"If the lamp of justice is lost in the darkness, what idea can be formed of the intensity of darkness?" – Lord Bryce

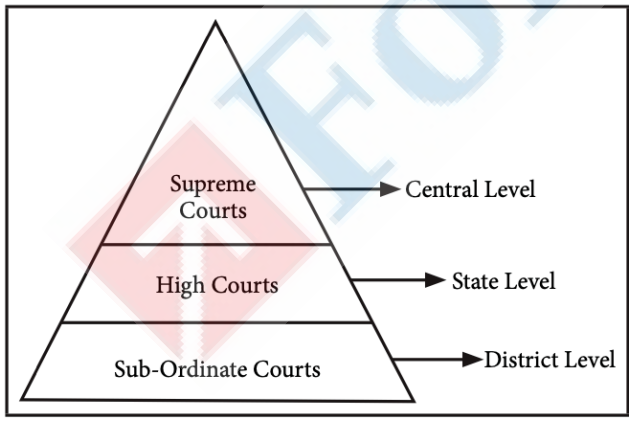
India, as a democratic country, is governed by the principle of the *Rule of Law*. Laws are systems of rules created by the State to regulate society, and they apply uniformly to all citizens, ensuring that no one is above the law. When a law is violated, a person's guilt is determined through a formal legal process, and if found guilty, they are subjected to punishment as prescribed. At this stage, the judiciary, the third organ of the State, steps in to uphold justice.

The judiciary is the branch of government responsible for interpreting laws, resolving disputes, and safeguarding citizens' rights. The term *judiciary* originates from the Latin word *judicium*, meaning "judgement." In essence, it is an institution that delivers judgements by applying and interpreting the law, thereby ensuring fairness, equality, and accountability in the legal system.

**Structure of the Indian Judiciary system:**

The Indian Constitution establishes a *Single Integrated Judicial System* to enforce both Central and State laws. This unified structure was inspired by the Government of India Act, 1935, and ensures consistency in the interpretation and application of laws across the country. Unlike federal systems such as the United States, where separate sets of courts operate at federal and state levels, India follows a single, cohesive system of justice.

This structure resembles a pyramid. At the top stands the Supreme Court of India, followed by the High Courts at the State level. Beneath each High Court exists a hierarchy of subordinate courts, including district and other lower courts. Since one uniform system of civil and criminal law operates throughout India, cases decided in the lower courts can be taken up to higher courts by way of appeal, ultimately ensuring a common judicial framework for the entire nation.



**Independence of Judiciary:**

For a democracy to thrive, an impartial and independent judiciary is indispensable. Judicial independence means that courts must remain free from external pressures such as interference from the executive or legislature, influence of political parties, public opinion, or private interests. At the same time, independence does not imply arbitrariness, for the judiciary continues to remain accountable to the Constitution, which acts as its guiding framework.

The need for an independent judiciary is rooted in its critical functions. It safeguards individual rights and ensures the impartial administration of justice. It preserves the federal balance by protecting the division of powers between the Union and the States. Most importantly, independence empowers judges to decide cases without fear or favour, guided only by the merits of the case.

**Constitutional provisions ensuring Judicial independence**

The Indian Constitution has ensured the independence of the judiciary through its various provisions, namely

1. **Separation of Power**: The legislature is not involved in the process of appointment of judges. Thus, upholding the principle of Separation of Power. Moreover, no discussion can take place in the Parliament regarding the conduct of a judge in the discharge of their duties, except when their impeachment motion is under consideration in Parliament.
2. **Security of Tenure**: The judges do not hold office during the pleasure of the President. Rather, judges hold office till reaching the age of retirement and cannot be arbitrarily removed from their office except by the process of impeachment.
3. **Difficult removal process**: The Constitution prescribes a very difficult procedure for the removal of judges, only on the grounds of proven misbehaviour or incapacity.
4. **Financial independence**: The judiciary is not financially dependent on either the executive or legislature. The salaries and allowances of the judges are charged upon the Consolidated Fund of India and cannot be reduced to their disadvantage.
5. **Power to punish for contempt of court:** The judges are free to announce their decisions, and their decisions cannot be criticized in public or by the press. The judiciary has the power to penalize those who are found guilty of contempt of court.
6. **Ban on practice after retirement**: Judges of the Supreme Court are not allowed to plead in any court or authority within the territory of India. This provision has been made to ensure that they cannot influence their former colleagues in the judiciary.
7. **Fixed Service Conditions:** The service conditions of the Judges cannot be changed except during a financial emergency.
8. **Freedom to appoint its Staff:** The Chief Justice of India can appoint officers and servants of the Supreme Court without any interference from the Executive.
9. **Jurisdiction cannot be curtailed:** The jurisdiction and powers of the Supreme Court can only be enlarged by the Parliament and not be curtailed.

The Supreme Court of India is the highest constitutional court and final court of appeal in the country, located in New Delhi. The Supreme Court is the final interpreter and the guardian of the Constitution. It

is designated as the protector of the Fundamental Rights of citizens and the guardian of the Constitution itself.

It was established under the provisions outlined in Chapter 6 (Articles 124 to 147) of Part V of the Indian Constitution. The Constitution, thus, deals with the organization, independence, jurisdiction, powers and procedures of the Supreme Court. Parliament has the authority to regulate them, ensuring their effective functioning within the constitutional framework.

**Historical background and evolution of the Supreme Court**

The evolution of the Supreme Court of India spans significant legislative milestones:

1. The Regulating Act of 1773 established the Supreme Court at Calcutta as a Court of Record, granting it comprehensive powers and authority.
2. The Government of India Act, 1935 created the Federal Court of India, as the final interpreter of the law and was endowed with exclusive original jurisdiction to resolve federal disputes.
3. With the enactment of the Constitution, the Supreme Court of India was established on 26th January 1950 to replace the Federal Court of India. Interestingly, the first sitting of the Supreme Court was held on 28th January 1950.
4. The Supreme Court also replaced the British Privy Council as the highest court of appeal. Thus, conferring wider jurisdiction upon the Supreme Court, surpassing that of its predecessor.

**British Privy Council**

The British Privy Council served as the highest court of appeal, located in London. It heard appeals from various courts of the British colonies, including from the Federal Court of India. The Privy Council played a pivotal role in shaping and unifying India's legal system and institutions.

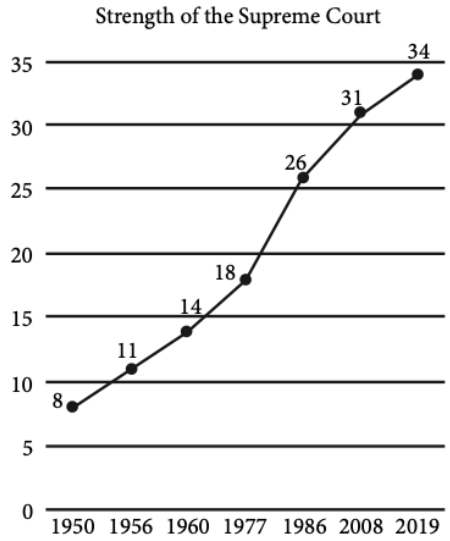
Its location in England, however, posed a significant disadvantage for Indians seeking justice and was perceived as a symbol of subjugation. Ultimately, its abolition, through the Privy Council Jurisdiction Act of 1949, marked a significant milestone in India's legal independence and judicial evolution.

**Composition of the Supreme Court**

Article 124 (1): There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than 7* other Judges.

* Now 33, as increased by the Supreme Court (Number of Judges) Amendment Act, 2019.

Originally, the Supreme Court of India, under Article 124, was to consist of a Chief Justice and up to seven puisne judges (1+7). The Constitution has empowered the Parliament to increase the number of puisne judges in the Supreme Court. **(PYQ 2014)** Over the period of time, the Parliament has increased the number of puisne judges to address the growing demand. The last addition was done in 2019 when the Parliament added three judges to increase the strength of puisne judges from 30 to 33 by passing the Supreme Court (Number of Judges) Act 2019. At present, the sanctioned judge strength of the Supreme Court is 34 (CJI + 33 puisne judges).




**Puisne Judges**

'Puisne', pronounced as 'puny', is a legal term that originated in France, meaning "junior" or "inferior in rank." In the context of common law jurisdictions like India, puisne judges refer to all judges of a court other than the Chief Justice of the court.

**Appointment of Judges**

Article 124 (2): Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for that purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted: Provided further that—
(a) a Judge may, by writing under his hand addressed to the President, resign his office;
(b) a Judge may be removed from his office in the manner provided in clause (4) of Article 124.

The Constitution, under Article 124, mandates that every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal. The oath or affirmation is also administered by the President, or some person appointed by him. The President appoints the Chief Justice of India (CJI) after 'consultation' with such judges of the Supreme Court and High Courts as he deems appropriate. Other judges of the Supreme Court are appointed by the President after a consultation with the CJI and such other judges of the Supreme Court and the High Courts as he deems necessary. The consultation with the CJI is obligatory for appointing judges other than the CJI (PYQ 2012).

**Qualification**

**Article 124 (3): A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—**
(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or
(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession; or
(c) is, in the opinion of the President, a distinguished jurist.

Explanation I- this clause "High Court' means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.
Explanation II- In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district Judge after he became an advocate shall be included.

The qualifications of judges are critical to ensure integrity and efficacy of the judicial system. The Constitution, thus, provides that a person to be appointed as a Judge of the Supreme Court should be a Citizen of India and must have experience as -

1. A Judge of a High Court for 5 years or two or more such courts in succession, or
2. An Advocate of a High Court for 10 years or two or more such Courts in succession [This includes any period during which the person held a judicial office not inferior to that of a district Judge after becoming an advocate], or
3. A 'Distinguished Jurist' in the opinion of the President. (No such provision for being a judge of the High Court).
4. Interestingly, the Constitution does not prescribe a minimum age for appointment as a judge of the Supreme Court.

Typically, judges of the Supreme Court are appointed from among the High Court judges. However, in recent times, individuals like Rohinton Nariman, U.U. Lalit, and Indu Malhotra have been directly elevated to the Supreme Court from the Bar. Notably, no non-practising lawyer has ever been appointed to the Supreme Court so far.

**Distinguished Jurist**
A distinguished jurist typically refers to a highly respected and accomplished legal professional who has made significant contributions to the field of law through their expertise or academic contributions etc. In order to be appointed as a Supreme Court judge, a distinguished jurist can be designated only by the President, who must act on the aid and advice of the Council of Ministers. Till date, no 'Distinguished Jurist' has been appointed as a Supreme Court Judge.

This qualification was debated in the Constituent Assembly as there was no such criteria in the initial

draft Constitution. Later, taking inspiration from the qualifications for the Judges of the International Court of Justice, an amendment was moved to permit the President to appoint a 'distinguished jurist' to the Supreme Court. After being positively received by other members and the Drafting Committee, it became a part of the qualifications for being a judge of the Supreme Court.

**'Consultation' & Collegium System**

The Supreme Court (SC) has provided various interpretations of the term 'consultation' in the above-mentioned provisions. These interpretations have led to a series of four important cases known as the 'Judges Cases,' which played a significant role in the development of the collegium system. These Judges cases are:

1. **First Judges case (1982**) The *S.P. Gupta vs Union of India* (1982), also called the First Judges Case or the "Judges' Transfer Case," highlighted the conflict between the Executive and the Judiciary over the appointment and transfer of judges. Earlier, in *Union of India vs Sankalchand Himatlal Sheth* (1977), the Supreme Court had held that transfers of High Court judges were an administrative matter and could not be challenged in court. However, growing concerns about arbitrary appointments and frequent short-term transfers threatening judicial independence led senior advocate S.P. Gupta to file a petition in 1981. In its ruling, the Supreme Court clarified that "consultation" with the Chief Justice of India in such matters only meant an exchange of views and did not mean "concurrence." This interpretation gave primacy to the Executive over the Judiciary in judicial appointments and transfers.

The 121st Law Commission Report recommended that a Judicial Commission should be set up to oversee the appointment of the judiciary. Empowered by the First Judges case and the Law Commission Report, 67th Amendment Bill, 1990 was introduced in the Parliament to empower the President to set up a National Judicial Commission. However, nothing came of this as the bill lapsed with the dissolution of the 9th Lok Sabha.

2. **Second Judges case (1993):** The correctness of the First Judges Case was doubted in Subhash Sharma vs Union of India, which opined that the First Judges Case judgement should be considered by a larger Bench. The CJI, thus, constituted a nine-judge Constitution Bench to examine the issues of appointment and transfer of judges. In the Supreme Court Advocates-on-Record Association vs Union of India (1993), the Supreme Court overruled the judgment in the First Judges Case with 7:2 majority and concluded the following:
    a. The Supreme Court curtailed discretion of the Executive and ruled that the senior most judge of the Supreme Court should alone be appointed as the CJI, i.e., the outgoing CJI recommends the senior most judge as his successor. Thus, institutionalizing the 'Seniority principle'.
    b. The other judges are to be appointed by the President after consultation with the CJI, and the 'consultation' really means 'concurrence'. Thus, giving a primary role to the CJI in judicial appointments and making his/her recommendation binding on the Executive.

The bench, however, also held that before making such recommendations, CJI must further consult the collegium of two senior- most judges of the Court.

The Second Judges case, thus, devised a specific procedure called the 'Collegium System' for the appointment and transfer of judges in the higher judiciary that reflects the collective decision of the court, rather than the individual opinion of the CJI.

**CJI & the 'Seniority principle'**

Until 1973, the long-standing practice was to appoint the most senior judge of the Supreme Court as the CJI. This unwritten tradition of seniority principle was breached in 1973 when Justice A.N. Ray was appointed as CJI. Interestingly, in the Kesavananda Bharti case, 1973, Justice Ray was a part of a minority judgement which stated that there was no limitation on the Parliament's power to amend the Constitution. On the very next day of the landmark judgement, he was appointed as the 14th CJI on 26th April 1973, superseding Justice Shelat, who was in line to become the CJI along with two other senior Judges, Justice Hegde and Justice Grover. All three resigned in protest.

