbents as well as reduce the pendency.

- **230th Law Commission in its report “reform in Judiciary”** in 2009 recommended
  - There must be full utilization of the court working hours and Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.
  - Cases of **similar nature should be clubbed** with the help of technology and used to dispose other such cases on a priority basis;
  - Judges must deliver judgments within a reasonable time both in civil and criminal matters.
  - Vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an hour
  - Lawyers must curtail prolix and repetitive arguments and length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.
  - Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation.

- **Strict regulation of adjournments** and imposition of exemplary costs for seeking it on flimsy grounds especially at the trial stage and not permitting dilution of time frames specified in Civil Procedure Code.
• **Better Court Management System & Reliable Data Collection**: For this categorization of cases on the basis of urgency and priority along with bunching of cases should be done.

• **Use of Information technology (IT) solutions**: The use of technology for tracking and monitoring cases and in providing relevant information to make justice litigant friendly. A greater impetus should be given to
  o Process reengineering- Involves redesigning of core business processes to achieve dramatic improvements in productivity and quality by incorporating the use of technology in court rules. It will include:
    o Electronic filing of cases: e-Courts are a welcome step in this direction, as they give case status and case history of all the pending cases across High courts and Subordinate courts bringing ease of access to information.
    o Revamping of National Judicial Data Grid by introducing a new type of search known as elastic search, which is closer to the artificial intelligence.

• **Alternate dispute resolution (ADR)**-
  o As stated in the Conference on National Initiative to Reduce Pendency and Delay in Judicial System- Legal Services Authorities should undertake pre-litigation mediation so that the inflow of cases into courts can be regulated.
  o The Lok Adalat should be organized regularly for settling civil and family matters.
  o Gram Nyayalayas, as an effective way to manage small claim disputes from rural areas which will help in decreasing the workload of the judicial institution.
  o Village Legal Care & Support Centre can also be established by the High Courts to work at grass root level to make the State litigation friendly.

• **Police Reforms**: The police administration need to be provided with more resources - financial and human both for its effective functioning and improvement of investigation system.

**Way Forward**

Economic Survey 2017-18 called for **coordinated action between government and judiciary** to reduce pendency of commercial litigation for improving ease of doing business (EODB) and boost economic activities.

The fundamental requirement of a good judicial administration is accessibility, affordability and speedy justice, which will not be realized until and unless the justice delivery system is made within the reach of the individual in a time bound manner and within a reasonable cost. Therefore, continuous formative assessment is the key to strengthen and reinforce the justice delivery system in India.

8.2. **Demand for Larger Benches**

Setting up of 9-judge bench to hear case of right to privacy has once again renewed the debate on setting up of larger constitutional benches to deal with important cases.

**Rationale behind demand for larger benches:**

• **Article 145(3) of constitution**: states that any “substantial question of law” relating to the interpretation of the Constitution must be heard by benches of at least five judges.

• More judges mean that there will be more points of view, greater reflection and more thorough analysis in vital cases. It will also add to legitimacy, thus, minimizing coming up of same issue frequently. For example, the issue of privacy itself has been debated in eight or more instances.

• It is more difficult to overturn a five-judge bench than a two- or three-judge bench, meaning the public can have more confidence in the stability of the law.

• Stability would also set the doctrine of precedent because as of now both High Courts and lower courts are left confused as to which of the various pronouncements they are meant to follow.
8.3. Judicial Transparency

8.3.1. Installation of CCTV cameras

Supreme Court has ordered installation of CCTV cameras in courtrooms and its premises, without audio recording, in at least in two districts of all states and union territories within three months. Such a move came after several rounds of deliberations happened between Union Executive and Supreme Court India to record court proceedings.

However, SC made it clear that footage of the CCTV cameras will not be available under Right to Information Act and anybody who want the video footage of court proceedings have to get permission of concerned High Court.

8.3.2. Live Streaming of Supreme Court Proceedings

Background

- Supreme Court (SC) approves live-streaming of court proceedings and directed the centre to frame rules for this.
- The SC agreed that live-streaming of court proceedings would serve as an instrument for greater accountability and formed part of the Code of Criminal Procedure, 1973.
- The SC held that the right to justice under Article 21 of the Constitution would be meaningful only if the public gets access to the proceedings and to witness proceedings live.

Arguments in favour

- Concept of open courts: Indian legal system is built on the concept of open courts, which means that the proceedings are open to all members of the public.
- To promote transparency: Live-streaming has been allowed for both Lok Sabha and Rajya Sabha proceedings since 2004.
- Lack of physical Infrastructure: On any given day, only a handful of people can be physically present and are allowed in the courtroom.
- Digitization: While the courts are opting for digitisation, with online records of all cases, filing FIRs online etc. there is a need to make live streaming of the proceedings also.
- Public Interest Issues: Matters which have a bearing on important public interest issues such as entry of women to the Sabarimala temple, or the scope of the right to the choice of one’s food should be available for all to watch which helps to build the right perception.
- The right to information, access to justice and need to educate common people on how the judiciary functions are all strong reasons in favour of allowing live-streaming.

Arguments against

- The unwanted public gaze caused by live-streaming will tend to make judges subject to popular public opinion and accountable to the general public.
- The role of the judiciary cannot be equated with the roles of the legislature and the executive. The broadcasting of parliamentary proceedings may be good for ensuring accountability, this is not the case with the courts.
- The individuality of judges is more likely to become a subject of public debate through live streaming, creating problems of its own. The focus should be on the judgment delivered.
- There is a greater likelihood of lawyers aspiring to publicise themselves tend to address not only the judges but also the public watching them which will hamper their objectivity.
- Instead of live-streaming, audio and video recordings of court proceedings would reform the administration of justice. These can be used at the time of review or appeal of a case.

Way forward

- Only a specified category of cases or cases of constitutional and national importance being argued for final hearing before the Constitution Bench be live streamed as a pilot project.
• The discretion of the Court to grant or refuse to grant such permission should be, inter alia, guided by the following considerations:
  o Unanimous consent of the parties involved and the sensitivity of the subject matter.
  o Any other reason considered necessary or appropriate in the larger interest of administration of justice, including as to whether such broadcast will affect the dignity of the court itself or interfere with/prejudice the rights of the parties to a fair trial.
• Provide for transcribing facilities and archive the audio-visual record of the proceedings to litigants and other interested persons who are unable to witness the hearings on account of constraints of time, resources, or the ability to travel long distances.

8.4. Judicial Accountability

Background

Recently, there was an allegation of sexual harassment against the Chief Justice of India (CJI) made by a former Supreme Court employee, which has yet again triggered a debate between judicial independence and judicial accountability.

Earlier, four senior judges of SC conducted a press conference over their differences with CJI, a first in the history of the country. Also, a sitting judge of Madras High Court Justice CS Karnan remained in controversy for his behaviour. This issue has thrown light on various issues & problems in Judiciary.

Indian Democracy runs on the principle of ‘rule of law’, which implies that ‘no one is above the law’. The Constitution of India gives the role of its guardian and protector to the Judiciary of India. The Judiciary is the watchdog, which preserves and enforces the fundamental and legal rights against any arbitrary violations. However, there have been many areas and instances, where the actions of judiciary itself have been questioned on being contrary to this and hence the issue of accountability of the judiciary has sprung up.

Meaning of Accountability

Accountability means any action taken by any authority requires justifiable explanation for that particular action. All public institutions and functionaries, whatever their role may be or wherever they stand in the hierarchy have to be accountable for their actions to the people of India.

The Constitution follows the principle of separation of power where checks and balances exit on every organ’s conduct. The two organs of the state of India- The Legislature and the Executive are accountable to the Judiciary and to the people at large. But, the question, which has come up, is, “to whom is the judiciary accountable?” and “who is judging the judges?”
Areas where Judicial Accountability has been found lacking

- **Appointment and Removal of Judges.** – The collegium system in India presents a unique system wherein the democratically elected executive and Parliament at large has no say in appointing judges.
  - Impeachment of judges is a long-drawn-out and difficult process along with its political overtone.

- **Conduct of Judges** - where judges have been alleged to have indulged in corruption (Justice Ramaswami Case, Justice Soumitra Sen), misappropriation, sexual harassment, taking post retirement jobs among others.

- **Opacity in the operations of Judiciary** - The judiciary claims that any outside body having disciplinary powers over them who compromise their independence so they have set up an
“in-house mechanism” investigating corruption.

- **Information asymmetry with Judiciary**: Judiciary has virtually kept itself outside the purview of the Right of Information Act.
- **Contempt of Court**: Using the powers under the Contempt of Court Act, judiciary has been alleged to silence the rightful critics also.
- **Judicial Overreach**: Judiciary has been praised on its activism towards resolving citizen’s grievances, however, in this process some of the decisions have encroached the line of overreach also.

**Implications**

- Erosion of **public trust in judges and judicial system** when there are issues of integrity and accountability of Judiciary.
- Impacts the **Independence of Judiciary** when there is lack of accountability to match it.
- Against the principles of **Natural Justice**: e.g. when the Chief Justice decides the “Master of the Rolls” and himself/herself is a party in any case.
- **Mockery of democracy and rule of law** particularly because of continuance as judge for long after indisciplined behavior.
- It goes against the **freedom of expression**. Stopping media from publishing any statements by any judge, is unreasonable from the point of view of freedom of speech and expression.

**Steps taken so far**

- **Contempt of Court (Amendment) Bill, 2003** was introduced.
- **Judicial Standards and Accountability Bill, 2010** was introduced.
- Unanimous passing of the **National Judicial Appointments Commission Act** by the Parliament and state legislatures, which was struck down by the Judiciary.
- **Draft Memorandum of Procedure, 2016** is been discussed.

**Measures which can be taken**

- A more **formal and comprehensive Code of Conduct for Judges** should be put in place, which is enforceable by law.
- The **Contempt of Court Act** could be amended with following provisions:
  - Cases of contempt should not be tried by courts but by an independent commission of concerned district.
  - The Act should be amended to remove words, ‘scandalizing the court or lowering the authority of the court’ from the definition of criminal contempt.
  - However, there must be stringent punishment against its misuse on false and malicious allegations made against honest judges.
- A **two-level judicial discipline model** with first level as a disciplinary system that can reprimand, fine or suspend judges for misdemeanors along with providing them some limited measures of immunity; and, second level as a system of removal of judges for serious misconduct, including corruption must be established.
- **Increasing the transparency in public hearing in the courtrooms**: Last year, the Supreme Court approved the live-streaming of court proceedings of cases of constitutional importance. This provision could be extended to the other cases and High Courts also.
- **Independent judicial Lokpal** may be set up with power to take up complaints and initiate action against judges should be set up to ensure accountability of the judiciary. It should be independent from both the judiciary and the government.

**Way Forward**

- Bringing a **new Judicial Standards and Accountability bill** along the lines of Judicial Standards and Accountability Bill 2010 (which lapsed) to establish a set of legally enforceable standards to uphold the dignity of superior judiciary and establish a new
architecture to process the public complaints leveled against the judges.

- **Authority outside judiciary to take disciplinary actions:** This is one solution being discussed. However, it has several shortcomings:
  - potential threat to judicial independence
    - may inject fear in judges while taking any decision that it may annoy powers as seen during the time of emergency
  - design of constitution has been to ensure absolute judicial independence, with no scope for Parliament or the executive interference in judicial conduct or decisions.

- **Appointment:** the collegium should take adequate safeguards so that only judges of high caliber and impeccable integrity are appointed to the higher courts. This requires infusion of greater transparency in the selection of judges.

- **Greater internal regulation:** disciplinary actions should be taken promptly at the very first instance of misconduct. For this, a National Judicial Oversight Committee should be created by the Parliament which shall develop its own procedures to scrutinize the complaints and investigation. The composition of such committee should not affect judicial independence.

### 8.4.1. Court’s reluctance to come under Right to Information (RTI)

**Background**

Numerous petitions seeking information from the court under RTI are asked to be applied under SC rules. Apart from this various courts have also framed their own rules under which various regulations. Further, although the courts were included in the definition of Public Authorities (section 2 (h)) most of the HCs did not even appoint Public Information Officers (PIOs) even months after this act came to force which denied people their right to information.

However, the **Supreme Court Rules undermined the RTI in four key areas.** Unlike the RTI Act, the Rules do not provide for:

- a time frame for furnishing information
- an appeal mechanism
- penalties for delays or wrongful refusal of information
- makes disclosures to citizens contingent upon “good cause shown”

In sum, the Rules allowed the judiciary to provide information at its unquestionable discretion, violating the text and spirit of the RTI. The RTI Act does not permit any appeals to be entertained by any court under Section 23. Section 23 of RTI Act forbids courts from entertaining “any suit, application or other proceeding in respect of any order made under this Act”. Nevertheless, the contradiction arises from the fact that the Indian Constitution gives powers to the Supreme Court and the high courts that override any statute.

Further, SC has said that the decision of the Registrar General of the Court will be final and not subject to any independent appeal to Central Information Commission. These issues have brought the credibility of judges further under question.

**Arguments in favour of bringing judiciary under RTI**

- The lack of stringent in-house accountability and transparency mechanisms has allowed the judiciary to keep itself free from regular public scrutiny. The Right to Information Act is a step forward towards opening a closed and secretive judicial system.
- It will increase the amount of transparency in judiciary in case of appointment of judges as it may decrease nepotism and despotism as criticized to be present in judiciary.
- Courts have always been questioned for pending cases. RTI can place yardstick among judiciary for timely disposal of justice.
- It will increase accountability of judiciary as judges can be held accountable for their decisions.
• It will increase the faith of people if they could also know about judicial working.
• In the famous Raj Narain Vs Indira Gandhi case, the SC laid down the foundation of Right to Information in India stating that the people of the country have the right to know about every public act. Thus, The Supreme Court should begin practicing what it preaches.

**Argument against bringing judiciary under RTI**

• Collegium discussions can be freewheeling and include the examination of fairly invasive government intelligence reports and the expression of judges’ personal opinions.
• For judges, their credibility and reputation is hugely important, and many feel that the slightest potential slight on this could be debilitating and prevent judges from doing their job.
• It may compromise secrecy & security involved in certain cases. This may prove detrimental for our country.
• It may compromise independence of judiciary as specified by constitution and may lead to politicization of judiciary.
• It may create extra burden on judiciary and delays in judicial appointments & transfers as an over conscious approach may be adopted to avoid conflicts.

**Way Forward**

In a democracy all institutions, including the judiciary, must be transparent and accountable. Transparency in judicial functioning and accountability for judicial actions and inactions inspire public faith and confidence in the institution.

The higher judiciary can be brought under RTI Act with following limitations:

• Sub-judice case where disclosed information can influence judge’s verdict.
• Confidential information to maintain unity and integrity of nation.
• If the information does not deal with issue of a public importance and doesn’t affect the person in any way.

The Chief Justice of India, as the high priest of the legal system, must uphold the RTI Act and realise that no institution can be considered credible and inspire public confidence unless it is open and transparent. The judiciary can only occupy the high moral ground it often claims, by setting an example, and leading from the frontlines of transparency; not by hiding behind the veil of secrecy.

**8.4.2. Need for larger benches**

**Background**

In the early years, all 8 judges including chief justice sat together to hear the cases. With the increase in workload, Parliament increased the number of judges gradually from 8 in 1950 to the present 34 and the constitution of benches also changed and they sat in smaller benches of two and three to dispose of backlogs (currently about 60,000 cases)

In the 1960s, Supreme Court heard about 100 five-judge or larger benches a year. By the first decade of the 2000s, the court averaged only about 10 constitution benches a year. Thus, various important cases are being heard by smaller benches such as RTE act case was decided by three judges, Naz Foundation case by just two judges etc. However, focusing more judges on constitution benches also comes with a concern that it could come at the cost of less access to the court for other matters.

**Reason for demands for larger benches:**

• **Article 145(3) of constitution:** states that any “substantial question of law” relating to the interpretation of the Constitution must be heard by benches of at least five judges. More judges mean that there will be more points of view, greater reflection and more thorough
analysis in vital cases. It will also add to legitimacy thus, minimizing coming up of same issue frequently. For example - The issue of privacy itself has been debated in eight or more instances

- It is more difficult to overturn a five-judge bench than a two- or three-judge bench, meaning the public can have more confidence in the stability of the law
- Stability would also set the doctrine of precedent because as of now both High Courts and lower courts are left confused as to which of the various pronouncements they are meant to follow.

Way forward
There needs to be clarity in determining when a case involves a “substantial question” of constitutional law and so requires a larger bench. Also, explanation needs to be given to justify why the matter was being heard by less than five judges.

8.4.3. Frequent use of Article 142

Background
There are criticisms on the frequent usage of Article 142 by the apex court in various cases such as highway liquor ban, ordering joint trial of the two Babri Masjid demolition cases, etc.

Article 142 states that “the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it…”

Causes of Concern
- **Unlimited power**: Article 142 is not a source of unlimited power and there should be self-restraint in using it that the orders under 142 does not amount to judicial overreach.
- **Unconstitutional**: It is against the doctrine of ‘separation of powers’, which is part of the basic structure of the Constitution.
- **Uncertainty about discretion**: As in the apex court, 31 judges sit in thirteen divisions of two or three to decide the cases and each bench is independent of the other.