After CJI Ray's retirement in 1977, M.U. Beg was appointed as CJI superseding the senior-most judge Justice H.R. Khanna. Again, it must be noted that Justice Khanna played a key role in the majority opinion in the Kesavananda Bharti case and formed the sole dissenting voice in the ADM Jabalpur case, 1976 (famously known as the 'Habeas corpus case'). Justice Khanna submitted his resignation to the President soon after the announcement that he had been superseded. Later, there was a return to the seniority principle when Morarji Desai became the Prime Minister. This was also reaffirmed in the Second Judge case. However, it is crucial to observe that other common law jurisdictions, such as the United Kingdom and the United States, do not employ the seniority principle in their appointments to the position of Chief Justice.As per the prevailing MoP convention, seniority for CJI selection follows date of appointment to the Supreme Court; where the date is the same, the tie-break is prior High Court seniority, and if still equal, age (CAPF AC 2020).

3. **Third Judges case (1998):** In 1998, concerns over the interpretation of the Second Judges Case led the Union of India to seek the Supreme Court's clarification through a Presidential Reference under Article 143. In *Re Special Reference No. 1 (1998)*, a nine-judge Bench unanimously held that judicial appointments must be decided by a collegium led by the CJI. The Court ruled that 'consultation' means consultation with a plurality of judges, not just the CJI's opinion. It expanded the collegium from the CJI and two senior-most judges (as per the Second Judges Case) to the CJI and four senior-most judges of the Supreme Court. Since then, this expanded collegium system has governed appointments to the higher judiciary.

4. **Fourth Judges case (2015):** Through the 99th Constitutional Amendment Act, 2014 the National Judicial Appointments Commission (NJAC) was established to replace the collegium system for the appointment of judges. The NJAC consisted of six members - three judges of SC, a central law minister and two civil society experts. A person would not be recommended by NJAC if any two

of its members did not accept such a recommendation, making the appointment process more broad- based.

However, a five-judge bench of the Supreme Court upheld the collegium system and struck down the NJAC as unconstitutional on the grounds that the involvement of the Executive in judicial appointment was against the "Independence of Judiciary", which is part of the Basic Structure of the Constitution (PYQ 2019).

**Memorandum of Procedure**

A Memorandum of Procedure (MoP) is a set of guidelines for appointing judges to the higher judiciary. It covers aspects like eligibility, transparency, a Secretariat for appointments, and complaint redressal. Much like the collegium, the MoP is also a judicial innovation. In 1999, the Union government finalized the MoP in line with the Third Judges Case. After the NJAC was struck down in 2015, the Supreme Court asked the government to revise the MoP in consultation with the CJI to bring more transparency. The Department of Justice prepared a draft, but differences between the executive and judiciary over certain clauses led to a long deadlock. While the government maintains that the MoP is yet to be finalized, the Supreme Court has clarified that the current MoP is valid. In *Lok Prahari vs Union of India* (2021), the Court held that the MoP is an administrative guideline, not binding law under Article 141, and can be revised. Later, in 2023, the Union Law Minister suggested including government nominees in the "search-cum-evaluation committee" to assist the collegium. Interestingly, even a Parliamentary Standing Committee noted its concern over the lack of consensus on the MoP despite years of discussions.

**Collegium system**

The term "Collegium" has not been mentioned in the Constitution of India. The collegium system has been devised as a mechanism by the judiciary, through Judges cases, for the appointment and transfer of judges.

The powers of the government are limited in the collegium system. The government can raise objections and seek clarifications regarding the Collegium's choices, but if the Collegium reiterates the same names, the government is bound to appoint them to the post. Also, it can get an inquiry conducted by the Home Ministry if a lawyer is to be elevated to be a judge in a High Court or the Supreme Court.

**Historical background**

The concept originated from recommendations put forth by the Bar Council of India in 1981, during a national lawyers' seminar in Ahmedabad. It proposed a collegium system for the appointment of the Supreme Court Judges, whose recommendations should be binding on the President. Here, the collegium was to consist of – CJI, five senior Judges of the Supreme Court along with two representatives from the Bar Council of India and the Supreme Court Bar Association.

Soon, Justice P.N. Bhagwati in the First Judges Case, 1981, while expressing dissatisfaction with the existing 'mode of appointment' of judges, vouched for establishing a Collegium system where the consultations can be more broad-based. Composition & Procedure of the Collegium The composition of

the collegium system is as follows:

a) To make a recommendation for the appointment of a judge to the Supreme Court, the CJI must consult with four other senior-most judges of the Supreme Court. [CJI + 4]
b) A High Court Collegium, meanwhile, is led by the incumbent Chief Justice and the two senior-most judges of that court. [CJ(HC) + 2] It must be noted that all consultees must record their opinions in writing, and it should form a part of the appointment file. Also, if the other Judges of the collegium retire before the Chief Justice, then s/he must consult the next successive judges in seniority to maintain administrative uniformity.

With regard to the appointment of High Court Judges, the Constitution, under Article 217 mandates that every Judge of the High Court shall be appointed by the President by warrant under his hand and seal. The oath or affirmation is administered by the Governor (not the President), or some person appointed by him for that purpose.

The President appoints the Chief Justice of a High Court after 'consultation' with CJI and the Governor of the State. The Chief Justice of the High Court is appointed following a policy that mandates Chief Justices to come from outside their respective States. For appointing other judges to a High Court, the President must consult the CJI, Governor and Chief Justice of the respective High Court. Here, the CJI and Chief Justice of the High Court shall formulate their opinion aft er consultation with two senior-most judges of their respective Courts [(CJI + 2) + (CJ(HC) + 2)]. The proposals for such appointments are initiated by the Chief Justice of the High Court and this recommendation is then forwarded to the Chief Minister, who advises the Governor to send the proposal to the Union Law Minister.

For the transfer of a judge from one High Court to another, the President must consult the CJI. Here, the CJI must consult with the Chief Justices of the respective High Courts. Again, the CJI shall formulate their opinion after consultation with four senior-most judges of the Supreme Court and Chief Justices of the High Courts shall formulate their opinion after consultation with two senior-most judges of their respective Courts. [(CJI + 4) + (CJ(HC) + 2) + (CJ(HC) + 2)]

**Constituent Assembly debates regarding 'Appointment of Judges'**

The Constituent Assembly discussed the matter in May 1949. There was a heated debate surrounding the 'consultation' requirement in clause (2) of Article 124. Some members proposed the removal of such requirements altogether, allowing the President to be solely responsible for the appointment. Some suggested that the appointment of CJI must be confirmed by a two-thirds majority vote of a joint session of Parliament. Along similar lines, some proposed that the Rajya Sabha must also be consulted by the President. However, this was dismissed on two grounds – it would be an imported system of electing judges, rather than selecting them, and it might lead to the politicization of the Judiciary.

Other members proposed that the appointment of the CJI and other judges should

occur only with the 'concurrence' of the sitting CJI. It was positively received by some members, while Dr. Ambedkar responded that the argument to give veto power to the CJI in the appointment of judges assumes that the CJI's opinion is impartial and flawless. However, the CJI, like everyone else, is fallible, with personal biases and granting such authority to the CJI can be a dangerous proposition. For him, the draft Article sufficiently ensured the independence of the judiciary, as neither the Executive nor the Legislature had absolute authority in the matter.

**Evaluation of Collegium system**

The collegium system for the appointment and transfer of judges has served multiple purposes. Firstly, it insulates the doctrine of basic structure by shielding the judiciary from executive influence. Thus, preserving judicial independence. By granting primacy to the judiciary in appointing judges, the system effectively mitigates conflicts of interest, especially since the government is a major litigant.

Secondly, the collegium system strengthens the principle of separation of powers by removing judicial appointments from executive control. Thus, it can curb the patronage and favouritism often associated with executive appointments. Thirdly, the collegium system can play a pivotal role in preventing potential tyranny of the majority, thereby acting as a tool to enforce due checks on the Executive when needed.

But the system is not devoid of concerns. Firstly, there are concerns about transparency and accountability as the meetings are not public, and the reasons for accepting or rejecting judges are not disclosed openly. This opacity invites criticism regarding the fairness and openness of the selection process. Secondly, the system also lacks an objective selection criterion, and the absence of external members has contributed to perceptions of nepotism and the perpetuation of judicial dynasties, often referred to as the "uncle judges' syndrome." Thirdly, as pointed out by the 230th Report of the Law Commission, the collegium system is in violation of Article 74, according to which the President is to act on the aid and advice of the Council of Ministers.

Fourthly, the practice of judges appointing themselves is a departure from norms in other large democracies, and it raises questions about its compatibility with democratic principles. The collegium's operational challenges, such as the absence of a dedicated secretariat raises doubts about its ability to make well-informed decisions consistently. Fifthly, there is no avenue for grievance redressal for aggrieved parties, underscoring concerns about fairness and procedural justice within the judiciary. During the Constituent Assembly debates, Alladi Krishnaswamy Iyer had warned against vesting unpatrolled power in the judiciary, which, he believed, could engineer the creation of a 'super-legislature'.

As there is room for improved transparency, accountability and inclusivity in the collegium system, several steps can be taken. Firstly, an objective criterion for the selection and rejection of applications can be laid out, along with publicising reasons

in the public domain. Secondly, efforts can be made towards developing a reformed Memorandum of Procedure to integrate voices from outside the judiciary, such as eminent citizens and academics.

Strengthening transparency through a dedicated Secretariat and recording minutes of collegium meetings and bringing it under the ambit of the RTI Act, would further enhance accountability. Fourthly, creating an All-India Judicial Service (AIJS) and implementing a grievance redressal mechanism within the collegium can democratize the system. A future rise in the pendency of cases can be tackled only when the judiciary and executive are willing to negotiate with a citizen-centric spirit.

**Tenure of Judges**

* Article 124 (2A): The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

* Added by the 15th Amendment, 1963

In the Constituent Assembly, members debated the retirement age of Supreme Court judges with varied suggestions. Some wanted it raised to 68 years as recommended by the Federal Court, while others proposed that judges serve until they resigned or "behaved well." Another idea was to fix the age at 60, with the President empowered to extend it to 65 on a case-by-case basis. Some members felt the issue should be left to Parliament rather than fixed in the Constitution, while others argued that a reasonable limit was necessary. Eventually, the Constitution did not prescribe a fixed tenure for Supreme Court judges but set their retirement age at 65 years. Questions about a judge's age are to be determined by an authority specified by Parliament. Judges may resign by writing to the President or be removed through a motion passed by Parliament.

**CJI to die in harness:** There have been two judges who died while holding the office of CJI –

1. Justice H.J. Kania, the first Chief Justice of independent India, died in 1951, and
2. Justice Sabyasachi Mukherjee, died in 1990.

**Removal of Judges**

Article 124 (4): A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-third of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

Article 124 (5): Parliament may by law regulate the procedure for the presentation of an address and for

the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

In the process of removal of Judges, the Constitution empowers the 'Legislators' to 'Judge'. As outlined under clause (4) of Article 124, a judge of the Supreme Court can be removed from his office by an order of the President after a motion passed by the Parliament. Such a motion must be passed by each House of Parliament with a special majority, i.e., the majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting. The Constitution mandates that the motion for removal must be presented to the President in the same session. Notably, such motions do not lapse on the dissolution of the Lok Sabha.

A judge of the Supreme Court can be removed on the grounds of 'proved misbehavior or incapacity'. The Constitution neither defines nor gives details of what constitutes 'proved misbehavior or incapacity' (PYQ 2019). Parliament is empowered by the Constitution to make a law to regulate the procedure for the presentation of such a motion and for the investigation & proof of such charges. Accordingly, Parliament has passed the Judges (Inquiry) Act, 1968.

Thus, the Supreme Court Judges cannot be removed by the CJI (PYQ 2012). It must be noted that the Constitution does not use the term 'impeachment' for the removal of Judges. It has only been utilized with reference to the removal of the President.

**The Judges (Inquiry) Act, 1968**

The Judges (Inquiry) Act of 1968 regulates and gives details about the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment (PYQ 2019). According to the Act, a motion for removal can be admitted if it is signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha). The Presiding Officer of the House has the discretion to admit or reject the admission of the motion. Thus, the motion to impeach a Judge of the Supreme Court can be rejected by the Speaker of the Lok Sabha as per the Judges (Inquiry) Act, 1968 (PYQ 2019).

If admitted, the Presiding Officer must constitute a three-member committee comprising the Chief Justice or a Judge of the Supreme Court, the Chief Justice of a High Court, and a Distinguished Jurist.The committee frames the charges, and can seek a medical test for the judge if the impeachment charge is on the grounds of mental incapacity. The committee has the power to regulate its procedure, call for evidence, and cross-examine witnesses. The judge also has the right to examine witnesses. Once the investigation concludes, the committee will submit a report to the Speaker/ Chairman with its findings and observations. The Speaker/ Chairman will then place the report before Lok Sabha/ Rajya Sabha "as soon as may be".If the report finds that the judge is not guilty of misbehaviour or incapacity, the matter will end there. In case of a guilty finding, the report of the committee is adopted by the House in which it was introduced, and then an address is made to the President by each House of Parliament in the same session seeking the judge's removal.

The House then debates the motion, and the judge (or his representative) has the right to represent his case. Subsequently, the motion is put to vote and the House must pass the motion by a special majority, that is, a majority of the total membership of that House and a majority of not less than two-thirds of

the members of that House present and voting. The process is then repeated in the other House. After the motion is passed by both Houses, an address is sent to the President who eventually issues an order for the judge's removal.

**Instances of Impeachment of Judges in India**

Since Independence, six impeachment attempts have been made against judges — but none have been successful. In only two cases — involving Justices V Ramaswami and Soumitra Sen — the inquiry committees found the judges guilty. Out of the six cases, five involved allegations of financial misconduct. One involved charges of sexual harassment.