Way out
- Although apex court has used Article 142 in good ways such as Union carbide case, cleansing of Taj Mahal, release of undertrials in jail etc., yet following restraints should be considered to bring complete justice to various deprived sections of society under Article 142 in general:
  - Cases invoking Article 142 should be referred to a Constitution Bench of at least five judges to decrease uncertainty around article 142.
  - In cases where the court invokes Article 142, the government must bring out a white paper to study the beneficial as well as the negative effects of the judgment after a period of six months or so from its date.
  - Supreme Court should follow it’s much reiterated principle that recourse to Article 142 of the Constitution is inappropriate, wherever a statutory remedy is available.

8.5. Contempt of Court

Background
India’s courts have routinely invoked its contempt powers to often punish expressions of dissent on purported grounds of such speech undermining or scandalizing the judiciary’s authority.

- In a first, the Supreme Court started contempt proceedings against Justice C S Karnan, a sitting judge of the Calcutta High Court.
- Recently, the Supreme Court issued the suo motu contempt notice to civil rights lawyer Prashant Bhushan against him on his tweets against the CJI.
Meaning of Contempt of Court

- Contempt of court consists of words spoken or written which tend to bring the administration of Justice into contempt, to prejudice the fair trial of any cause or matter which is the subject of Civil or Criminal proceeding or in any way to obstruct the cause of Justice.

- Article 129 and Article 142 (2) of the Constitution enables the Supreme Court to issue notice and punish any one including Judges of the High Court for its contempt or contempt of any subordinate courts.
  - The Judiciary was provided with this power under Contempt of Court Act, 1971 which defines contempt powers of judiciary.

Rationale behind Contempt of Court

- To ensure that the Judges do not come under any kind pressure either from media criticisms or by general public opinion and discharge their duties without any kind of fear and favour or any external influence whatsoever.
- Prevent scandalisation or lowering the authority of any court.
- Prevent interference with the due course of any judicial proceedings.
- Strengthen court’s image as legal authority and that no one is above the law.
- Ensure one could not defy court orders according to one’s own free will.

Arguments against Contempt of Court

- Contempt of Court proceedings have the effect of muzzling free speech guaranteed under Article 19(1)(a) of the Indian Constitution.
- Article 19(2) includes ‘contempt of court’ as a reasonable restriction on free speech but its justification in its present form is not tenable in a democracy.
- Pandit Thakur Das Bhargava in the Constituent Assembly said that powers to reprimand contempt concerned only actions such as the disobedience of an order or direction of a court, which were already punishable infractions.
- Speech in criticism of the courts, ought not to be considered as contumacious, for it would simply open up the possibility of gross judicial abuse of such powers; which has now been proved true in many instances.
- Interestingly, in England, whose laws of contempt we have adopted, there hasn’t been a single conviction for scandalizing the court in more than eight decades.

Law Commission’s Stand

- According to 274th Law Commission Report no changes are required to the 1971 statute.
- There are several safeguards built into the Act to protect against its misuse. For instance, the Act contains provisions which lays down cases that do not amount to contempt and cases where contempt is not punishable. These provisions suggest that the courts will not prosecute all cases of contempt.
- The Commission further noted that the Act had withstood judicial scrutiny, and therefore, there was no reason to amend it. In fact, the statute, by laying down procedure, restricts the vast authority of the courts in wielding contempt powers.
- Amending the definition of contempt will lead to ambiguity. This is because the superior courts will continue to exercise contempt powers under the Constitution. If there is no definition for criminal contempt in the Act, superior courts may give multiple definitions and interpretations to what constitutes contempt.
- Even in the absence of the legislation, the Courts have the power to punish for their contempt under the constitution as the Act 1971 is not the source of ‘power to punish for contempt’ but a procedural statute that guides the enforcement and regulation of such power.
Way Forward

The Contempt powers should be used in such a way as not to violate Right to Freedom of Speech while also ensuring independence of the Judges. The judiciary must be highly liberal while respecting freedom of speech and allow fair criticism as permitted under 1971 Act.

In addition to that, the **Contempt of Court Act, 1971** must be suitably amended or repealed on the lines of United Kingdom and United States where such a law does not exist. But amendment in 1971 act in 2006 also did not lead to restrain by judiciary. Thus, the right balance between freedom of speech and contempt powers of court can be achieved by the judiciary itself.

8.6. Master of the Roster

Background

In last few years, there has been a heated debate on the topic of ‘Master of Roaster’. The recent debate all started with when a public interest lawyer filed a petition in the Supreme Court in the Judges bribery case and asking the Chief Justice of India to recuse in the matter, to which he refused.

Later on, four senior most judges of the Supreme Court came out to do a press conference and blamed the then Chief Justice of India for selectively allotting cases to preferred benches. In response to that, the CJI published a new subject wise roster for allocation of cases. However, this allocation, did little to pacify the judges as the CJI allocated most important public litigations matters to himself.

Meaning of Master of Roster

‘Roster’ as ‘a list of people’s names and the jobs they have to do at a particular time.’ **Master of Roster** is a judge appointed by the SC to list out the allocation of cases to different judges, for preventing two different benches from hearing the same kind of case. It allows effective case management, by allocating similar cases to judges with more experience.

In the Indian context, it usually refers to the administrative power of the **Chief Justice of India** and the **Chief Justices of the High Courts** to allocate the matters that their brother and sister judges shall be hearing, respectively.
There has been several judgments of the High Courts and the Supreme Court interpreting the correct positions of ‘Master of Roster’. Recently also after this debate, it was formalised that the CJI is Sui generis (unique) and hence the master of roster.

Concerns raised-
- The concentration of immense powers on a single person also against the principles of democracy.
- There are allegations of corruption in the courts. By giving power of deciding the case, it violates the basic principle of law i.e. that no one should be a judge in his own case.
- A just and fair roster must be one that is divided subject-wise among judges according to their experience and expertise in those subjects.
- Politically sensitive matters should be before the five senior judges of the Supreme Court.

Arguments against such concerns-
- According to another recent judgment also, seniority in terms of appointment has no bearing on which cases a judge should hear. To suggest that one judge is more capable of deciding particular cases or that certain categories of cases should be assigned only to the senior-most among the judges of the Supreme Court has no foundation in principle or precedent. To hold otherwise would be to cast a reflection on the competence and ability of other judges to deal with cases assigned to them by the Chief Justice.
- The CJI is only “the first among equals” as a judge, but is sui generis (one of his kind) in other capacities.
  - Entrustment of such authority in the Chief Justice is necessary for safeguarding the Supreme Court as an “independent safeguard for the preservation of personal liberty”.
- The CJI has made the roster system public and portfolios are now being published on the Supreme Court website.
Way Forward

The Chief Justice is entrusted with the function because such an entrustment is necessary for efficient transaction of administrative and judicial work of Supreme Court. The purpose behind this authority to Chief Justice is to ensure that Supreme Court is able to fulfill and discharge constitutional obligations, which govern and provide the rationale for its existence.

Judges need to trust each other. The CJI must also ensure that the allotments of cases to the benches are in an independent and an impartial manner. He should not only act as unbiased but also seem to do so to instill confidence in his colleagues. He should not brush aside any reasonable suggestions in this regard from his colleagues.

8.7. Judges and Post-Retirement Positions

Background

- Recently, the President nominated the former Chief Justice of India, Ranjan Gogoi to the Rajya Sabha.
- The President has used his powers under Article 80 (1)(a) to nominate 12 persons having special knowledge or practical experience in respect of such matters as the following: Literature, science, art and social service.
- Ranjan Gogoi was nominated to the Rajya Sabha within six months of his retirement as the 46th Chief Justice of India
- There has been a number of reactions and counter-reactions to it. A public interest litigation has also been filed in the Supreme Court against this move.

Arguments in favour

- **No legal/ constitutional bar** - the Article 124(7) provides that a retired Supreme Court judge cannot “plead or act in any court or before any authority within the territory of India”.
  - This provision only restricts post-retirement appointments in Judiciary itself, but not in posts of president, governor, member of parliament, etc.
  - There is no cooling off period before a Judge following his/her retirement.
- **Not a strict separation of power** - the Indian constitution does not provide for a strict separation of powers as available in the American constitution.
  - Further, the legislature and judiciary can work together for nation-building, if there are such exchange of personalities.
  - The presence of judges in Parliament will be an opportunity to project the views of the judiciary before the legislature and vice versa.
- **Other instances of post-retirement appointments of judges** - in other domains and areas such as Justice P. Sathasivam was appointed the Governor of Kerala and Justice Hidayatullah became the Vice President of India.
- **Has not joined any political party** - The given instance is of nomination of judge. There is a crucial difference between elected and nominated members.
  - Those who are elected to a house from a party are subject to whip of that party. They are bound to vote the way the party directs them, and in general, they can’t criticise the party and the govt if the party is in power.
  - On the other hand, a nominated member is an independent member, not subject to any party whip.