1. Justice V Ramaswami (1993): The first impeachment proceedings were initiated against Supreme Court judge V Ramaswami for financial impropriety. The motion failed, and Ramaswami retired in 1994.
2. Justice Soumitra Sen (2011): A judge of the Calcutta High Court, Justice Sen faced impeachment over corruption charges. The Rajya Sabha passed the motion, but Sen resigned before the Lok Sabha could take it up. The proceedings lapsed after his resignation.
3. Justice S K Gangele (2015): Justice Gangele of the Madhya Pradesh High Court faced charges of sexual harassment. A committee investigated and cleared him in 2017.
4. Justice J B Pardiwala (2015): Then a judge of the Gujarat High Court (now a Supreme Court judge), Justice Pardiwala faced an impeachment motion for controversial remarks on reservation. He expunged the remarks, and the motion was withdrawn by the Rajya Sabha Chairman.
5. Justice C V Nagarjuna Reddy (2017): A judge of the Andhra Pradesh and Telangana High Court, he was accused of harassing a Dalit judge and financial misconduct. The motion failed after MPs who had signed it withdrew their support, leaving it short of the required numbers.
6. Chief Justice Dipak Misra (2018): A politically sensitive impeachment attempt was made against then Chief Justice of India Dipak Misra. Rajya Sabha Chairman M. Venkaiah Naidu rejected the motion at the initial stage.

**Justice Yashwant Verma Controversy: How the Judiciary's In-House Inquiry Process Works**

The judiciary's in-house inquiry process is a mechanism to deal with allegations of misconduct against judges that fall short of impeachment. It was first conceptualized in 1995, after allegations of financial impropriety were made against the then Chief Justice of Bombay High Court, A M Bhattacharjee. The Supreme Court, in C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, noted a significant gap between "bad behaviour" and "impeachable misbehaviour". To address this, a five-judge committee was formed, and by 1999, the Supreme Court formally adopted an internal procedure for dealing with such complaints.

The process begins when a complaint is received by the Chief Justice of a High Court, the Chief Justice of India (CJI), or the President of India. If received by the President or a High Court Chief Justice, the complaint is forwarded to the CJI, who may dismiss it at the outset if it appears frivolous or insubstantial. If needed, the CJI can seek a preliminary report from the concerned High Court's Chief Justice. If this report suggests that a deeper inquiry is warranted, the CJI may constitute a

three-member committee comprising two Chief Justices of High Courts and one senior High Court judge.

This committee is allowed to follow its own procedure, so long as it ensures fairness and natural justice, including providing the concerned judge an opportunity to respond. After completing its inquiry, the committee submits a report to the CJI, stating whether the allegations are credible and whether they are serious enough to justify removal proceedings. If the allegations are found true but not serious enough for removal, the CJI may issue a formal "advice" to the judge, and the report is recorded for the future.

However, if the committee finds the charges serious enough to warrant removal, the CJI advises the judge to either resign or take voluntary retirement. If the judge refuses, the CJI may direct the High Court not to assign them any judicial work—this was the case recently with Justice Yashwant Varma. As a final step, the CJI informs the President and the Prime Minister that removal proceedings should be initiated.

**Oath or Affirmation**

Article 124 (6): Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Before assuming office as a Supreme Court judge, the appointed person must take an oath or affirmation before the President, or another person appointed by him for this purpose.

**Ban on practice after retirement**

Article 124 (7): No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

During the Constituent Assembly debates, members discussed restrictions on judges after retirement. Some proposed barring them from holding executive or profit-based offices, while others felt such limits were unfair. The Drafting Committee sided with the latter, noting that retired judges might still be needed for public service. Dr. Sapru, drawing from English practice, suggested that once appointed, judges should never resume legal practice after retirement, as it could influence or overshadow their former colleagues. He also argued that temporary or acting judges harmed justice more than they helped, and adequate pensions were the best way to ensure judges stayed away from practice. Ultimately, the Assembly decided that Supreme Court judges would not be allowed to plead in any court or authority within India after retirement.

**Post-Retirement Benefits**

In 2022, The Central Government amended the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 to provide extra benefits to retired Chief Justices and Judges of the Supreme Court. These benefits include:

- For one year after retirement, retired Chief Justices and Judges will get a chauffeur (like those in the Supreme Court) and a secretarial assistant (equal to a branch officer level).
- They will also receive round-the-clock security at home and a personal security guard for one year.
- A retired Chief Justice can stay rent-free in a Type VII house in Delhi (in addition to their official residence) for six months after retirement.
- Both retired Chief Justices and Judges will receive protocol and courtesies at ceremonial airport lounges.

**Salaries of Judges of Supreme Court & High Court**

**Articles 125 & 221: Salaries, etc., of Judges**

(1) There shall be paid to the Judges of the Supreme Court (and each High Court) such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.
(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Originally, the Constitution, under Articles 125 and 221, fixed the salaries of the Judges of the Supreme Court and each High Court "as specified in the Second Schedule". The 54th Amendment, 1986, increased these salaries and enabled the Parliament to make changes in future without a Constitutional Amendment. To regulate the salaries and certain conditions of the Judges, the Parliament enacted the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958. Thus, presently, the salaries, allowances and pensions of the Judges of the Supreme Court and each High Court are determined from time to time by Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency.
The salaries, allowances and pensions of the Judges of the Supreme Court are charged on the Consolidated Fund of India, i.e., the Parliament cannot vote on it but can discuss it (PYQ 2012). However, in the case of Judges of the High Court, only the pensions are charged on the Consolidated Fund of India. The salaries and allowances of the Judges of the High Courts are charged on the respective State's Consolidated Fund.

**Acting CJI**

**Article 126: Appointment of Acting Chief Justice**
When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

According to the Constitution of India, the President of India can appoint an acting Chief Justice when - a) The office of CJI becomes vacant, or b) the CJI is temporarily absent, or c) the CJI is unable to perform the duties of his office. The President can appoint a Supreme Court or High Court Judge to act as the CJI. Usually, in case the office is vacant, the senior most available Supreme Court Judge is appointed. Once the President approves the appointment, the Secretary of the Department of Justice, informs the CJI or the appointed Judge, announces the appointment and publishes a notification in the Gazette of India.

**Ad-Hoc Judges**

**Article 127: Appointment of ad hoc Judges**
(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an ad hoc Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.
(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

Article 127 empowers the Chief Justice of India (CJI) to appoint a High Court judge as an ad hoc judge of the Supreme Court whenever there is no quorum of judges available. This provision aims to address the shortage of permanent judges and reduce the backlog of cases. For such an appointment, the CJI must obtain the President's consent and consult the Chief Justice of the concerned High Court. The selected judge must be qualified to serve in the Supreme Court and, during the tenure as an ad hoc judge, enjoys the same powers, privileges, and authority as a regular judge of the Court. Attending Supreme Court sittings becomes the primary duty of such judges, taking precedence over their other responsibilities.

**Retired Judges**

**Article 128: Attendance of retired Judges at sittings of the Supreme Court**
Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court *[or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court] to sit and act as a Judge of the Supreme Court, and

every such person so requested shall, while so sitting and acting, been titled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court: Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

* Added by the 15th Amendment, 1963

According to Article 128, the CJI can ask a retired judge to sit and act as a Supreme Court Judge for a limited term. The Judges who are eligible for such attendance are – a) Retired Judge of the Supreme Court or b) Retired Judge of the Federal Court, or c) Retired Judge of a High Court who is qualified to be appointed as a Supreme Court Judge (allowed by the 15th Amendment, 1963). The CJI must get the prior consent of the President of India and that of the retired judge. Thus, any retired judge of the Supreme Court of India can be called back to sit and act as a Supreme Court judge by the Chief Justice of India with prior permission of the President of India (PYQ 2021). While attending the Supreme Court, the retired judge will have the same powers, jurisdiction, and privileges as a Supreme Court judge, however, s/he will not be deemed to be a judge of the Supreme Court. Their salaries and allowances are set by the President.

**Seat of Supreme Court**

**Article 130: Seat of Supreme Court**
The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

The Constitution, under Article 130, designates Delhi as the seat of the Supreme Court of India. Additionally, it empowers the Chief Justice of India (CJI), with the President's approval, to establish other locations as seats of the Supreme Court. However, this provision remains discretionary rather than mandatory. Importantly, no court has the authority to issue directives to either the President or the CJI to designate any other place as the seat of the Supreme Court.
By its 229th Report 2009, the Law Commission of India has recommended for division of the Supreme Court into a Constitution Bench at Delhi and court of last resort in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai.The Court has repeatedly treated proposals for regional benches as a matter within Article 130's administrative domain of the CJI with Presidential approval(UPSC CSE Prelims 2017).

**Jurisdictions & Powers - Supreme Court**
The Supreme Court is the highest judicial authority in the country, with wide-ranging powers and jurisdictions that are essential for upholding justice. Its multifaceted jurisdiction encompasses - A) Original, B) Writ, C) Appellate, D) Advisory, E) Revisory, F) Inherent and G) Extraordinary jurisdictions. Each of these jurisdictions plays a crucial role in maintaining the rule of law, interpreting the Constitution, resolving disputes, and ensuring the protection of fundamental rights.

**A. Original Jurisdiction of the Supreme Court**

**Article 131: Original jurisdiction of the Supreme Court Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute:**
(a) between the Government of India and one or more States;
(b) between the Government of India and any State or States on one side and one or more other States on the other; or
(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, named or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

Under Article 131, the Supreme Court has original jurisdiction, meaning it can hear certain cases directly without them being referred from lower courts. This provision was included by the Constitution makers to ensure that important disputes, especially those of a federal nature, are settled authoritatively and conclusively by the Apex Court.

a) **Original exclusive Jurisdiction:** The original exclusive jurisdiction of the Supreme Court refers to its exclusive authority to hear and adjudicate certain types of cases directly. Such cases are outside the purview of other Courts. These include the disputes of a federal nature:
   i) When any dispute emerges between the Government of India on one hand and one or more states on the other hand,
   ii) When disputes arise between the Government of India & one or more states on one side and one or more states on the other side, and
   iii) When disputes arise between two or more states. Thus, the power of a Supreme Court of India to decide disputes between the Centre and the States falls under the original jurisdiction (PYQ 2014).
   Also, under the Arbitration and Conciliation Act, 1996, International Commercial Arbitration can also be initiated in the Supreme Court.
b) **Original non-exclusive Jurisdiction:** The original non-exclusive jurisdiction means that other courts can also handle some of the same matters. For instance, an individual can directly approach the Supreme Court if his/her fundamental rights are denied or taken away by the government. One can also visit the High Court in this case. Thus, it is not an exclusive jurisdiction of the Supreme Court.

For a dispute to be admitted under the original jurisdiction of the Supreme Court as provided in Article 131, it must relate to a question of law or fact that determines the existence or extent of a legal right. Therefore, disputes of a purely political nature or suits filed by private individuals against the Union or the States cannot be entertained under this jurisdiction. Similarly, the original jurisdiction does not cover matters arising out of pre-constitution treaties or agreements.

The wording of Article 131 also indicates that its scope should be understood in harmony with other provisions of the Constitution. As a result, the jurisdiction is restricted in certain areas such as disputes relating to the distribution of inter-state river waters under Article 262 or matters concerning presidential recommendations to the Finance Commission under Article 280. It also excludes commercial disputes between the Union and the States and cases relating to recovery of damages by States against the Union. Moreover, Article 131 cannot be invoked to challenge the constitutional validity of laws passed by Parliament or State legislatures. This position was clearly upheld by the Supreme Court in *State of Madhya Pradesh vs Union of India* (2011).

**B. Writ Jurisdiction**

Article 139: Conferment on the Supreme Court of powers to issue certain writs Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant to and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

The Supreme Court, as the guardian of the Constitution, carries the vital responsibility of protecting the rule of law and ensuring that the rights of citizens are upheld. Article 139 provides for constitutional remedies and empowers the Supreme Court to issue writs for the enforcement of fundamental rights. Any citizen whose rights have been infringed can directly approach the Supreme Court, which can issue appropriate writs to safeguard those rights. This reinforces the ideals of justice, equality, and the rule of law, which are central to a democratic society.

The writs issued by the Supreme Court under Article 139 are binding on all courts in India. However, the Court can issue writs only for the purpose of enforcing fundamental rights and not for any other matter. It is also important to note that this writ jurisdiction is concurrent, not exclusive. High Courts too possess writ jurisdiction, and their powers are wider in scope. Unlike the Supreme Court, a High Court can issue writs not only for the enforcement of fundamental rights but also for other purposes, making its writ jurisdiction broader in comparison. [Note: Writs are discussed in detail under the Fundamental Rights chapter]

**C. Appellate Jurisdiction of the Supreme Court**

**Article 132: Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases**

(1) An appeal shall lie to the Supreme Court from any judgment, decree or fi nal order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

* (2) - - - - -

(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation- For the purposes of this article, the expression "final order" includes an

order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

* Clause 2 was omitted by the 44th Amendment, 1978

**Article 133: Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters**

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A:

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

**Article 134: Appellate jurisdiction of Supreme Court in regard to criminal matters**

(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court-

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) certifies under article 134A that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

*** Article 134A: Certificate for Appeal to the Supreme Court**
Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134-
(a) may, if it deems fit so to do, on its own motion; and
(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case

* Added by the 44th Amendment, 1978

As the Supreme Court replaced the British Privy Council as the highest Court of Appeal, its appellate jurisdiction refers to its power to review decisions and change outcomes of decisions of lower courts. Appeals can be made to the Supreme Court in Constitutional matters, civil matters or criminal matters.

1. **Constitutional Cases**: An appeal in constitutional matters can be made before the Supreme Court if the High Court certifies that the case involves a substantial question of law requiring interpretation of the Constitution. This provision ensures that questions of constitutional importance are settled by the highest court of the country. In the case of **R.D. Agarwal vs Union of India (1971)**, the Supreme Court held that when an order is passed by a single-judge bench of a High Court, it is left to the discretion of the aggrieved party to either file an appeal before the Supreme Court or move a revision application before a larger bench of the same High Court.
2. **Civil Cases**: Appeals can be made to the Supreme Court if the High Court certifies that the case involves a substantial question of law of general importance which needs to be decided by the Supreme Court. If the High Court refuses to issue such a certificate, the aggrieved party can still approach the Supreme Court, which has the power to grant special leave to appeal in suitable cases. Based on the recommendations of the Law Commission of India, the 30th Amendment Act, 1972, revised the basis of civil appeals by shifting from a value-based criterion to one focused on important legal issues. The amendment made it mandatory for appeals to involve a substantial question of law in order to qualify for consideration and also removed the earlier financial limit of ₹20,000 for filing such appeals.
3. **Criminal Cases**: Two types of appeals in criminal cases can be referred to the Supreme Court if cases with or without the certificate lie before the High Court. Where a review is preferred on the basis of the High Court's certificate, it is at the discretion of the Supreme Court whether to allow it or not. However, the certificate of the High Court is not required, i.e., the appeal lies as a matter of right in a case where the High Court – a) has reversed the judgement given by the lower court of acquittal and punished the accused with a death sentence, or b) withdraws a case from the lower court and gives death sentence to the accused.

   The Parliament, under Article 134(2), enacted the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. By this Act, the Supreme Court was empowered to entertain

criminal appeals even without the certificate of the High Court if certain conditions were fulfilled. For instance, if the High Court sentenced a person to life imprisonment or 10 years.

**4. Special leave Petition**

**Article 136: Special leave to appeal by the Supreme Court**
(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

A Special Leave Petition (SLP), under Article 136 of the Constitution, allows an aggrieved party to seek special permission to be heard in the Supreme Court against any judgment, decree, order, determination, or sentence passed by any court or tribunal within India. The term "special leave to appeal" traces its origin to the Government of India Act, 1935.

The scope of this provision is very wide as it confers plenary jurisdiction on the Supreme Court to hear appeals. It extends to all matters, whether constitutional, civil, or criminal, and applies to both final and interlocutory orders. An SLP can also be filed if the High Court refuses to grant a certificate of fitness for appeal. However, it is not a right of citizens but a discretionary privilege of the Supreme Court. In Pritam Singh vs The State (1950), the Court clarified that this power must be exercised sparingly and only in exceptional circumstances. Importantly, Article 136 does not apply to cases decided by military courts or court-martials, a practice borrowed from the UK Constitution.

An SLP must be filed within 90 days from the date of the judgment, or within 60 days if it challenges the refusal of a High Court certificate. The petition must include a copy of the judgment and be signed by an Advocate on Record (AoR).

**D. Advisory Jurisdiction**

**Article 143: Power of President to consult Supreme Court**
(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.
(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

Under Article 143, the Supreme Court exercises advisory jurisdiction on questions of law or fact of public importance referred to it by the President. This provision enables the Court to guide the Executive on complex constitutional or legal matters. Article 143 is not considered a part of the Court's role in the

administration of justice but rather as an advisory mechanism meant to assist the President in decision-making. The idea of such advisory jurisdiction can be traced back to the Government of India Act, 1935, which had conferred a similar power on the Federal Court. There can be two cases where the President can seek the opinion of the Supreme Court:

Case I: If the President feels that there lies a question of law or fact of public importance, he can ask for the advice of the Supreme Court. In this case, the Court can refuse to tender its opinion on the question of law or fact of public importance.

Case II: Disputes that arise out of pre- constitutional treaties and agreements that are excluded from the original jurisdiction can be referred to the Supreme Court for advisory jurisdiction. Here, the Supreme Court must tender its opinion on any dispute arising out of any pre-constitutional treaty or agreement.

In both cases, the opinion of the Supreme Court is merely advisory in nature and is not binding on the President or the Government. The Court does not pass any orders or decrees but merely gives its opinion, on the matter concerned, to the President. The first such reference was made in 1951 in the Delhi Laws case and so far, the President has made 15 references to the Supreme Court under Article 143. For instance, Berubari Union (1960), Third Judges case (1998), 2G spectrum case (2012), etc.

**E. Revisory Jurisdiction**

**Article 137: Review of judgments or orders by the Supreme Court**
Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

Article 137 of the Constitution empowers the Supreme Court to review its own orders and judgments. This power is also reflected in the Supreme Court Rules, 1966. The idea behind the review jurisdiction is to ensure that the Court's decisions remain accurate and authoritative, and to correct any errors that may have occurred. Since the Supreme Court is a court of record and its decisions guide other courts, the review power plays an important role in preventing miscarriage of justice.

The scope of review is not unlimited. It is subject to the laws made by Parliament under Article 145, and the Code of Civil Procedure, 1908, which lays down three grounds for review: discovery of new evidence, an apparent error on the face of the record, or any sufficient reason. In Union of India vs Sandur Manganese & Iron Ore Ltd., the Court clarified that a clerical error or the mere possibility of a different interpretation is not enough for a review.

A review petition must be filed within 30 days of the judgment. Such petitions are usually considered by the same judges who gave the original decision, and are heard in chambers rather than in open court. Oral arguments are rare, with lawyers relying mainly on written submissions. Like Special Leave Petitions, review petitions are also discretionary, and the Court may refuse to reopen its earlier judgment.

**Curative Petition**

A curative petition is the final legal remedy in India that allows the Supreme Court to reconsider its own decision in a review petition. The Supreme Court established the curative petition in the case of Rupa Ashok Hurra vs Ashok Hurra & another, 2002, based on its powers under Articles 32, 129, 137, 142, Doctrine of Judicial Review, Principles of Natural Justice, etc. Constitutionally, a final ruling of the Supreme Court can typically be challenged only through a review petition, and even then, only on narrow procedural grounds. However, the curative petition serves as a sparingly used judicial innovation to rectify any grave miscarriage of justice.

### F. Inherent jurisdiction of the Supreme Court

#### 1. Constitutional Interpretation

**Article 147: Interpretation**

In this Chapter and in Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any order in Council or order made there under, or of the Indian Independence Act, 1947, or of any order made there under.

The power of constitutional interpretation is a fundamental aspect of the Supreme Court's role in upholding the Constitution of India. As the final interpreter of the Constitution, the Apex Court impacts the legal landscape of the country, shaping its implementation.

Through its interpretations, the Supreme Court has expanded the scope of fundamental rights beyond their literal text. For instance, in K.S. Puttaswamy (Retd.) vs Union of India, 2017, the Supreme Court interpreted the Constitution to affirm the Right to Privacy as a fundamental right under Article 21, which guarantees the right to life and personal liberty. Therefore, the Supreme Court's role in interpreting constitutional provisions in the context of contemporary issues and changing societal values highlights its essential function in adapting the Constitution's application to modern realities.

#### 2. Judicial Review

As the guardian of the Constitution, the Supreme Court of India has the power of Judicial Review. It is the power of the Supreme Court to examine the constitutionality of a law. If the court finds that a law is inconsistent with the Constitution or the fundamental rights, it can declare the law unconstitutional and inapplicable. It includes an examination of the constitutionality of legislative enactments and executive orders of both the Central and State governments. Moreover, the court can call into question any amendment made to the Constitution of India (PYQ 2019).

The Constitutional validity of legislative enactments or executive orders can be challenged in three cases – a) If it infringes the Fundamental Rights, b) If it is outside the competence of framing authority, or, c) If it is in contravention to constitutional provisions.

Courts also apply the four-pronged proportionality test to review restrictions on rights, adopted in Modern Dental College (2016) and affirmed in K.S. Puttaswamy (2017) (UPSC CSE Prelims 2020)

**(legitimate aim; rational connection or suitability; necessity, i.e., least restrictive alternative; and balancing—proportionality stricto sensu) (UPSC CSE Prelims 2020)**.

**Constitutional provisions – Judicial review**

Though the specific term "judicial review" is not explicitly mentioned in the Indian Constitution, the following constitutional provisions relate to this power:

1. Article 13 empowers the judiciary to review and strike down any law that is inconsistent with fundamental rights.Article 13 embodies the doctrines of severability and eclipse, and after the 24th Constitutional Amendment (1971) inserted Article 13(4), constitutional amendments are outside Article 13 but remain reviewable on the Basic Structure (UPSC CSE Prelims 2018).
2. Article 32 grants the Supreme Court the power to issue writs for the enforcement of fundamental rights and allows individuals to seek judicial review of legislative actions and executive decisions. Similar, yet broader powers, are granted to the High Courts under Article 226.
3. Articles 131-137 provide the Supreme Court with various jurisdictions that may involve constitutional interpretation and review, including reviewing its own judgments and orders.
4. Article 142 authorizes the Supreme Court to pass any decree or order necessary for doing complete justice, which can include reviewing and invalidating inconsistent laws or executive actions.
5. Article 145 empowers the Supreme Court to make rules regarding its practice and procedures, including those related to the exercise of its judicial review powers.

**Significance**

Judicial review is a crucial power of the Supreme Court of India for several reasons. Firstly, it plays a fundamental role in upholding constitutional governance by safeguarding the Constitution from undue government encroachment and ensuring that unfair laws or orders are kept in check. Secondly, this power is essential for maintaining the supremacy of the Constitution. In India's federal structure, judicial review allows the Supreme Court to resolve disputes between the central and state governments, thereby preserving federal equilibrium.

Thirdly, judicial review also protects citizens' fundamental rights as enshrined in the Constitution and reinforces the independence of the judiciary by delineating the functions of each branch of the government. Fourthly, the Court's interpretative authority, under the power of Judicial Review, helps in clarifying ambiguities in laws and settles disputes over legal interpretations.

**Scope of Judicial Review:**

The Indian Constitution incorporated the concept of judicial review inspired by the American model. In India, the scope of judicial review is more restricted compared to the United States, primarily due to the emphasis on "procedure established by law" in India, under Article 21. In contrast, the U.S. judicial review is broader as it encompasses the principle of "due process of law", which provides a wider interpretation and application.

Judicial review power is often described as the interpretative and supervisory function of the Indian judiciary. It is regarded as a part of the Basic Structure of the Constitution, as affirmed in the Indira Gandhi vs Raj Narain case, 1975. The increasing use of Suo Motu powers and the innovation of Public Interest Litigation (PIL), coupled with the abandonment of the principle of locus standi, has enabled the

judiciary to address a wide range of public issues even in the absence of a direct complaint from an aggrieved party.

**3. Court of Record**

**Article 129: Supreme Court to be a court of record**
The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

**Article 215: High Courts to be courts of record**
Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Article 129 and Article 125 denote the Supreme Court and the High Courts to be a court of record. Being a court of record, the higher judiciary has two powers

1. The judgements, proceedings and acts of these Courts are recorded for perpetual memory and testimony. These records have evidentiary value and are recognized as legal precedents, and
2. These courts have the power to punish for contempt of court.

In Rustom Cowasjee Cooper v. Union of India, 1970, the Supreme Court held that whether a court is a court of record or not depends on whether it has the power to fine and imprison for contempt of itself or other substantive offences. Such courts have been expressly created by statute or by implication.

The Court can take up a contempt matter either by itself, i.e., Suo Moto, or on the recommendation of the Attorney or Solicitor General. Furthermore, any person can file a contempt petition before the court. Thus, the Constitution of India empowers the Supreme Court and the High Courts to punish for contempt of themselves (PYQ 2022).

**Contempt of Court**
Contempt of Court refers to any act of disobedience or disrespect towards a court of law. It covers actions that defy the authority of the court, obstruct its functioning, or involve wilful disobedience of its orders. The power of the Supreme Court to punish for contempt flows from Article 129, which declares it as a court of record, and Article 142(2), which authorises it to investigate and punish any person for contempt. If a person is found guilty, the Court may impose penalties such as a fine or even imprisonment.
Contempt of court can be of two types - civil and criminal contempt. The Constitution of India does not define civil contempt and criminal contempt (PYQ 2022). In India, Parliament is vested with the powers to make laws on the Contempt of court (PYQ 2022). Pursuant to the report of H.N. Sanyal Committee, the Contempt of Courts Act, 1971 was passed by the Parliament (PYQ 2022). Thus, giving statutory backing to the idea, Contempt of Courts Act, 1971 separates civil and criminal contempt: Interestingly, Before the enactment of the Contempt of Courts Act, 1971, the expres- sion "Contempt of Court" was left to be defined by the courts and the courts gave their decisions according to the merits of each case.

1. Civil contempt: It is the willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

2. Criminal contempt: It means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which:
    a. Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
    b. Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
    c. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

It must be noted that innocent publication, fair and accurate reporting of judicial proceedings and fair criticism on the merits of a judicial order after a case is heard and disposed of, do not amount to a contempt of court.

Notably, in the case of Delhi Judicial Service Association vs State of Gujarat, 1991, the Apex Court held that it has the power to punish not only for its own contempt but also for the contempt of the courts subordinate to it. Also, the High Courts have been given special powers to punish people for the contempt of subordinate courts, as per Section 10 of 'The Contempt of Courts Act of 1971.'

**Initiating Criminal Contempt of Court Proceedings**

To initiate a criminal contempt of court case, Section 15 of the Contempt of Courts Act, 1971 lays down the procedure. In the Supreme Court, the Attorney General (AG) or Solicitor General can bring in a motion, while in High Courts, this role is taken by the Advocate General. However, if a private individual wishes to file such a case, they must first obtain written consent from the AG or Advocate General. This written consent must clearly state the nature of the contempt committed. The purpose of requiring this consent is to prevent the courts from being burdened with baseless or frivolous petitions that waste judicial time.

Importantly, the AG's consent is not needed if the court itself chooses to initiate contempt proceedings on its own (known as suo motu action). For instance, in the Prashant Bhushan case, the Supreme Court acted without a motion from any individual. This power comes from Article 129 of the Constitution, which gives the Supreme Court the authority to act independently in contempt matters. If the AG denies consent, the matter usually ends there. However, the complainant can still request the court to take suo motu cognizance if the situation is serious enough.

Once the AG has granted consent, the court issues a notice to the person accused of contempt. This notice is generally served in person, and if not, the court must explain why. In certain cases, if there's a fear that the person might avoid the proceedings, the court may order the temporary seizure of their property. The accused can then submit a written response (affidavit) explaining their side. The case is then heard by a bench of at least two judges, who consider all the evidence and issue a final judgment based on the facts and circumstances.

**Contempt of Court – an analytical perspective**

Contempt of Court proceedings are essential for upholding the court's honour and helps in maintaining its credibility and efficiency. This was reaffirmed in Pritam Lal vs The High Court of M.P., wherein the Supreme Court held that punishing contempt is necessary to maintain the court's dignity. It helps in maintaining judicial independence from public opinion and media influence, as demonstrated in the case against Justice Karnan for his inappropriate conduct.

Article 19(1) of the Constitution recognizes contempt of court as a reasonable restriction on the freedom of speech and expression. Contempt of Court upholds the Rule of Law by addressing disobedience to court orders, thereby reinforcing the Constitution's basic structure. There are also several safeguards against misuse, such as Section 13 of the Contempt of Courts Act, 1971, which prevents punishment for contempt if the harm is deemed minimal.