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**Previous Instances of such appointments**

- Justice Ranganath Mishra - He was appointed to the Rajya Sabha six years after he demitted office as CJI.
- Justice Baharul Islam - He was a Rajya Sabha member and then became a High Court judge, then Supreme Court judge and finally became a Rajya Sabha member again.
- Justice Kawdoor Sadananda Hegde - He served as a member of the Rajya Sabha prior to his joining the Madras High Court. He was sworn into the Supreme Court in 1967.
Legal knowledge: The valuable experience and insights that judges acquire during their period of service cannot be wasted after retirement.
  - Adds value to the Rajya Sabha debates - Eminent judges can contribute towards more nuanced law making in the country and strengthen Rajya Sabha as the conscience keeper of the Parliament.

Arguments against

- Separation of powers and judicial independence: Justice should not only be done, but seen to be done. Here, accepting and offering post retirement jobs bridges the constitutional distance which executive and judiciary needs to have, creating the perception of bias. This hampers judicial independence when positions are taken within a short time of retirement or accepted before retirement.
- Conflict of interest - Positions at tribunals and constitutional bodies create a conflict as Government itself is a litigant and appointment authority at the same time. The first Law Commission, headed by M C Setalvad, had recommended that judges of the higher judiciary should not accept any government job after retirement.
- Compromises the independence of judiciary - The acceptance of post-retirement jobs leaves newly retired judges open to political criticism from the opposition, who use it to cast aspersions on the Court, the Judicial system, and the judgments and orders passed by these judges while in office.
  - It sends out the message that if a judge gives ruling in favour of the executive, he/she will be rewarded.
  - More than being a reward for the retired judge, the offer of a plum post-retirement job, sends a message to judges who are still working.
- Integrity of the judges - The judges are expected to conduct themselves in such a manner even after their retirement so as not to create an adverse impression about the independence of judiciary.
  - The judges are expected to work without fear or favour and remain above political divides or affiliation in their career.
- Erode people’s trust - The judiciary thrives on perception and faith. Such actions can shake people’s confidence and faith in the independence of judiciary.

What can be done to strike a balance?

- Mandatory cooling off period - for judges for taking up government assignments after retiring.
  - The cooling-off period will minimise the chances of judgments getting influenced by post-retirement allurements.
  - This cooling-off period can be of six years and no judge should be appointed before completing this period, as the government’s tenure is of five years.
- Increase age of retirement - Unlike in many other countries, a judge of the higher judiciary in India retires at a comparatively young age and is capable of many more years of productive work.
- Enact a law - to set up a commission made up of a majority, if not exclusively, of retired judges to make appointments of competent retired judges to tribunals and judicial bodies. In the meantime, judges themselves can fill the legislative void by giving suitable directions.
  - Extend the application of other statutes to judges - such as Section 8 of the Lokpal and Lokayukta Act, 2013, which barred its chairman and members from re-employment or taking any assignments as diplomat and Governor and other posts, on ex-judges of the Supreme Court and high courts.
• **Envisioning a transparent process**: Former Chief Justice R M Lodha, had suggested that before a judge retires, the government should provide option of either being a pensioner or continue to draw existing salary. If they opt for pension, government jobs are out but if they opted for full salary, that name should be put in a panel. When a vacancy arises, these persons can be considered and the process becomes devoid of allegations of appeasement, favouritism etc.

• **Amending the constitution**: by incorporating a provision similar to Articles 148 (barring CAG from post retirement job) or 319 (similar provision for UPSC members).

9. Recent Developments

9.1. Public Interest Litigation (PIL)

**Recent Developments**

- Recently, while hearing public interest litigation (PIL) challenging the allocation of 4G spectrum to Reliance Jio, Supreme Court (SC) voiced its concerns on the NGO becoming a “proxy litigant” and a front for settling corporate rivalry or personal vendetta.
- This observation by SC, once again brought into focus the debate on the proper role of the PIL in the legal system.

**Positive Contributions of PIL**

- Bringing courts closer to the disadvantaged sections of society such as prisoners, destitute, child or bonded labourers, women, and scheduled castes/tribes.
- PIL has become a vehicle to bring social revolution through constitutional means.
- It has also helped in expanding the jurisprudence of fundamental (human) rights in India.
- PIL also become an instrument to promote rule of law, demand fairness and transparency, fight corruption in administration, and enhance the overall accountability of the government agencies.
- PIL has enabled civil society to play an active role in spreading social awareness about human rights, in providing voice to the marginalized sections of society, and in allowing their participation in government decision making.
- Through PIL, judiciary also initiated legislative reforms and filled in legislative gaps in important areas. For example – Vishaka guidelines on sexual harassment at workplace.
- PIL has helped the Indian judiciary to gain public confidence and establish legitimacy in the society.
Present Status

- Spectrum of issues raised in PIL have expanded tremendously—from the protection of environment to corruption-free administration, right to education, sexual harassment at the workplace, relocation of industries, rule of law, good governance, and the general accountability of the Government.
- In recent years, anyone could file a PIL for almost anything. It seems that there is a further expansion of issues that could be raised as PIL, e.g. calling back the Indian cricket team from the Australia tour.
- This is contradictory to the main objective of the PIL, which is meant to provide the remedial jurisprudence for those who can’t approach the court on account of poverty or some other disability.
Issues

• **An unanticipated increase in the workload of the superior courts:** PILs have interfered with the normal judicial functioning of the court leading to increase in the number of pending cases before Supreme Court and High Courts, resulting in the choking of the legal system.

• **Abuse of process:** PILs have been vastly misused where it has degenerated into private interest litigation. It has given rise to the filing of frivolous and vexatious petitions, filed before the court.

• **Friction and confrontation with fellow organs of the government:** A major criticism of PILs is that through this medium judiciary is encroaching the domain of Executive and Legislature. Over the years, the social action dimension of PIL has been diluted and eclipsed by another type of “public cause litigation” in courts. In this type of litigation, the court’s intervention is not sought for enforcing the rights of the disadvantaged or poor sections of the society, but simply for correcting the actions or omissions of the executive or public officials or departments of government or public bodies.

Steps taken to prevent misuse of PILs

• The SC has warned that the court shall have the power to impose exemplary compensation on the parties that misuse the PIL. Further, a party that brings a PIL in the court shall have to prima facie establish a case before the court, before the court takes up the case for further action.

• The court has also started establishing the Scrutiny Committees consisting of public-spirited lawyers, social workers etc. to scrutinize the PIL filed and submit the report to the court explaining the merit in the case if there is any to save the court’s precious time. In this regard, the court has also been taking help of Amicus Curiae (friend of the court). The Supreme Court also cautioned the high courts to be cautious while taking up a PIL that it should not interfere in the policy issues of executives.

• The Supreme Court has devised guidelines defining the process and the issues, which can be accepted as PIL.

Way Forward

• Striking a balance in allowing legitimate PIL cases and discouraging frivolous ones.

• One way to achieve this objective could be to confine PIL primarily to those cases where access to justice is undermined by some kind of disability.

• The other useful device could be to offer economic disincentives to those who are found to employ PIL for ulterior purposes.

9.2. Affordable Justice Delivery

Recently, the Supreme Court introduced ‘Middle Income Group Scheme’ to provide affordable legal services where fees would be charged as per the schedule attached to the scheme. The scheme will be administered through a society named ‘Supreme Court Middle Income Group (MIG) Legal Aid Society’ registered for this purpose. The Patron-in-Chief of the society is Chief Justice of India and the Attorney General is its ex-officio Vice President. Its **beneficiaries** will be litigants in the SC whose gross income is less than Rs. 60,000 per month or Rs. 7.5 lakh per annum.

Significance

• **Right to free legal aid or free legal service** is an essential fundamental right guaranteed by the Constitution and forms the basis of reasonable, fair and just liberty under Article 21 of the Constitution of India.

• **Article 39-A** says that the State shall “ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”
9.3. Online Justice Delivery

Background

The Supreme Court recently passed directions for all courts across the country to extensively use video-conferencing for judicial proceedings so that the congregation of lawyers and litigants can be avoided to maintain social distancing amid the coronavirus pandemic.

Supreme Court invoked its power under Article 142 of the Constitution to validate all proceedings through video-conferencing. Earlier, Kerala High Court also conducted court proceedings through video conferencing and also live streamed the proceedings.

How online delivery of judicial services help in tackling various issues in judicial system?

- **High pendency**: Between 2006-2019, there has been an overall increase of 22% in the pendency of cases across all courts. Online judicial services can provide additional aid to clear this backlog and reduce the time and cost involved.

- **Enhanced efficiency of courts**: Standard system generated formats of routine judgments and orders, particularly in civil cases, can be used by courts for quick delivery of judgments.
  - Reduction of paperwork will relieve judges and other court staff from administrative duties and allow them to focus on judicial functions.
  - Real-time online data would facilitate better identification and classification of cases and also enable High Courts to exercise proper supervision and control over subordinate courts.

- **Tackling Infrastructural constraints**: Video and audio enabled hearings can save significant court costs in terms of building, staff, infrastructure, security, transportation costs for all parties to the court proceedings.

- **Availability of judicial data**: The Law Commission of India in its 245th Report noted that the lack of comprehensive and accurate data relating to cases from courts across the country poses a hurdle to efficient policymaking by the government. Digital databases created by online judicial services can address this need.

- **Improving transparency and accountability in the judicial system**: Allowing audio-video recordings of court proceedings can contribute to transparency of court processes by allowing a precise record of the proceedings and at the same time discourage improper conduct in courts and wastage of court time.
  - Information related to judicial statistics placed in the public domain can help the key stakeholders like advocates, litigants, researchers and the public at large to be better informed about the state of the judicial system

- **Promoting ease of doing business**: Online resolution of contractual disputes will boost the confidence of domestic and foreign businesses as they explore investments in India.

Challenges

- **Lack of investment in court and IT infrastructure**: State of the art e-courts require the deployment of new age technology like high speed internet connection, latest audio and video equipments, cloud computing, availability of sufficient bandwidth etc.

- **Lack of technical knowhow** among court officials and staff and absence of dedicated in-house technical support.

- **Low awareness amongst litigants and advocates**: As per a survey less than 40 per cent of cases were filed exclusively through a computerized system.

- **Digital divide in access to justice**: due to insufficient infrastructure, non-availability of electricity and internet connectivity and low digital literacy in rural areas.

- **Interdepartmental Challenges**: due to lack of coordination, communication and interoperability of software between various departments.

- **Cyber security threats**: Judicial data comprise of sensitive case information and litigant data, their electronic storing and transmission fuels security and privacy concerns.
• **Procedural problems**: like admissibility and authenticity of the evidence received through the video and/or audio transmissions, the identity of the witness and/or individuals subject of the hearings, confidentiality of the hearings etc.

**Judicial Reforms Undertaken**

**Integrated Case Management Information System (ICMIS)**
- It has been introduced in the apex court for digital filing.
- Its functions include the option of e-filing cases, checking listing dates, case status, online service of notices/summons, office reports and overall tracking of progress of a case filed with the apex court registry.
- This will streamline the filing process for both the advocates and the registry.
- It will ensure transparency, provide easy access to case information and help in reducing the time in filing pleadings which, in turn, would increase the pace of judicial process.

**National Judicial Data Grid**
- It is a web portal that provides data related to the number of cases pending in any court in the country.

**eCourts Mission Mode Project**
- It is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for all District Courts across the country.
- The objective of the eCourts Project is to provide designated services to the citizens so as to bring in a healthy and modern judiciary at all district and sub-district courts in the country.
- The services being delivered to citizens include status of registration of cases, Case status, Case list, all order sheets, and final orders/judgments.
- e-Courts Services Mobile application and InCourts National Portal have also been developed.

**Judicial Service Centre**
- JSC has been established in all comprehensive courts which serve as a single window for filing petitions and applications by litigants/lawyers as also obtaining information on ongoing cases and copies of orders and judgments etc.

**Way Forward**

- Development of supporting infrastructure at every level such as facilitation centres with facilities for e-filing and video conferencing at the entrances of court complexes; integrated softwares etc.
- Making rules for use of electronic evidence: Procedural laws / rules may also need to be amended to incorporate the suggestions of having audio-video recording of court proceedings and maintaining standard system generated formats of routine judgments and orders.
- Design and impart regular training courses: for judges, court staff and paralegals for using online systems and maintenance of e-data (such as records of e-file minute entries, summons, warrants, bail orders, order etc). Courses should optimize the use of virtual teaching tools to maximize reach.
- Creating a user friendly eCourts mechanism and awareness generation: which is simple and easily accessible by the common public and provides information in multiple Indian languages.
- Clear rules on data privacy: These must include consequences of data breach, infringement of privacy etc. and an appropriate grievance redressal mechanism.

10. Articles Related to the Supreme Court

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### Article 144
Civil and judicial authorities to act in aid of the Supreme Court

### Article 144A
Special provisions as to disposal of questions relating to constitutional validity of laws (Repealed)

### Article 145
Rules of court, etc.

### Article 146
Officers and servants and the expenses of the Supreme Court

### Article 147
Interpretation

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### 11. Previous year UPSC Prelims Questions

**2019**

1. Consider the following statements:
   1. The motion to impeach a Judge of the Supreme Court of India cannot be rejected by the Speaker of the Lok Sabha as per the Judges (Inquiry) Act, 1968.
   2. The Constitution of India defines and gives details of what constitutes ‘incapacity and proved misbehaviour’ of the Judges of the Supreme Court of India.
   3. The details of the process of impeachment of the Judges of the Supreme Court of India are given in the Judges (Inquiry) Act, 1968.
   4. If the motion for the impeachment of a Judge is taken up for voting, the law requires the motion to be backed by each House of the Parliament and supported by a majority of total membership of that House and by not less than two-thirds of total members of that House present and voting.

Which of the statements given above is/are correct?
(a) 1 and 2  
(b) 3 only  
(c) 3 and 4 only  
(d) 1, 3 and 4

**Ans (c)**

2. With reference to the Constitution of prohibition or limitations or provisions contained in ordinary laws cannot act as prohibitions or limitations on the constitutional powers under Article 142. It could mean which one of the following?
   (a) The decisions taken by the Election Commission of India while discharging its duties cannot be challenged in any court of law.
   (b) The Supreme Court of India is not constrained in the exercise of its powers by laws made by the Parliament.
   (c) In the event of grave financial crisis in the country, the President of India can declare Financial Emergency without the counsel from the Cabinet.
   (d) State Legislatures cannot make laws on certain matters without the concurrence of Union Legislature.

**Ans (d)**
3. With reference Constitution of consider the statements: to the India, following

1. No High Court shall have the jurisdiction to declare any central law to be constitutionally invalid.
2. An amendment to the Constitution of India cannot be called into question by the Supreme Court of India.

Which of the statements give above is/are correct?
(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2

Ans (d)

2017
1. In India, Judicial Review implies
(a) the power of the Judiciary to pronounce upon the constitutionality of laws and executive orders.
(b) the power of the Judiciary to question the wisdom of the laws enacted by the Legislatures.
(c) the power of the Judiciary to review all the legislative enactments before they are assented to by the President.
(d) the power of the Judiciary to review its own judgements given earlier in similar or different cases.

2015
1. Who/Which of the following is the Custodian of the Constitution of India?
(a) The President of India
(b) The Prime Minister of India
(c) The Lok Sabha Secretariat
(d) The Supreme Court of India

2014
1. The power of the Supreme Court of India to decide disputes between the Centre and the States falls under its
(a) advisory jurisdiction
(b) appellate jurisdiction.
(c) original jurisdiction
(d) writ jurisdiction

2. The power to increase the number of judges in the Supreme Court of India is vested in
(a) the President of India
(b) the Parliament
(c) the Chief Justice of India
(d) The Law Commission

2012
1. Which of the following are included in the original jurisdiction of the Supreme Court?
1. A dispute between the Government of India and one or more States.
2. A dispute regarding elections to either House of the Parliament or that of Legislature of a State.
3. A dispute between the Government of India and a Union Territory.
4. A dispute between two or more States.

Select the correct answer using the codes given below:
(a) 1 and 2
(b) 2 and 3
(c) 1 and 4
(d) 3 and 4

Ans (c)
2010
2. Consider the following statements:
The Supreme Court of India tenders advice to the President of India on matters of law or fact.
1. On its own initiative (on any matter of larger public interest).
2. If he seeks such an advice.
3. Only if the matters relate to the Fundamental Rights of the citizens.
Which of the statement given above is/are correct?
(a) 1 only  (b) 2 only  (c) 3  (d) 1 and 2
Ans. (b)

2005
3. Consider the following statements:
1. The Parliament cannot enlarge the jurisdiction of the Supreme Court of India as its jurisdiction is limited to that conferred by the Constitution.
2. The officers and servants of the Supreme Court and High Courts are appointed by the concerned Chief Justice and the administrative expenses are charged on the Consolidated Fund of India.
Which of the statements given above is/are correct?
(a) 1 only  (b) 2 only  (c) Both 1 and 2  (d) Neither 1 nor 2
Ans. (b)

2001
4. The Supreme Court of India tenders advice to the President on a matter of law or fact
(a) On its own initiative  
(b) Only if he seeks such advice  
(c) Only if the matter relates to the Fundamental Rights of citizens  
(d) Only if the issue poses a threat to the unity and integrity of the country
Ans. (b)

12. Previous year UPSC GS Mains Questions
1. Explain the scope of the Advisory jurisdiction of the Supreme Court of India. (150 words) (92/I/4b/20)
2. What is the position of the Supreme Court under the Constitution of India? Discuss its role as a guardian of the Constitution. (About 250 words) (95/I/1b/40)
3. What is the position of the Supreme Court under the Constitution of India? How far does it play its role as the guardian of the Constitution? (250 words) (02/I/7a/30)
4. How can a judge of the Supreme Court be removed? (20 words) (04/I/9d/2)
5. How will you define ‘judicial review’. (82/I/8c(A)/3)
6. The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution. Discuss critically.
7. Starting from inventing the ‘basic structure’ doctrine, the judiciary has played a highly proactive role in ensuring that India develops into a thriving democracy. In light of the statement, evaluate the role played by judicial activism in achieving the ideals of democracy.
8. What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution?
9. Critically examine the Supreme Court’s judgement on ‘National Judicial Appointments Commission Act, 2014’ with reference to appointment of judges of higher judiciary in India.
13. Previous Year Vision IAS GS Mains Test Series Questions

1. While judiciary has been seen as a harbinger of promoting transparency and accountability in governmental functions, it needs to promote the same regarding its own functioning. Comment w.r.t. the need for judicial reforms in India.