However, there are certain challenges in the exercise of the power of Contempt of Court. Firstly, it may infringe on the freedom of speech, creating a chilling effect on the rights under Article 19(1). Secondly, its subjective nature allows for arbitrary use against legitimate criticism, leading to conflicts of interest since the judiciary acts as both victim and judge. This also contradicts the Principle of Natural Justice that one should not judge their own case. Thirdly, while "scandalizing the court" is outdated in England and Wales, it persists in India, and contempt cases often remain pending for over a decade despite a one-year initiation limit. Fourthly, it undermines democratic principles by suppressing public critique and may foster resentment rather than respect for the judiciary.

The solution to these challenges in the exercise of the power of Contempt of Court lies in prioritizing the right to free speech over contempt powers, which should be used sparingly and only when public interest is threatened. It is crucial to distinguish between contempt of court and contempt of judges. Punishments for contempt should be enhanced to better deter interference with justice, and the concept of 'mens rea' (legal concept denoting criminal intent or evil mind) should be incorporated to ensure that intent is considered.

A review mechanism, such as an independent panel, can be established to prevent judicial overreach and conflicts of interest. The Law Commission suggests retaining contempt provisions but limiting them to civil contempt, i.e., wilful disobedience of court orders. Lessons from other democracies, like Canada and the U.S., which tie contempt to immediate threats to administration or avoid using it against comments on judges, should also be considered.

## 4: Rule-making power of the Supreme Court

**Article 145: Rules of court, etc.**

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including-

(a) rules as to the persons practising before the Court,

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;
(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;
* (cc) rules as to the proceedings in the Court under article 139A; (d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;
(e) any judgment pronounced, or order made by the Court may be received and rules as to the conditions the procedure for such review including the time within which applications to the Court for such review are to be entered;
(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;
(g) rules as to the granting of bail;
(h) rules as to stay of proceedings;
(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;
(j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose and may provide for the powers of single Judges and Division Courts.
(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.
(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.
(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

* Added by the 42nd Amendment, 1976

The Supreme Court of India functions according to defined procedures under its constitutional framework. Subject to laws made by Parliament, it has the authority, with the approval of the President, to frame rules regulating its practice and procedure. These rules cover matters such as who can appear

before it, the process for filing appeals, enforcement of Fundamental Rights, stay of proceedings, court fees, granting of bail, and related issues. Using these powers, the Supreme Court can regulate the conduct of advocates and others appearing before it, and it has also simplified procedures in matters like Public Interest Litigation (PIL).

The Constitution mandates that a case involving any substantial question of law or cases referred by the President, under Article 143, shall be heard by a Constitutional Bench (discussed below). For other cases, the court can fix the minimum number of judges and can lay down powers of the Benches with single Judges and Division Courts. The CJI is the 'master of the roster' who constitutes the Benches of the Court and allocates cases to the Benches so constituted.

Judgements by the Supreme Court are announced in an open court and all judgments are determined by a majority vote among the judges presiding on the bench. The dissenting judges can, however, deliver dissenting judgements.

**Bench in the Supreme Court**

In the Supreme Court, a Bench refers to a panel of judges assigned to hear and decide cases. Depending on the significance of the case and the specific requirements of the legal questions involved, a Bench may consist of a single judge or multiple judges.

1. Single Judge Bench: Typically handles routine matters or certain types of cases where only one judge is deemed sufficient to make a decision.
2. Division Bench: Usually comprises two or more judges who collaboratively review and adjudicate cases. This is common for more significant cases and appeals.
3. Constitutional Bench: A constitutional bench is typically composed of five or more judges and is specifically convened for cases involving any substantial question of law to interpret or address constitutional issues. These benches are not a routine phenomenon.

**When does the SC set up a Constitution Bench?**

As we have seen above, Article 145(3), which deals with the rules of the court, provides for the setting up of a Constitution Bench.Article 145(3) says a minimum of five judges need to sit for deciding a case involving a "substantial question of law as to the interpretation of the Constitution", or for hearing any reference under Article 143, which deals with the power of the President to consult the SC.

Other scenarios in which a Constitution Bench can be constituted are:

1. If two or three-judge Benches of the Supreme Court have delivered conflicting judgments on the same point of law
2. If a later three-judge Bench of the SC doubts the correctness of a judgment delivered by a former Bench with as much strength and decides to refer the matter to a larger bench for reconsideration of the previous judgment.

The judiciary hasn't determined so far what constitutes "substantial questions of law" that "involve Constitutional interpretation".

A larger Bench can, however, overrule the pronouncement of a five-judge Constitution Bench. But before that, a five-judge Bench must be convinced that the previous order was incorrect, following

which it may refer the matter to a larger Bench of seven judges.
The Chief Justice of India, who is also the master of the roster, decides which cases will be heard by a Constitution Bench, the number of judges on the bench and even its composition. While there are no clear guidelines, the sole discretion lies with the CJI. It is not binding on the CJI to be a part of a Constitution Bench.

To date, the largest-ever Constitution Bench was that of 13 judges in the case Kesavananda Bharati v. State of Kerala, 1973

**5. Administrative & Supervisory Functions of the Supreme Court**

**Article 146: Officers and servants and the expenses of the Supreme Court**
(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the court as he may direct: Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose: Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.
(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the offices and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

Article 146 deals with the administrative framework of the Supreme Court. It empowers the Court to appoint its own officers and staff, ensuring that it functions smoothly and efficiently. These personnel support the judges in their work, maintain records, and look after the Court's administration. The Chief Justice of India, in consultation with the President, frames rules regarding their appointment, service conditions, and tenure, subject to laws made by Parliament. Importantly, even persons not attached to the Court may be appointed to its offices, but such appointments require consultation with the UPSC. These provisions are aimed at maintaining the independence and effectiveness of the Supreme Court's administrative machinery.
The administrative expenses of the Supreme Court, including salaries, allowances and pensions, are charged on the Consolidated Fund of India. Similarly, any fees collected by the Court also goes into this Fund. This arrangement gives the Court financial autonomy, enabling it to manage its own budget without interference from the executive or legislature. Such financial independence is vital for the Court to discharge its constitutional duties effectively and without external pressure. It also reflects the principle of separation of powers, which is a basic feature of the Indian Constitution, ensuring the protection of the rule of law and the rights of citizens.

**6. Power to transfer cases**

**Article 139A: Transfer of certain cases**
(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.
(2) The Supreme Court may, if it deems it expedient to do so for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

1. Transfer of cases from High Court(s) to Supreme Court: If the Supreme Court is satisfied that the cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, it may withdraw a case or cases pending before the High Court or High Courts and dispose of all such cases itself.
2. Transfer of cases from one High Court to another: The Supreme Court has been conferred with the power to direct transfer of any civil or criminal case from one High Court to another High Court or from a Court subordinate to another High Court, for ends of justice.

**7. Other powers under Inherent jurisdiction**
(i) Judgements binding on all courts

**Article 141: Law declared by Supreme Court to be binding on all courts**
The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Article 141 of the Constitution states that the law declared by the Supreme Court is binding on all courts in India. Importantly, the term "all courts" excludes the Supreme Court itself, as clarified in the Bengal Immunity Case (1955). This provision forms the basis of the Doctrine of Precedent in India, which ensures consistency in the interpretation of law. It means that the decisions of higher courts are binding on lower courts, while the rulings of High Courts are binding on their subordinate courts within the state. Similarly, decisions of a division bench of a High Court are binding on single-judge benches of the same court. This principle of judicial precedent strengthens uniformity, stability, and efficiency in the legal system.

(ii) Duty of civil and judicial authorities to act in aid of the Supreme Court

**Extraordinary powers under Article 142**

**Article 142: Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.**
(1) 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, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Article 142 is an extraordinary tool in the hands of the Judiciary that empowers the Supreme Court to pass such decree or make such order as is necessary for doing 'complete justice' in any cause or matter pending before it. Through this article, the Supreme Court delivers justice in exceptional cases without being hindered by legal or bureaucratic red tape. There must be strong and cogent reasons for exercising this discretionary power. Thus, it can be said that the Supreme Court of India is not constrained in the exercise of its power by laws made by Parliament (PYQ 2019).
In the Constituent Assembly, Shri Thakur Das Bhargava held that natural justice is above law. To ensure this, the Supreme Court shall have full right to pass any order which it considers just. The framers of the Constitution felt that this provision is of utmost significance to those people who have suffered due to the delay in getting their necessary reliefs.
The Supreme Court has been increasingly using its plenary powers under Article 142. A study published by researchers at IIM-Ahmedabad in 2024 found there were 1,579 Supreme Court cases that referred to Article 142 or "complete justice" between 1950 and 2023. But, only in 50 per cent of these cases, the report stated, the Court "explicitly" used its power under the Article.
In State of Tamil Nadu vs. Governor, 2025, Supreme Court went further by invoking its extraordinary powers under Article 142 to clear 10 bills passed by the Tamil Nadu Assembly without the governor's approval. In 2024, the apex court overturned the Chandigarh municipal election results and asserted that the Court is duty bound, under Article 142, to do complete justice to ensure that the process of electoral democracy is not allowed to be thwarted. In 2019, granting five acres of land in Ayodhya to Muslim parties, but outside the disputed area, the Supreme Court used Article 142. While invoking Article 142 "to ensure that a wrong committed must be remedied", it implicitly referred to the demolition of the Babri Masjid. There have been several other instances where Article 142 has proved instrumental in justice delivery, like ban on liquor sale around National Highways, the release of former PM Rajiv Gandhi assassination case convict; revocation of the allotment of coal blocks allocated to wrongdoers from 1993 onwards and levy fines on coal produced unlawfully, etc.

**Desirability of Article 142 – an analytical perspective**
While empowering the judiciary to uphold constitutional ideals and ensure justice, Article 142 can be desirable. It is utilized when the executive or legislature fails to protect people's rights and uphold the

constitutional principles. It facilitates judicial activism to address gaps and instances of injustice that may arise in extraordinary circumstances. Article 142 plays a crucial role in maintaining checks and balances on the executive and legislative branches, reinforcing the overall system of governance.

It, however, can face several drawbacks. Recently, former Vice-President Jagdeep Dhankhar took aim at Article 142 and said it "has become a nuclear missile against democratic forces, available to the judiciary 24×7". Firstly, unlike the executive and legislature, the Supreme Court cannot be held accountable for its decisions, such as when it banned e-rickshaws in Delhi without providing alternatives, leading to potential infringement on basic rights. Secondly, frequent court interventions can also erode public confidence in the government's integrity, quality, and efficiency. Thirdly, the contours of 'complete justice' remain ambiguous, leading to confusion about how Article 142 should be invoked. Article 142, thus, can potentially blur the lines between Judicial Activism and Judicial overreach.

To address the loopholes, the Supreme Court should establish stringent guidelines for the application of Article 142 to ensure judicious use of its powers and pursue judicial restraint. For instance, the cases under Article 142 can be mandatorily referred to a Constitutional Bench and its use must balance complete justice for society and individuals. The Justice Venkatachaliah Commission (2002) recommended that the judiciary exercise these powers sparingly and with caution to avoid overreach. Similarly, the Law Commission's 245th Report (2014) stressed the importance of judicial restraint in its use, highlighting the potential risks of excessive reliance on Article 142. As the judiciary plays a crucial role in translating legislative provisions into practical and equitable solutions for society, the extraordinary powers granted by Article 142 should be exercised in strict adherence to constitutional principles.

**Article 144: Civil and judicial authorities to act in aid of the Supreme Court**
All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

Article 144 of the Indian Constitution mandates that all civil and judicial authorities must assist the Supreme Court. This provision allows the Supreme Court to issue orders and directives to individuals or authorities nationwide to ensure the effective administration of justice. Its purpose is to reinforce the Supreme Court's authority and integrity, ensuring that its judgments and directives are respected and implemented by all relevant parties. It establishes the Supreme Court's supremacy and confirms its role as the ultimate interpreter of the Constitution.

**Extraordinary jurisdiction of the Supreme Court**

**1. Judicial Activism**

Judicial activism refers to the proactive role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in society. In India, it implies that the authority of the Supreme Court and the High Courts go beyond their functional domain, even if it interferes in the matters of executive and legislature.

The judiciary employs various tools for activism, including Article 13, which, along with Articles 32 and 226, enables higher courts to review and invalidate laws inconsistent with fundamental rights. Article 142 allows the Supreme Court to issue orders necessary for doing 'complete justice.' Judicial innovations, like Public Interest Litigation (PIL), have expanded the scope of judicial activism by enabling the courts to address broader public issues. Further, international statutes like the Universal Declaration of Human Rights (UDHR) and acceptance of the Due Process of Law, as seen in the Maneka Gandhi case, broaden the scope of judicial activism.

**Suo Motu Cases:**
In an offshoot of Judicial Activism, the Supreme Court has the power to take Suo Motu cognizance of matters. This means that it can initiate cases on its own without a formal petition if it believes that a significant issue of public interest or violation of fundamental rights is at stake. The Supreme Court has increasingly exercised its Suo Moto powers to address the issues of national importance beyond individual cases. For instance, Kolkata rape case in 2024.

**Desirability of Judicial activism - an analytical perspective**

"A judge is not a legislator in general but does legislate new law to fill gaps between existing rules." - Benjamin Cardozo.

Judicial activism is valued for addressing executive and legislative apathy, stepping in when these branches fail to resolve issues effectively, and enforcing constitutional limits to curb legislative overreach and executive tyranny. For instance, the Supreme Court established the Vishaka Guidelines in 1997 to address sexual harassment in the workplace. This also reinforces the Doctrine of Checks and Balances by ensuring that laws are applied objectively, as demonstrated in the S.R. Bommai case concerning President's rule.

Also, it upholds justice by prioritizing human rights, as demonstrated by the use of Article 142 to release undertrials and grant compensation for the victims of Bhopal gas tragedy. It enables swift resolution when the legislature is slow to act, such as in banning old vehicles in Delhi, and accommodates civil society activism by promoting social change through legal reforms, like led petitions for electoral reforms, like disclosure of information by the candidates. Additionally, it aids in social engineering by supporting progressive policies and enhances good governance by providing accessible, efficient avenues for individuals to seek justice.
Judicial activism, however, is often criticized for undermining the spirit of Separation of Powers by interfering with the legislative and executive branches, which can disrupt the balance between various branches of the government. It may lead to legislative and executive bodies avoiding their responsibilities, relying on the courts to address issues they should resolve.