Approach:

Answer should focus on the twin issues of judicial accountability and independence. Also the question asks for need for reforms and not the reforms themselves. Hence there is no need to go into various recommendations for judicial reforms. Rather the logic behind these recommendations should be highlighted.

Answer:

• Judiciary’s image has received a serious setback in the past few years. Several judges have come under the ambit of all kinds of allegations like corruption, sexual misconduct and favoritism in the appointment of judges. Also the intellectual quality of many judicial pronouncements has been perceived to be mediocre. Cumulatively, this has led to two specific demands.
  a) First, there is a need to reform the process of judicial appointments; and
  b) Second, some mechanism needs to be devised to hold judges accountable.
  Judicial independence and accountability should go together.

• In India, it is only a collegium of judges that recommends to the President, names for elevation to the bench and there is no outside advice available for this purpose. Judicial pronouncements have made the recommendation binding. The current system of appointments is not open to public scrutiny and thus lacks accountability and transparency.

• A closely related aspect related to accountability of judges is the mechanism for removal of judges for deviant behaviour. Other than impeachment under Articles 124(4) and 217(1), there is no mechanism to proceed against any inappropriate behaviour or misdemeanour of judges. At the time of framing the Constitution, it was felt that judicial conventions and norms would constitute strong checks. However, the impeachment provisions have turned out to be impracticable as it is virtually impossible to initiate any impeachment proceedings, let alone successfully conclude them.

• Associated with the above important issues are the need for a cooling off period for judges before taking up government appointments and measures for tackling the problems of judicial backlog.

• The recent episodes regarding sexual misconduct, corruption and nepotism clearly indicate that the credibility of judiciary is now at stake. The NJAC appears to be a step in the right direction but what needs to be ensured is that it functions in a transparent and impartial manner. The entire process should ensure that while judiciary is accountable to the public at large, at the same time, it is free from any unwanted interference. This would need some delicate balancing.

2. What is the importance of an independent judiciary in a democracy? Highlight the safeguards in our political-constitutional setup to ensure the independence of judiciary.

Approach:

• Describe the meaning of independence of judiciary.

• Briefly state the need for the independence of the judiciary.
• Mention various provisions to ensure independence of judiciary.
• Conclude with the need to balance judicial independence with judicial accountability.

**Answer:**

Democracy in India rests on the constitutional scheme of separation of powers between the three organs of the government, with adequate checks and balances to ensure that the rights of the citizens are duly protected and there is no misuse of power. A judiciary free from encroachments, pressures and interference is an integral part of this scheme.

The Indian judiciary, with the Supreme Court (SC) at the apex and High Courts (HCs) at the state level, has been assigned a very significant role in the Indian democratic system. The SC is a federal court, the highest court of appeal and the guardian of the Constitution. Along with the HCs, it is the guarantor of the fundamental rights of the citizens.

Independence of judiciary is ensured by following safeguards:

- **Mode of appointment** – Appointment of judges of the SC and the HC is done by the President on the recommendation of the collegium of the judiciary. This ensures that absolute discretion of the executive is curtailed and judicial appointments are not based on political considerations.
- **Security of tenure** – Judges can be removed only on the grounds mentioned in the constitution.
- **Conduct of Judges cannot be discussed** in any legislature except when impeachment motion is under consideration.
- **Fixed service conditions** – The salary, allowances, privileges etc. cannot be changed to their disadvantage after appointment.
- **Expenses charged on Consolidated Fund** – therefore free from annual parliamentary voting.
- **Power to punish for its contempt** – Thus, its actions and decisions cannot be opposed or criticised arbitrarily.
- **Other provisions** – such as Ban on practice after retirement, no power with Parliament to curtail its jurisdiction, Freedom to appoint its staff etc. also helps in maintaining its independence.

In a democratic polity, all power is held in trust of the people and must be exercised for the people. Therefore, while safeguarding judicial independence, it is essential to balance it with judicial accountability and transparency.

3. A dysfunctional judicial delivery system is a serious impediment to establishing the rule of law in our nation. Examine the statement in the context of the problem of case pendency and judicial vacancies in India.

**Approach:**

- Bring out the facts to present the current picture of judiciary.
- Mention the important issues related to dysfunctional judicial system and explain the reason behind the problem of case pendency and judicial vacancies.
- Provide the probable solutions to deal with the problem.

**Answer:**

There are more than 2.18 crore cases pending in various courts and around 485 top judicial posts are needed to be filled up in high courts. It leads to judicial delays and deprives people of speedy justice.
Issues associated with pendency of cases:

- Frequent adjournments and delays in trial have led to increase in the number of under trial prisoners. Trials take decades to complete pointing to the inefficiency of judicial system.
- Many frivolous cases filed by corporates against their business rivals take up too much time of the courts.
- Misuse of PILs take up a lot of time of court, further aggravating the problem.
- Thus while poor suffer due to lack of resources, the powerful misuse the judicial process to suit their needs which is an impediment to the rule of law.

Issues associated with Judicial Vacancies:

- Judiciary requires more than 70,000 judges to clear the mounting backlog of cases.
- Judicial infrastructure has not kept pace with the rate of litigation. If all the posts of judges in the judiciary are filled, then there wouldn’t be enough courtrooms to accommodate all of them.
- Lack of consensus among the collegium members over recommendations. There is further tussle between executive and judiciary over appointments, due to which many posts have remained vacant.

To uphold the rule of law both these interrelated problems require steps from executive as well as judiciary. Following steps needs to be taken:

- As the economic cost of the delay is pegged at 0.5% of gross domestic product. There is urgent need for increased budgetary allocation to cope up with increased number of litigations.
- Government should speed up the process of drafting the memorandum of procedure with consensus of judiciary.
- Government and judiciary should initiate recruitment process six months prior to occurrence of vacancy.
- Frivolous cases should be dealt with a heavy hand and exemplary costs should be imposed on such litigation.
- Provide effective and continuous training for judges and court officers to enhance the quality of dispensation of Justice.
- Need to promote judicial education for enhancing the quality and improving the standards of justice.
- More focus on alternative dispute resolution mechanism like Lok Adalats, Arbitration and Conciliation etc. is required. Promoting Gram Nyayalayas is also desirable.
- Government, which is the biggest litigant, needs to simplify laws and enhance ease of doing business to avoid litigations in the first place.
- Other options, such as changes in procedure, improved quality of law graduates, greater use of information technology must all be explored to ameliorate the situation.

4. **Despite long term recognition of the problem of pendency of cases in the courts, limited progress has been made in reducing their number. What are the possible reasons for such a scenario? Suggest a framework of measures that can be taken to address this issue.**

**Approach:**

- Introduce by giving a brief description of the statement, ‘justice delayed is justice denied.’
- Mention the reasons for long judicial pendency in disposing cases across India.
Answer:

More than 22 million cases are currently pending in India’s district courts. Six million of those have lasted longer than five years. Another 4.5 million are waiting to be heard in the high courts and more than 60,000 in the Supreme Court, according to government data. These figures are increasing according to the decennial reports.

The following causes have been identified for pendency of cases - litigation explosion; inadequacy of the staff attached to the high courts; inordinate concentration of work in the hands of a few members of the Bar; lack of punctuality among judges; inadequate supply of the copies of judgments and orders, and so on.