"Judiciary must interpret if there is one, not to make if there is none."

Courts frequently lack the time and resources to fully assess the economic, environmental and political implications of their decisions, such as in the case of ban on sale of liquor near the National Highways. This can weaken democratic trust, as it highlights executive inaction and reduces confidence in elected representatives. The judiciary, which lacks legislative expertise and democratic legitimacy, may impose decisions that appear as 'tyranny of the unelected,' as the late Arun Jaitley suggested.

**Judicial overreach**

Judicial overreach occurs when the judiciary extends its influence beyond its restrained bounds, often blurring the line between judicial activism and overreach. While Judicial activism is generally accepted for its role in advancing justice and upholding rights, Judicial overreach is viewed as problematic and undesirable. It has been evident in the domains of all three organs of the State. For instance,

1. In the Executive domain, the judiciary has committed an overreach in various cases - In Shyam Narayan Chouksey vs Union of India, 2016, Supreme Court mandated playing the national anthem in cinema halls; Ban on Firecrackers during Diwali 2020- this was criticized by VP Naidu as 'Judicial overreach'; Cancellation of telecom licenses in 2G case, etc.
    - In State of Tamil Nadu vs. Governor, 2025, Supreme court cleared 10 bills passed by the Tamil Nadu Assembly without the governor's approval, creating the unprecedented situation of laws taking effect without executive signature.
2. In legislative matters, the establishment of the collegium system that excludes the executive from judicial appointments; striking down the National Judicial Appointments Commission (NJAC) established by the 99th Constitutional Amendment Act, etc.
3. In its own domain, the judiciary can misuse its power to punish for contempt of court.

**Solution lies at the fulcrum**

Judicial overreach can be mitigated through several key practices. Judicial restraint is crucial, as it involves the judiciary exercising self-discipline to avoid overstepping into governance, preserving the balance among the organs. This approach respects the democratic process by allowing legislators and executives to fulfil their roles and ensures that courts only intervene when there is a clear constitutional violation.

Maintaining judicial independence requires the judiciary to adhere strictly to legal texts, interpretations, and precedents, ensuring decisions are grounded in established law. Limiting judicial discretion involves referring cases under Article 142 to a Constitution Bench and requiring the government to produce a white paper to assess the impacts of judicial decisions. Adjudication should follow historically validated constraints, minimizing personal judicial preferences, and courts must be vigilant not to obstruct state functions or responsibilities, either knowingly or unknowingly.

In India, judicial activism has played an important role in keeping democracy alive. Pronouncements like the Kesavananda Bharti case, Minerva Mills Case, etc. have helped in keeping all the organs of government in balance and help in keeping society healthy and progressive. The judiciary, thus, should be mindful to ensure that Judicial overreach is avoided and judicial activism, if at all necessary, should act as a medicine and not a daily bread and butter.

**Public interest Litigation (PIL)**

Public interest Litigation (PIL) is a power given to the public by courts through judicial activism. PIL means 'litigation' filed in a court of law for the protection of 'Public Interest.' It is a judicial innovation which finds no mention in the Constitution or in any statute. The concept of PIL evolved in American jurisprudence during the 1960s, where it was designed to provide legal representation to previously unrepresented groups like the poor, racial minorities, etc. **[PYQ-1997]**

Any Indian citizen can file a PIL, provided it is not filed with a private interest, but in larger public interest. The requirement of 'locus standi' has been relaxed for filing PIL in India. PILs can be filed either in the High Court or in the Supreme Court. At times, the courts can take the suo motu cognisance of the cases. Unlike traditional litigation, PIL

requires a more proactive role from the courts, necessitating a positive and active approach in addressing issues. **P.N. Bhagwati was the Chief Justice of India when the PIL concept was developed in the Indian judicial system in 1981 [PYQ 2006]. Further, Justice V. R. Krishna Iyer is considered as one of the progenitors of public interest litigation (PIL) in the Indian judicial system.[PYQ 2008]**

> "The Court has to innovate new methods and strategies to provide access to justice to large masses of people who are denied basic human rights." - Justice P.N. Bhagwati

**Evolution of PIL in India:**

1. In Mumbai Kamagar Sabha vs. Abdul Thai, 1976, Justice Krishna Iyer called for introducing the concept of PIL to complement the traditional litigation.
2. Hussainara Khatoon vs. State of Bihar, 1979, was the first reported case of PIL that focused on the inhuman conditions of prisons and undertrials. It established the right to speedy justice as a fundamental right, under Article 21.
3. In S.P. Gupta vs. Union of India, 1982, a new era of the PIL movement was heralded by Justice P.N. Bhagawati. It was held that "any member of the public or social action group acting bonafide" can invoke the Writ Jurisdiction of the Supreme Court (under Article 32) or the High Courts (Article 226).
4. In Janata Dal v. H.S. Chaudhary, 1993, the Supreme Court defined PIL as a legal action started in a court of law for the enforcement of public interest where the public has some interest that affects their legal rights or liabilities.

**PIL – an analytical perspective**

Public Interest Litigation (PIL) holds significant value in India for several reasons. Firstly, it offers a cost-effective means for citizens to address critical issues with minimal court fees, making justice accessible to a broader population. Secondly, PILs enable the judiciary to address larger public concerns such as human rights, environmental protection, and social welfare, exemplified by cases like the 'Green Litigation' initiated under the MC Mehta case, 1988. Thirdly, by upholding the principle that "Injustice anywhere is a threat to justice everywhere," PILs serve as a crucial tool for ensuring justice for all. Fourthly, PILs provide a mechanism for holding the executive accountable and enable judicial monitoring of state institutions, as demonstrated by the case where the 2G scam was uncovered

through a PIL.

However, PILs can be marred by several issues. Firstly, they have sometimes been misused as a tool for harassment, with frivolous cases being filed due to the lower fees compared to private litigation. Secondly, there is also a risk of judicial overreach, where the courts may exceed their jurisdiction while attempting to address socio-economic or environmental issues. Thirdly, the delays in disposing of PIL cases often result in judgments that remain unimplemented. Fourthly, PILs are occasionally criticized as 'Personal Interest Litigation' or 'Private Interest Litigation' when they address matters of individual rather than public concern.

These challenges can be addressed if the Courts start rigorous evaluation of the bona fides of petitioners and the misuse of PILs is actively condemned by Civil society. The principles regarding PILs as laid down by the Supreme Court should be adhered to diligently, while ensuring that judgments do not overstep judicial boundaries or negatively impact society and the economy. By cooperating with the government to secure enforcement of its orders, PILs can continue to serve as a model for other developing nations and provide a recourse for marginalized and disadvantaged communities, reinforcing the foundations of democracy.

**4. Enlargement of Jurisdiction & Ancillary powers**

**Article 138: Enlargement of the jurisdiction of the Supreme Court**
(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.
(2) The Supreme Court shall have such further jurisdiction, and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

**Article 139: Conferment on the Supreme Court of powers to issue certain writs**
Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

**Article 140: Ancillary powers of Supreme Court**
Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

The Constitution provides extraordinary tools in the hands of Parliament to bestow further powers on the Supreme Court. Article 138 grants Parliament the authority to enlarge the Supreme Court's jurisdiction to include any matters or categories of issues, beyond those related to the enforcement of fundamental rights. This can help in the effective resolution of legal disputes and promote consistency in judicial

decisions. It, however, does not outline specific procedures or conditions for extending the Court's jurisdiction. Instead, it leaves this decision to the discretion of Parliament, which may enact legislation to extend the Court's authority.

On similar lines, under Article 139, Parliament can grant additional authority to the Supreme Court to issue the writs, as under Article 32, beyond the purpose of enforcement of fundamental rights. These writs would also be binding on all courts within the territory of India. In a similar vein, under Article 140, Parliament can also provide other ancillary powers to the Supreme Court that are necessary for the effective discharge of its duties. These ancillary powers are essential for the Court to function as an independent and impartial institution, ensuring justice and protecting the rights of the citizens.

**TYPES OF ADVOCATES:**

The **Advocates Act, 1961** classifies advocates into two categories: **Senior Advocates** and **Other Advocates**, both of whom are entitled to practice law before the courts. The designation of an advocate as a Senior Advocate is an exercise of the powers vested in the **Supreme Court and High Courts**, which must be satisfied that the advocate meets the qualifications prescribed under the Act. An advocate may be designated as a Senior Advocate with their **consent**, if the **Supreme Court or a High Court** is of the opinion that, by virtue of their ability, standing at the Bar, or special knowledge or experience in law, they are deserving of such distinction.

Additionally, there are three categories of advocates who are entitled to practice law before the **Supreme Court**. These include:

- Senior Advocates
- Advocates-on-Record
- Other Advocates

**Senior Advocate:**

The title of Senior Advocate is one of the highest honors in the Indian legal system, given to experienced and distinguished lawyers. This concept dates back to 13th-century England, where a special class of lawyers, Serjeants-at-Law, later evolved into Queen's Counsel during British rule. As stated above, In India, the Advocates Act of 1961 formally introduced the classification of lawyers into Senior Advocates and Other Advocates. Senior Advocates are chosen based on their expertise, experience, and contributions to the legal field.

Due to their reputation and high demand, they often charge substantial fees, sometimes reaching lakhs of rupees for a single hearing. A 2015 study by the Vidhi Centre for Legal Policy had found that the chances of the Supreme Court agreeing to accept a case for detailed hearing roughly doubles when argued by a Senior Advocate compared with cases without a Senior Advocate — while Senior Advocates had a 59.6% success rate in getting their cases admitted, for other lawyers, it was 33.71% success.

The process of selecting Senior Advocates has undergone several changes over time. In 2017, the Supreme Court, in the Indira Jaising case, introduced new guidelines to make the selection process more transparent and merit-based. A 100-Point Index system was introduced to evaluate candidates based on

their legal knowledge, integrity, past cases, and contributions to public interest law. The selection was overseen by a committee comprising the Chief Justice of India, senior judges, the Attorney General, and a bar representative. However, recent changes have removed the 100-point system, making the process more subjective, as final approval now rests with the Full Court of judges.

**Restrictions on Senior Advocates:**
Senior Advocates are subject to certain restrictions under Supreme Court Rules, 2013, including:

- They cannot file a vakalatnama (a document authorizing an advocate to represent a client).
- They cannot appear before a court without a junior advocate or an advocate-on-record.
- They cannot draft pleadings or other legal documents.
- They cannot accept briefs directly from clients.

These restrictions aim to ensure that Senior Advocates focus on advocacy and advisory roles while junior advocates handle procedural aspects of legal practice.

**Process of Designation**
The process of designating Senior Advocates has evolved over the years, with significant changes introduced through judicial rulings and guidelines. Prior to 2018, Section 16 of the Advocates Act, 1961 governed the appointment of Senior Advocates, with the Chief Justice and other judges making the designation. However, the 2017 Supreme Court judgment introduced new mechanisms, including the establishment of a Secretariat to handle applications and a Committee for Designation of Senior Advocates to evaluate candidates.

Latest Guidelines (2023)

The latest guidelines on the designation of Senior Advocates include:

- Recommendation by Chief Justice of India (CJI) or Supreme Court Judges: The CJI, along with any Supreme Court judge, can recommend an advocate's name in writing.
- Minimum Age Requirement: The minimum age to apply for Senior Advocate designation is 45 years, though this can be relaxed by the Committee, CJI, or a recommending judge.
- Evaluation Criteria: Candidates are assessed out of 100 marks, with a shift in focus:
    - 50 marks for reported and unreported judgments (excluding orders that do not establish legal principles).
    - 5 marks for academic contributions, publications, and teaching experience (reduced from 15 marks in previous guidelines).

After evaluation, the candidate's name is forwarded to the Full Court, which makes the final decision based on majority voting. The Full Court also holds the power to recall the designation if necessary.

**Advocate-on-Record:**
An Advocate on Record (AoR) is a specially designated lawyer who has the exclusive authority to file

cases before the Supreme Court of India. While any advocate enrolled with the Bar Council of India can practice before any court or tribunal under the Advocates Act, the Supreme Court has its own procedural rules under Article 145 of the Constitution, which require litigants to engage an AoR for filing petitions. An AoR may further engage other lawyers, including senior advocates, to argue cases, but remains the primary link between the litigant and the Supreme Court. To become an AoR, an advocate must meet strict eligibility criteria and pass a highly competitive examination, ensuring only skilled professionals represent cases before the country's highest judicial authority.

The AoR system follows a structure broadly inspired by the British legal tradition, which separates barristers and solicitors. In India, AoRs perform a role similar to solicitors by managing case documentation and filings, while senior advocates, like barristers, specialize in presenting arguments before the court. This system dates back to the colonial Federal Court of India, where designated agents handled case submissions while barristers argued before the bench. The Supreme Court inherited this framework, ensuring a regulated and efficient process for handling cases in the court of last resort.

**Eligibility:** Supreme Court Rules, 2013, lays down the requirements to be fulfilled to become an AoR. They are as follows:

1. The Advocate is required to be enrolled with any State Bar Council.
2. The Advocate is required to have a prior experience of at least 4 years.
3. The Advocate has undergone a training of 1 year under a senior AoR.
4. The Advocate has appeared for the examination conducted by the SC.
5. The Advocate is required to have an office in Delhi within a radius of 10 miles from the SC house and give an undertaking to employ a clerk, who shall be a registered clerk, within one month of being registered as an AoR.
6. Once registered, an AOR is issued a unique identification number that must be used on all documents filed in the SC.

**Other Advocates:**

These are Advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961. They are not permitted to appear, plead, or address the Supreme Court on behalf of a party unless they are instructed by an Advocate-on-Record or granted special permission by the Court. However, they can assist in legal research, drafting, and other preparatory work for cases.

**Bar Council of India**

The Bar Council of India is the statutory body established under Section 4 of the Advocates Act, 1961. Bar councils have the power to lay down the rules relating to legal education and recognition of law colleges (PYQ 2022). The BCI sets standards of professional conduct and exercises disciplinary jurisdiction over Bar. Its members are elected from amongst the lawyers in India and thus represent the Indian bar. Interestingly, Government law officers, legal firms, and patent jurists are recognized as advocates, while corporate lawyers are outside the recognition of advocates (PYQ 2022).

**High Courts**

The Constitution of India, under Article 214, provides for a High Court for each state. However, the Parliament, under Article 231, may by law, establish a common High Court for two or more states or Union Territories. This depends on the area and the population of the state or union territory. There are 25 High Courts in India, with three having jurisdiction over more than one State[PYQ 2001, 2005]. Among the Union Territories, Delhi, and Union Territories of Jammu & Kashmir and Ladakh have a High Court of their own.

**Composition, Appointment & Qualifications – Judges of High Court**

Every High Court consists of a Chief Justice and other judges as deemed necessary by the President. Under Article 217, the Chief Justice of a High Court is appointed by the President, after consultation with the Chief Justice of India (CJI) and the Governor of the concerned state. Other judges are appointed by the President in consultation with the CJI, the Governor of the state, and the Chief Justice of that High Court.

To be eligible for appointment as a High Court judge, a person must be a citizen of India, below the age of 62 years, and must have either served as a judicial officer in India for at least ten years or practiced as an advocate in one or more High Courts for at least ten years.

**Oath, Resignation, Removal and Transfer of Judges**

1. Oath or affirmation: The appointed Judges of the High Court are to take an oath or affirmation administered by the Governor.
2. Resignation: A High Court Judge may resign anytime through a resignation addressed to the President.
3. Removal: Judges can also be removed in the same manner as the Supreme Court Judges, as provided under Article 124. Justice Soumitra Sen of the Kolkata High Court was the first judge in India who was tried for impeachment. The process of impeachment was passed against him in the Rajya Sabha. Before it could be again passed by the Lok Sabha, he resigned from his post.
4. Ban on Practice after retirement: Any Judge of the High Court shall not plead or act in front of any authority, except the Supreme Court and other High Courts. Vacancy:
5. The office may be vacated due to appointment to the Supreme Court or transfer to another High Court by the President.
6. Transfer: The President can transfer any of the judges of the High Court to another, after the consultation with CJI. The CJI may recommend the transfer of judges after consulting four senior-most judges of the Supreme Court. After being transferred, a judge is entitled to a compensatory allowance in addition to his salary.
   [Note: Salaries, allowances and pensions of the Judges of High Court—discussed earlier]

**Appointment of other Judges – High Court**

a) Acting Chief Justice - High Court: The President, under Article 223, may appoint any Judge of the High Court as the acting Chief Justice, if the Chief Justice of the High Court is unable to perform his duties.
b) Additional Judges - High Court: Article 224, after the 7th Amendment 1956, empowers the President to appoint Additional Judges to the High Court to deal with extra work or pending

cases. The term for such a Judge shall not exceed 2 years and s/he shall not have attained the age of 62 years.

c) Acting Judges - High Court: Under Article 224, the President can appoint Acting Judges to the High Court if any Judge of the High Court is absent or is unable to perform his duties. The term for such Judge shall extend till the permanent judge resumes the office. S/he shall be duly qualified to be appointed as a High Court Judge and shall not have attained the age of 62 years.

d) Retired Judges – High Court: Under Article 224A, the Chief Justice of the High Court, with the previous consent of the President, may request retired Judges of other High Courts to act as a Judge of that High Court. The salaries and allowances of such Judges are to be determined by the President. Notably, Retired Judges are not deemed to be a Judge of the High Court. This provision of appointing a Retired Judge to the High Court was added by the 15th Amendment, 1963.

In **Lok Prahari vs. Union of India', 2021,** the Supreme Court has taken cognisance of a large number of vacancies in High Courts and mounting arrears of cases. To remedy the situation, it has issued guidelines for exercise of powers under this article

1. If the vacancies are more than 20 per cent of the sanctioned strength.
2. The cases in a particular category are pending for over five years.
3. More than 10 per cent of the backlog of pending cases are over five-years-old.
4. The percentage of the rate of disposal is lower than the institution of the cases either in a particular subject-matter or generally in the court.

**Jurisdictions & Powers of the High Courts**

The Constitution does not grant any general jurisdiction to the High Courts (Article 225) but states that their jurisdiction will be as it existed at the time the Constitution came into effect. Such jurisdictions are subject to the laws made by Parliament and State Legislature.

1. **Original Jurisdiction:** The High Courts also have the authority to hear certain cases in the first instance and not by way of appeal. These matters include:
    a. Disputes relating to the election of members of Parliament and State Legislatures. (Exclusive original jurisdiction)
    b. Regarding revenue matters or an act ordered or done in revenue collection.
    c. Enforcement of fundamental rights of citizens. (Non-exclusive original jurisdiction)
    d. Matters of admiralty and contempt of court.
    e. Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.
    f. The four High Courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value.
2. **Appellate Jurisdiction:** As a court of appeal, the High Court hears appeals against the judgments of Subordinate Courts functioning within the territorial jurisdiction of the State. It extends to both civil and criminal matters:

**Appeals in Civil Matters:** The civil appellate jurisdiction of a High Court is as follows:

1. If the amount exceeds a stipulated limit, the appeals from the orders and judgments of the district courts, additional district courts, and other subordinate courts lie directly to the high court, on both questions of law and fact.
2. The appeals from the orders and judgments of the district court or other subordinate courts lie to the high court in cases involving questions of law only, and not questions of fact.
3. Some High Courts have provision for intra-court appeals. Under this, when a single judge of the High Court has decided a case, an appeal from such a decision lies to the division bench of the same High Court.
4. Appeals from the decisions of the administrative and other tribunals lie to the division bench of the High Court.

**Appeals in Criminal Matters:**

1. Appeals from the judgments of Sessions Court and Additional Sessions Court lie to the High Court if the sentence is one of imprisonment for more than seven years.
2. A death sentence or capital punishment awarded by a Sessions Court, or an Additional Sessions Court, should be confirmed by the High Court before it can be executed, whether there is an appeal by the convicted person or not.

**3. Supervisory Jurisdiction:** Under Article 227, every High Court has the power of superintendence over all courts and tribunals within its jurisdiction. This includes the authority to issue general rules regulating court practices and proceedings, as well as to prescribe forms for records and accounts. However, such rules require the prior approval of the Governor and must not contradict any law. The supervisory jurisdiction of High Courts extends to both administrative and judicial matters. It can be exercised suo motu (on its own) and not only on the application of a party, giving the High Court wide revisional powers. Importantly, Armed Forces Tribunals are excluded from this jurisdiction.

**High Court's Control over Subordinate Courts**

A High Court has administrative control and other powers over the Subordinate Courts, which include:

In the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges), the Governor must consult the High Court.

The High Courts can deal with the matters of posting, promotion, grant of leave, transfers, and discipline of the members of the judicial service of the state (other than district judges).

It can withdraw a case pending in a subordinate court if it involves a substantial question of law that requires the interpretation of the Constitution. It can then either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgment.

Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

**4. Writ jurisdiction:** Article 226 empowers every High Court to issue writs throughout its territorial jurisdiction. A High Court may also issue writs beyond its territory if the cause of action arises within its jurisdiction. Unlike the Supreme Court, which can issue writs only for the enforcement of Fundamental Rights, High Courts can issue writs both for Fundamental Rights and for other legal purposes. Hence, the writ jurisdiction of the High Courts is wider than that of the Supreme Court. The writ jurisdiction of both the Supreme Court and the High Courts has been recognised as part of the basic structure of the Constitution.

**5. Court of Record:** Under Article 215, every High Court shall be a Court of record and shall have the power to punish for its contempt. Thus, as a Court of record, every High Court has two powers: (a) The judgements, proceedings and acts of the High Court are recorded for perpetual memory and testimony. These records have evidentiary value and are recognized as legal precedents; (b) The High Court has the power to punish for contempt of court, not only for itself but also for other High courts, subordinate courts and tribunals.
Even when no revisory jurisdiction is conferred on it by the Constitution, as a court of record, a High Court can review and correct its own judgement or order or decision. The Supreme Court has specifically been conferred with the power of review by the Constitution. Thus, the High Court in India has the power to review its own judgement, but this power is not same as that of the Supreme Court (PYQ 2021).

**6. Power of Judicial Review:** Like that of the Supreme Court, High courts, under Article 226, also have the power to examine the constitutionality of legislative enactments and executive orders of both the Central and State governments. The High Court shall have the jurisdiction to declare any central or state law to be constitutionally invalid (PYQ 2019). The 42nd Amendment, 1976 curtailed judicial review of High courts with respect to Central law. This was, however, restored to the original position by the 43rd Amendment, 1977.

**7. Transfer Jurisdiction:** The High Court, under Article 228, can transfer cases pending before a subordinate court to itself if it involves a substantial question of law as to the interpretation of this constitution. The object of Article 228 is to make the High Court the sole interpreter of the Constitution in a State.

8. **Administrative Staff Of High Court:** Article 229 empowers the Chief Justice of a High Court to appoint its officers and staff, or delegate this power to another judge or officer. The Governor may require consultation with the State Public Service Commission for certain appointments. Service conditions are governed by state laws and rules framed by the Chief Justice or an authorized officer. However, rules on salary, leave, and pensions need the Governor's approval, and the High Court's administrative expenses are charged to the State's Consolidated Fund.

**8. Extension of jurisdiction of the High Court:** The Parliament, under Article 230, may by law, include or exclude the jurisdiction of the High Court to any Union Territory.

| List of High Courts in India | | | | |
|---|---|---|---|---|
| **S. No.** | **Name** | **Year** | **Territorial Jurisdiction** | **Seat** |
| 1. | Kolkata | 1862 | West Bengal, Andaman & Nicobar Islands | Kolkata (Bench at Port Blair) |
| 2. | Bombay | 1862 | Maharashtra, Dadra & Nagar Haveli and Daman & Diu, Goa | Mumbai (Bench at Panaji, Aurangabad and Nagpur) |
| 3. | 3 Chennai | 1862 | Tamil Nadu & Pondicherry | Chennai (Bench at Madurai) |
| 4. | Allahabad | 1866 | Uttar Pradesh | Allahabad (Bench at Lucknow) |
| 5. | Karnataka | 1884 | Karnataka | Bengaluru (Bench at Dharwad and Gulbarga) |
| 6. | Patna | 1916 | Bihar | Patna |
| 7. | Jammu & Kashmir | 1928 | Jammu & Kashmir | Srinagar & Jammu |
| 8. | Punjab & Haryana | 1947 | Punjab, Haryana, Chandigarh | Chandigarh |
| 9. | Guwahati | 1948 | Assam, Nagaland, Mizoram and Arunachal Pradesh | Guwahati (Bench at Kohima, Aizawl and Itanagar) |

| | | | | |
|---|---|---|---|---|
| 10. | Orissa | 1948 | Orissa | Cuttack |
| 11. | Rajasthan | 1949 | Rajasthan | Jodhpur (Bench at Jaipur) |
| 12. | Madhya Pradesh | 1956 | Madhya Pradesh | Jabalpur (Bench at Indore, Gwalior) |
| 13. | Kerala | 1958 | Kerala & Lakshadweep | Ernakulam |
| 14. | Gujarat | 1960 | Gujarat | Ahmedabad |
| 15. | Delhi | 1966 | Delhi | Delhi |
| 16. | Himachal Pradesh | 1966 | Himachal Pradesh | Shimla |
| 17. | Sikkim | 1975 | Sikkim | Gangtok |
| 18. | Chhattisgarh | 2000 | Chhattisgarh | Bilaspur |
| 19. | Uttarakhand | 2000 | Uttarakhand | Nainital |
| 20. | Jharkhand | 2000 | Jharkhand | Ranchi |
| 21. | Tripura | 2013 | Tripura | Agartala |
| 22. | Manipur | 2013 | Manipur | Imphal |
| 23. | Meghalaya | 2013 | Meghalaya | Shillong |
| 24. | Telangana | 2019 | Telangana | Hyderabad |

| | | | | |
|---|---|---|---|---|
| | | (original 1954) | | |
| 25. | Andhra Pradesh | 2019 | Andhra Pradesh | Amravati |

**Subordinate Courts**

India has a single and integrated judicial system with a three-tier structure – the Supreme Court at the top, High Court at the state level and Subordinate Courts at the district level. Thus, the state judiciary consists of the High Court and a hierarchy of subordinate courts, also known as lower courts, operating under the High Court at district and lower levels. The subordinate courts are so-called because of their subordination to the state high court.

**Appointments & Qualification for Subordinate Courts:**

1. District Judges: The Constitution, under Article 233, empowers the Governor of the state, in consultation with the High Court, to appoint, post, and promote district judges within the state. A person is qualified to be appointed as a District Judge, if s/he - (a) has not already been in the service of the Central or the state government, (b) has been an advocate for seven years, and (c) has been recommended by the HC for appointment.
2. Other Judges: All the other judges are appointed through competitive examinations held by the State Public Service Commission (SPSC). These Judges are appointed in the judicial service of a state by the Governor of the state after consultation with the SPSC and the High Court of the concerned state.

**Supreme Jurisdiction: High Court Control of Subordinate Courts**

The High Court, under Article 235, has authority over district courts and other subordinate courts, including the posting, promotion, and leave of individuals in the state's judicial service who hold positions below that of a district judge.

**Application of these provisions to certain magistrates**

The Governor may direct that the above-mentioned provisions relating to persons in the state judicial service apply to any class or classes of magistrates in the state.

**Hierarchical structure of Sub-ordinate court**

The structure and jurisdiction of subordinate courts in India vary slightly from state to state, as each state determines its own system. Broadly, every district has civil courts, criminal courts, and revenue courts. At the district level, the highest court is the Court of the District Judge, which hears both civil and criminal cases. When deciding civil cases, the judge is called a District Judge, and when deciding criminal cases, the same judge functions as a Sessions Judge. In some cases, the District Judge may also act as the Deputy Commissioner or District Collector, performing administrative duties such as maintaining law and order and supervising revenue collection. Apart from these responsibilities, the District Judge has supervisory

authority over all subordinate courts in the district. Appeals from the orders and judgments of the District Judge can be taken to the High Court.