Despite recognition of these causes, limited progress has been made in reducing pendency of cases due to the following:

- The number of judges in the country is inadequate to cope with the staggering pendency of cases in different courts. The rise in the number of cases has not been matched by an increase in the number of judges. There are 10-12 judges per million people in India. In developed countries, there are 50 judges per million people.
- However, increasing the number of judges is not the only answer. Some urgent institutional changes are called for. The critical test is not the judge-population ratio but the judge-docket ratio. Docket refers to the list of cases to be tried and is an accurate indication of the work load of a judge. In India, the docket ratio per judge is 987 whereas it is 3,235 per judge in the United States of America. The answer perhaps lies in effective court management, which has not been seriously attempted at by the Indian judiciary. For example, computers have not been used adequately to improve court management.
- Even though Section 301 of the Code of Criminal Procedure provides for the holding of trial proceedings expeditiously, it is an open secret that there is enormous delay in the disposal of cases because of frequent adjournments.
- The glut of cases in the lower courts is where the root of the problem lies. A number of courts still do not have data under the “Date filed” column, the most crucial piece for identifying delays.
- The proportion of cases that are stuck pending police investigations has little bearing in the ability of the courts to speedily finish trials. For instance, in Gujarat, where 92 out of every 100 cases are pending before the court, only 11.5% are waiting for police investigations to be completed. On the other hand, in Assam where 80 out of 100 cases are waiting to be picked up the court, about 59% of cases are awaiting police investigations.
- Inadequate strength of the police force has also played its part in the pile up of cases before the courts.

Measures needed to reduce judicial backlog:

- Annual targets and action plans must be fixed for the judicial officers to dispose of old cases where accused is in custody for over two years.
- Quarterly review of judicial officers’ performance to curb malpractices like hasty disposal which undermined the quality of justice dispensed, must be made.
- Expeditiously filling vacant posts, improving Court infrastructure and setting standards of judicial recruitment examinations are other measures to improve the quality of district judges.
• Further perceptions of irregularities in judge selection deserve consideration; in this context the National District Judge Recruitment Examination mooted by the Supreme Court must be given a serious thought.

• Incremental measures like restricting adjournments, curbing summer vacations, and audio-visual recording of court proceedings along with real-time data monitoring of case status will produce a transformative effect.

• Case Flow Management (CFM) rules can be incorporated by looking into the recommendations of committees formed by the Supreme Court such as the Justice M. Jagannatha Rao committee.

• Encouraging Alternate Dispute Redressal Mechanisms such as Arbitration, Mediation, Conciliation and Lok Adalats along with fast track courts.

• Separation of traffic cases from ordinary courts.

• Improve the quality of subordinate judges, at the level of recruitment as well as on the job training.

• Implement the concept of evening courts where the services of the retired judges may be taken along with the law graduates. It would be beneficial in two ways: help training the young incumbents and reducing the pendency.

To conclude, other states should follow the footsteps of Haryana, Chandigarh, Punjab, Himachal Pradesh and Kerala where cases pending over 10 years have been reduced to 1% of the total pendency. In addition the recommendations of the 245th Law Commission Report on “Arrears and Backlogs: Creating Additional Judicial Womanpower must be implemented.

5. **While the power to punish for the contempt of court is a much needed tool to protect the administration of justice from being maligned, it is time that it be relooked into. Critically analyse.**

**Approach:**

• Define contempt of court and give the constitutional and legislative provisions.

• Give arguments in favor of retaining the contempt of court provisions

• Discuss the issues with the current provisions of contempt of court.

**Answer:**

Articles 129, 142 and 215 of the Indian Constitution and the Contempt of Courts Act, 1971 vest the Superior Courts with the power to punish for their contempt. This is also facilitated by the article 19 (2). The purpose behind the contempt provision is to protect the administration of justice from being maligned and to ensure compliance with judicial orders.

The 1971 Act defines civil and criminal contempt. Civil contempt is when a person willfully disobeys any order of a court. Criminal contempt is interfering with the administration of justice, or scandalizing the court or lowering its authority. Hence, it gives the courts wide powers to restrict an individual's fundamental right to personal liberty.

There have been several instances where fair criticism of the judiciary has invited the threat of contempt proceedings, thus thwarting the fundamental right of freedom of speech and expression. This has necessitated a relook into the criminal contempt provisions.

**Relevance of power to punish for the Contempt of Court**

• Power to punish for non-compliance of its orders is essential to maintain the confidence in the judiciary and ensure the rule of law.

• It enforces the equality before law - Acts as a tool against the rich and the powerful by forcing compliance with the orders of the court.
• According to 274th Law Commission Report no changes are required to the 1971 statute. Even in the absence of the legislation, the Courts have the power to punish for their contempt under the constitution. In fact, by laying down the procedure, the act restricts the vast authority of the courts in wielding contempt powers.
• It is also needed to maintain credibility and efficiency of judiciary. For example, the Supreme Court issued contempt proceedings against Justice Karnan for his demeaning behavior.
• It is needed for the independence of the judiciary and protect its functioning from the opinion of media and the public.

Arguments for relook
• It goes against the fundamental right of Free Speech and Expression.
• In a democracy, judicial accountability is also required. For example, terming FIR against a sitting judge as contempt of court raises the question of its accountability.
• The grounds, on which contempt proceedings can be initiated such as ‘scandalizing the court’, are open ended and vague which are prone to misuse.
• In UK as well, the offence of ‘scandalizing the court’ as a ground for criminal contempt has been abolished in 2013.

Law of contempt of court, along with other laws, like sedition, is a remnant of our colonial past, enacted to curtail public scrutiny. A mature approach to criticism will inspire public confidence in judiciary. These laws should be examined to refine the broad provisions prone to misuse. Further, care should be taken that dilution of the Act does not interfere with independent functioning of judicial system in India.

6. “The process of justice delivery in India has become a punishment in itself”. In reference to the above, examine the causes for a large number of under trials in the country. Do you think Supreme Court’s recent directive on Section 436A of CrPC would be able to address the issue?

Approach:
The answer should be divided into two parts, the first one addressing the causes for large number of undertrials in India. The second part should bring out why SC ruling is not enough for solving the problem. Reasons must be cited to justify the stand. Finally, end on the kind of reforms that are needed to truly solve the problem of large number of undertrials in India.

Answer:
The Undertrail problem is defined as number of under trials in proportion to convicts in Indian Prison system. The primary constitutional and moral concern with undertrial detention is that it violates the normative principle that there should be no punishment before a finding of guilt by due process.

Some of the causes of large number of undertrials in India are:
• The disproportionately small number of courts in a country with a large population
• The perennially increasing rights and obligations created by ever increasing pieces of legislation
• The low level of efficiency of the judicial system and;
• The multi-tier appellate system primarily caused the huge backlog in the justice delivery system.
• Another major reason for the large volume of pending cases is the inability of undertrials to furnish a bail bond
The Supreme Court of India based on Section 436A of the CrPC, has recently passed a judgment for states to release under trials who have already served more than half the sentence had they been convicted within two months. Even though the move is well intended there a number of the concerns remain with Section 436A:

- On average over 80 per cent of undertrials in India spend less than one year in prison during the years under consideration. Most of them are unlikely to have spent half of their likely prison term.
- So even though this would help those who have been undertrial for a long period of time it certainly wouldn’t solve the problem of undertrials in India.
- Single largest category of crime for undertrials in India is murder which entails sentence of larger duration. Ruling will not benefit them murder being heinous crime.
- Various reports and studies suggest that illiterates, poor and other vulnerable section are over represented in the undertrial population. Justice system must address this systemic bias.

Arguably, the high proportion of undertrials is a reflection of the pathological failure of the criminal justice system to successfully convict and thereby secure peace and security. This failure must be resolved by focussing on systematic institutional reform of the investigation and prosecution of offences. Second, our current legal strategy assumes inordinately long periods of undertrial detention and we show that a Section 436A-focussed strategy will have minimal impact on the undertrial population overall.

Without substantive reforms to the investigation and trial process, early release of undertrials may further aggravate the pathologically low rates of conviction and incarceration in the Indian criminal justice system.

7. Article 145(3) of the Indian Constitution says that any “substantial question of law” relating to the interpretation of the Constitution must be heard by benches of at least five judges. But some of the most important constitutional cases, like Salwa Judum and Naz foundation, were decided by smaller benches. Why is there a need for larger benches? What are the possible reasons for smaller benches hearing such important cases?

**Approach:**

- Answer should focus on the reasons for smaller benches and problems associated with them.
- There is no need to go into a broad discussion of Salwa Judum or Naz Foundation cases.

**Answer:**

- The requirement for large benches is straight forward and logical also. The Constitution is explicit that for important constitutional matters larger benches are needed. Benefits of larger benches hearing important cases can be discussed as under:
  - More judges mean that there will be more points of view, greater reflection and more thorough analysis offered in these vital cases that will help set the direction of the country for decades to come.
  - It also gives such judgments added value and legitimacy. It is more difficult to overturn a five-judge bench than a two- or three-judge bench, meaning the public can have more confidence in the stability of the law on issues that affect millions of lives.
o More judges also mean that it is likelier that the opinion of the bench will reflect that of the overall Supreme Court and not just two or three judges with a minority viewpoint. This is all the more critical in cases where novel questions of law are being addressed and there is no clear precedent on the issue.

o Alternatively, when there is a clear precedent, more judges are required to overturn the decisions of these earlier benches. It is already worrying that some of today's smaller benches are effectively ignoring or de-emphasising judgments of earlier and larger constitution benches. This is undermining the court's entire system of precedent.

- Given all these benefits to larger benches, there must be some reasons because of which they are not being constituted more often. Some of those reasons are as below:
  o As the court has found itself bogged down with more and more cases (over 50,000 are currently pending), it has become more difficult to have larger benches. They take judges away from disposing of the long line of backlogged matters.
  o Also there are no clear cut guidelines on how to determine when a case involves a "substantial question" of constitutional law and so requires a larger bench.
  - So there are no alternatives to larger benches as constitution explicitly mandates it. There are no easy answers here, but the court should lay out a vision for how it wants to balance the many competing pressures on its time and judges.

8. While Public Interest Litigations have provided access to justice for the poor and the marginalized sections of the society but many vested interests have also misused it. In this context, examine the utility of PILs as a tool of social justice.

Approach:

- Highlight how Public Interest Litigations have benefitted the poor and marginalized by illustrating the link between positive contribution of PILs and Judicial Activism.
- Also, discuss the misuse and pitfalls of PIL.
- Conclude by presenting a forward outlook.

Answer:

Public interest litigation means any litigation conducted for the benefit of public or for the removal of some public grievance. Any public spirited person can move the court for public cause by filing a petition in the Supreme Court under Article 32 of the Constitution or in the High Court under Article 226 of the constitution or before the Court of Magistrate under sec.133 of Code of Criminal Procedure, 1973. The traditional requirement of 'locus standi' is relaxed in PIL.

To achieve justice in the society, Public Interest Litigation (PIL) has proved to be a useful tool. It provides a means to justice to disadvantaged sections of society and enables civil society to not only spread awareness about human rights and also allows them to participate in government decision making.

- The most important contribution of PIL has been to bring courts closer to the disadvantaged sections of society such as prisoners, destitute, child or bonded labourers, women, and scheduled castes/tribes.
- As Directive Principles are not justiciable, the courts imported some of these principles into the FRs thus making various socio-economic rights as important—at least in theory—as civil and political rights. This resulted in the legal recognition of rights as important as education, health, livelihood, pollution-free environment, privacy and speedy trial.
• PIL is also an instrument to promote rule of law, demand fairness and transparency, fight corruption in administration, and enhance the overall accountability of the government agencies.

• Through PIL, judiciary also triggered legislative reforms and filled in legislative gaps in important areas. For instance, the Supreme Court in the Vishaka case laid down detailed guidelines on sexual harassment at the workplace.

• The Indian judiciary, courtesy of PIL, has helped in ensuring the reservation of seats for SCs/STs and other backwards classes in employment or educational institutions.

Ulterior purpose: While PIL has proved to be a useful tool for the marginalized disadvantaged groups, it is being misused by people agitating for private grievances in the grab of public interest and seeking publicity rather than espousing public causes.

Almost any issue is presented to the courts in the guise of public interest because of the allurements that the PIL jurisprudence offers (e.g. inexpensive, quick response, and high impact). Frivolous PIL plaintiffs waste the time and energy of the courts, the judiciary and add to the burden of increasing backlog.

Although the Supreme Court has compiled a set of “Guidelines to be Followed for Entertaining Letters/Petitions Received by it as PIL” it is critical to ensure that PIL does not become a back-door to enter the courts to fulfill private interests, settle political scores or simply to gain easy publicity.

PIL enables civil society to play an active role in spreading social awareness about human rights, in providing voice to the marginalised sections of society, and in allowing their participation in government decision making. If civil society and disadvantaged groups lose faith in the efficacy of PIL, that would sound a death knell for it.

9. While it has been argued that the judiciary should be brought under RTI, a balance also needs to be maintained between independence of the judiciary and the right of people to know. In this context, discuss the pros and cons of bringing the judiciary under the ambit of RTI.

Approach:

• Introduce the debate around the issue of bringing judiciary under RTI
• Analyse the pros and cons of bringing judiciary under the ambit of RTI. Conclude with suggestions for the same.

Answer:

Recently honorable Supreme Court has referred to a five bench judges Constitution Bench, the question whether disclosure of information about judicial appointments, transfers of HC judges amounts to interference in judicial independence. Amidst the controversy of annulment of NJAC by the Supreme Court, the debate of bringing judiciary fully under the ambit of RTI is gaining ground.

Some of the rationale and benefits in bringing judiciary under RTI can be enumerated as-

• Appointments through proceedings of the collegium are absolutely opaque and inaccessible for public. RTI umbrella over judiciary will bring in transparency and will curb nepotism in appointments. It will also curb instances like superseding of the senior judges for promotions etc.

• The law of contempt has been often misused to punish outspoken criticism and exposure of judicial misconducts. Even an FIR cannot be registered against the
judges under the Prevention of Corruption Act. RTI will ensure accountability and will act as a key tool in eliminating misconduct by judges.

- While acting on the premise of judicial independence, judges expediently exclude themselves from disclosure of any kind of information to public. If brought under RTI, such disclosure will create public trust.
- RTI will help in curbing red-tapism and will ensure rationality and logic in judgements.

However there are some cons of bringing judiciary wholly under RTI.

- There is apprehension that it might undermine the independence of judiciary and the decisions as judges would be apprehensive of public pressure.
- Apprehensions that RTI disclosure may affect credibility of the decisions and free and frank expression of judges.
- The disclosure of personal details of judges might be a cause of concern for national security.
- Sometime details of appointments are closely linked with personal details like medical conditions, disclosure of which will undermine the right to privacy.
- Some of the RTI applications may be frivolous and politically motivated.

However, it needs to be noted that judiciary is not an exemption under RTI. Judiciary plays a dual role of administrative functions and the other of judicial decision making and most of administrative functions are under ambit of RTI. The judicial decisions can also be brought under RTI but there is requirement of drawing balance between independence of judiciary and the fundamental right of right to know of people so that judiciary remains people last hope in democracy.

10. **Criticism about the judiciary should be welcomed, so long as criticisms do not hamper the “administration of justice”. In this context discuss whether the power of contempt of court given to the higher judiciary limits the freedom granted by Article 19(1)(a) and whether these two can be reconciled.**

**Approach:**

- In the introduction briefly address the key concern of the statement and link it to the argument on power of contempt and freedom of speech and expression.
- Discuss the need of contempt powers with judiciary.
- Discuss the implications of contempt powers on freedom of speech.
- Discuss how these two can be reconciled.

**Answer:**

Administration of justice requires strong safeguards for the judiciary. Thus:

- Article 129 and 215 of the Constitution of India empower the Supreme Court and High Court respectively to punish people for their contempt.

The Contempt of Court Act, 1971 delineate contempt powers of judiciary to:

- Prevent scandalisation or lowering the authority of any court.
- Prevent interference with the due course of any judicial proceedings.
- Strengthen court’s image as legal authority and that no one is above the law.
- Ensure one could not defy court orders according to one’s own free will.

In the context freedom of speech and expression, a right underpinned by article 19 1(a), contempt of court is considered a reasonable restriction under Article 19 (2), which empowers contempt laws.
Critics observe that:
- Judiciary has routinely invoked its contempt powers to punish expressions of dissent on grounds of such speech undermining or scandalising the judiciary’s authority.
- Acts of speech and expression that do not necessarily impede with the actual administration of justice have been punished invoking the idea of reputation of judiciary in the eyes of the public.

Rights under article 19 (1) (a) are important as they:
- Empower citizens to express their opinion which is necessary for good public policies.
- Are important in themselves for ensuring a good life, also enshrined under Article 21 of the constitution.

Thus, it becomes imperative to reconcile the freedom of speech and the contempt power of the courts. It can be ensured by taking the following into consideration:
- Judiciary itself underlined guidelines that envisage economic use of the jurisdiction on the one hand and harmonization between free criticism and the judiciary, e.g. Mulgaonkar case 1978. Also, of note are observations in cases such as Ram Dayal Markarha v. state of Madhya Pradesh 1978; Conscientious Group v. Mohammed Yunus 1987; P.N. Duda b. P. Shiv Shankar 1988; Sanjay Narayan, Hindustan Times v. High Court of Allahabad 2011.
- The 2006 amendment in the Contempt of Courts Act, 1971 states that “court may permit, in any proceedings for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bonafide”.

International standards and laws of other democracies would be informative and enable us to arrive at the right standards. e.g. in European democracies such as Germany, France, Belgium, Austria, Italy, there is no power to commit for contempt for scandalising the court. In the U.K., the offence of scandalising the court has become obsolete. In the United States, contempt power is used against the press and publication only if there is a clear imminent and present danger to the disposal of a pending case.
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