Though the structure, power and jurisdiction of the subordinate courts vary across states, some details are referenced below to get a basic idea:

**I. Civil courts**

1. Court of the District Judge: It is the highest civil court and is presided by the District Judge. The court deals with serious offences.
2. Court of the Civil Judge: The court of the Civil Judge hears cases which generally involve money from Rs 2000 to Rs 5000. Appeal against the decisions of this court can be made before a district judge.
3. Munsif Court: These courts deal with civil cases which generally involve money less than Rs 2000. Appeals against his decision can be made in the Court of the Civil Judge.
4. Small Courts: These courts are headed by junior magistrates and deal with cases where the money involved is too less. For instance, small courts in Delhi deal with cases which generally involve money less than Rs. 1000 while in Mumbai this limit is Rs.10,000. There can be no appeal against their decisions. Courts of Small Causes are constituted under the Provincial Small Cause Courts Act, 1887; their decrees are generally not appealable, though a limited revision lies to the High Court under Section 25, and they do not try criminal matters (SSC CGL 2015).

**II. Criminal Courts**

The Criminal Courts deal with cases related to murder, robbery, theft , assault etc. The criminal courts can be classified into the following categories:

1. Sessions Court: It is the highest criminal court and is presided by the Sessions Judge (the same judge who decides civil cases is known as a District Judge). The court deals with serious offences and has the authority to impose any sentence, including life imprisonment and the death penalty. Capital punishment passed by him is subject to confirmation by the High Court, whether there is an appeal or not. Assistant Sessions Judges cannot award sentences beyond the statutory ceiling and never impose death;(CDS)
2. Court of Chief Judicial Magistrate: It generally deals with less serious offences and cannot award the life sentence or death sentence.
3. Court of First-Class Magistrate: It deals with less serious cases and can award up to three years of sentence or a fine up to Rs 5000, generally. These are followed by the Court of Second-Class Magistrate and the Court of Third-Class Magistrate

**III. Courts of Revenues**

The Courts of Revenues deal with cases related to the maintenance of land records and collection of land revenues. These courts are

1. Board of Revenues: It is the highest court in cases related to revenues in the state. It can hear appeals against the decisions taken by revenue courts placed under it.

2. Commissioner's Court: A Commissioner looks after the assessment and collection of revenues of all districts. Collector's Court: This court is headed by the deputy commissioner of a state. He helps the revenue department in the assessment and collection of land revenues.
3. Tehsildar's Court: A tehsildar is responsible for the collection of revenues.
4. Naib Tehsildar's Court: It is the lowest court and hears cases related to the assessment of land revenues and collection of property taxes from farmers.

**Contempt of subordinate courts**

The District Courts and subordinate courts, not being the court of records, are not empowered with the power to punish for their contempt; how-ever, the Supreme Court and High Courts being court of records under Articles 129 and 215 come into play to protect the dignity of the former.

**Subordinate Courts – an analytical perspective**

Lower courts are the initial point of contact for individuals seeking justice, but they face significant challenges that negatively impact their effectiveness and public perception. Issues such as a lack of resources, vacant judicial positions, high caseloads, and manual data allocation create opportunities for corruption and rent-seeking. This results in a poor experience for the general public and fosters a negative perception of the lower judiciary. Unlike higher courts, which are under constant media scrutiny ensuring accountability, lower courts lack similar oversight.

The lower judiciary struggles to attract talented judges due to limited career progression opportunities and lower salaries, affecting the quality of decision-making. Higher courts, by contrast, recruit directly from the vibrant pool of practising lawyers, with more than half of High Court judges coming from the Bar. In contrast, lower court judges are selected through a complex array of state-specific exams with varying standards. Additionally, lower courts do not possess contempt powers, unlike higher courts, and suffer from inadequate infrastructure, including insufficient courtrooms, judges' chambers, libraries, and basic amenities such as clean washrooms and drinking water.

To improve public perception and enhance the efficiency of lower courts, a single recruitment exam can be conducted by the National Testing Agency for all states, offering competitive salaries to attract talent, leveraging information technology to streamline proceedings, and ensuring the development of essential infrastructure. As Nani Palkhivala famously remarked, "Justice in India is a snail, and it moves at a pace which would be regarded as unduly slow in a community of snails." Addressing these issues at the lower court level, where most cases are filed, is crucial for meaningful reform.

**Performance of Judiciary**

"If the lamp of justice goes, we cannot imagine the amount of darkness."- James Bryce.

In the Indian democratic framework, the judiciary is the third pillar of democracy. As a guardian of the Constitution, the judiciary ensures that the laws of the land are implemented in letter and spirit and that a sense of justice and fair play pervades in society. It is the sole authority and has the responsibility to

interpret laws to ensure that the legislature and the executive adhere to the constitutional framework and enact and implement laws in consonance with the basic tenets of the Constitution.

**Achievements of the Judiciary**

Since independence, the Indian judiciary has made several landmark contributions. It has consistently functioned as an independent and impartial institution, earning strong public trust even when other state organs faced criticism. Through innovative constitutional interpretation, such as the Doctrine of Basic Structure, it has safeguarded democracy from political misuse. The judiciary has also expanded the scope of citizens' rights—for example, by interpreting Article 21 to include the right to live with dignity, not just mere existence.

In the Maneka Gandhi case, the Court adopted the principle of 'Due Process of Law', ensuring fairness in reviewing executive and legislative actions. The introduction of Public Interest Litigation (PIL) further strengthened access to justice by relaxing the rule of locus standi, thereby empowering marginalized groups. The judiciary also expanded the ambit of judicial review, covering areas like the powers of the President, Governor, and even decisions of the presiding officers of legislatures. In addition, it has actively advanced environmental protection, balancing developmental needs with ecological preservation when other state organs prioritized growth.

**Challenges faced by the Indian judiciary**

The Indian judiciary faces several significant challenges. Firstly, there is an issue of the enormous pendency of cases, with a vast backlog across various court levels and many cases lingering for decades. Secondly, there are substantial vacancies within the judiciary, with many judicial positions unfilled. Thirdly, corruption also poses a serious problem, manifesting in both political interference and bribery, which affects the impartiality of judicial decisions and processes.

Fourthly, the legal system is often prohibitively expensive, limiting access for a large portion of the population and resulting in poor utilization of legal aid services. Fifthly, infrastructure within the judiciary is inadequate, with a shortage of courtrooms and essential facilities, such as separate toilets and libraries, affecting the overall functioning of the courts. Finally, there are concerns about judicial accountability, with issues regarding the conduct of judges and a lack of transparency in handling allegations of corruption and misconduct, compounded by limited external oversight due to judicial independence.

**Steps required to strengthen the judiciary**

Strengthening the Indian judiciary requires coordinated efforts from both the government and the judiciary itself. On the government's part, there is a need to substantially increase budgetary allocations, such as earmarking one percent of flagship scheme funds for judicial infrastructure, as suggested by the Economic Survey 2017–18. Vacancies in subordinate courts must be filled expeditiously to address the growing backlog of cases. Reforms in litigation policy are essential to reduce the burden of government litigation, which constitutes a large share of pending cases. Implementation of the Supreme Court's guidelines in the *Prakash Singh* Case is crucial for meaningful police reforms, while the establishment of more Gram Nyayalayas and the strengthening of the free legal aid scheme can ensure greater access to justice. Institutional reforms are also necessary, such as finalizing the Memorandum of Procedure (MoP),

creating regional benches of the Supreme Court, and considering the separation of the apex court into a constitutional court and an appeals court. In addition, the passage of the Judicial Standards and Accountability Bill and the creation of a National Judicial Oversight Committee would strengthen judicial accountability and transparency.

The judiciary, too, must take initiatives to enhance accountability and efficiency. This can be achieved through the establishment of an independent Judicial Lokpal to handle complaints against judges, the adoption of a two-level judicial discipline model involving fines, suspensions, and removals, and the framing of a Model Code of Conduct for judges and lawyers. Improving court productivity requires increasing the number of working days, reengineering business processes, and leveraging modern technology through initiatives like the e-courts project, the National Judicial Data Grid, and online case filing. Justice N.V. Ramana has advocated a three-pronged approach that emphasizes improving judicial infrastructure, facilitating pre-litigation dispute resolution through counselling, and strengthening Alternative Dispute Resolution (ADR) mechanisms to ease the burden on courts. Finally, judicial restraint is as important as judicial activism; the judiciary must avoid overstepping its mandate and limit the number of appeals it entertains in order to remain focused on its constitutional responsibilities.

**All India Judicial Services**

Article 312 of the Constitution provides for the establishment of an All-India Judicial Service (AIJS), which shall not include any post inferior to that of a District Judge. This constitutional provision enables the creation of the AIJS at the District Judge level.

**Evolution of the idea of AIJS**

The 14th Law Commission first mooted the idea of a centralized judicial service in its 'Report on Reforms of the Judicial Administration'. In 1976, the 42nd Amendment modified Article 312(1), empowering the Parliament to legislate for the creation of one or more All-India Services, including an AIJS, common to the Union and the States. The 116th report of the Law Commission, in 1986, laid down the comprehensive guidelines for the creation of the AIJS.

Soon, in All India Judges' Association vs Union of India, 1992, the Supreme Court directed the Centre to set up an AIJS. The Strategy for NewIndia@75 released by the NITI Aayog, amongst other things, proposed the creation of an AIJS akin to the other central services like the IAS and the IPS. But, in view of the existing divergence of opinions amongst the major stakeholders (States, various High Courts), at present, there is no consensus on the proposal for setting up an AIJS.

**AIJS – an analytical perspective**

The need for an AIJS is driven by the goal of strengthening the justice delivery system. Establishing an AIJS can facilitate the induction of qualified legal talent through a nationwide merit-based selection process and address social inclusion by ensuring representation for marginalized and deprived groups. This move is seen as a solution to the issue of judicial vacancies, as there are currently numerous openings in the District and Subordinate Judiciary, with women judges representing only a small fraction of the total. By aligning salaries and perks for subordinate court judges with those of

government bureaucrats, the AIJS would make judicial careers more attractive.

The AIJS can also enhance the quality of judgments by selecting the best talent based on merit, ensuring transparency and efficiency in recruitment, and combating corruption and nepotism. Additionally, it would restore public trust in the judiciary and promote greater inclusion of marginalized sections, similar to reservations in the bureaucracy.

The formation of an AIJS, however, faces several impediments. Firstly, the current provisions of Article 312 permit only the appointment of District Judges to the AIJS, which does not address the vast number of vacancies at the subordinate court level. Additionally, the proposal has faced strong opposition from nearly half of the High Courts and many State Governments. Federal concerns arise as some states view the AIJS as an encroachment on their jurisdiction, potentially leading to conflicts between the Union and state governments.

Localization issues also pose a challenge in a diverse country like India, where an outsider unfamiliar with local customs might undermine the legitimacy and efficiency of the judicial system. Moreover, many states already have reservation policies for various communities within their State Judicial Service Rules, which questions the need for a new system focused on representation. There are also concerns about whether the AIJS would guarantee judicial independence, as District Judges' current independence is partly due to the significant role of High Courts in their appointment and management.

To address these challenges, it is proposed that the AIJS exams be conducted by the UPSC, thereby minimizing federalism issues, since appointments will be made by High Courts and state governments. Despite concerns about local customs and language, it is argued that judicial officers, like civil servants, can adapt to regional languages and practices. The AIJS could potentially expedite the disposal of cases by ensuring enough number of judges, like the recruitment practices for other civil services.

However, any significant reform will encounter criticism, and the feasibility of the AIJS must be carefully evaluated. It is also essential to investigate the reasons behind current vacancies and take appropriate measures, such as addressing infrastructure constraints like those highlighted by the Allahabad High Court's affidavit about a lack of courtrooms. Thus, merely centralizing recruitment through the creation of an AIJS will not be a silver bullet to address the large number of vacancies in a few states.

**TRIBUNALS**

Tribunals are the quasi-judicial institutions established by law to adjudicate on disputes pertaining to administration, taxation, environment, securities, etc. They serve as an alternative to the traditional court system and are established to ensure speedy justice, unburden the courts, and provide cost-effective & decentralized resolution of disputes.

Tribunals were not a part of the original constitution. They were incorporated in the Indian Constitution

by the 42nd Amendment, 1976 in accordance with the recommendations of the Swaran Singh Committee. The Amendment introduced Part XIV-A to the Constitution, called 'Tribunals.' It provides for two types of Tribunals - Administrative Tribunals and Other Tribunals.

**I. Administrative Tribunals**

**Article 323A: Administrative tribunals**
(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.
(2) A law made under clause (1) may-
(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;
(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1); (e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the cause of action on which such suits or proceedings are based had arisen aft er such establishment;
(f) repeal or amend any order made by the President under clause (3) of article 371D; (g) contain such supplemental, incidental, and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the eff ective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.
(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Article 323A empowers the Parliament to provide, by law, for the establishment of Administrative Tribunals for the adjudication of disputes and complaints concerning recruitment and conditions of service of persons engaged in public services. These include posts in connection with the affairs of the Union or any State or any local or other authority within the territory of India. To give effect to the provisions of Article 323A, the Parliament passed the Administrative Tribunals Act, 1985. It provides for three types of tribunals:

a) Central Administrative Tribunal (CAT): The Central Government established the Central Administrative Tribunal (CAT) in 1985, with its principal bench at Delhi and additional benches across various states. It exercises original jurisdiction in matters of recruitment and service conditions of public servants under its purview. Its jurisdiction extends to the All-India Services, the Central Civil Services, civil posts under the Union, and civilian employees of the Defence Services. However, members of the Defence forces, officers and staff of the Supreme Court, and

the secretarial staff of Parliament are excluded from its coverage. CAT is a multi-member body comprising a Chairman and members drawn from both judicial and administrative backgrounds. Initially, it also included the post of Vice-Chairman, but this was abolished by the Administrative Tribunals Amendment Act of 2006. At present, it has a sanctioned strength of one Chairman and sixty-five members, with each bench consisting of one judicial and one administrative member. The Chairman must be, or have been, a Judge of a High Court.

Appointments to CAT are made by the President on the recommendation of a high-powered selection committee chaired by a sitting Supreme Court Judge nominated by the Chief Justice of India, with the concurrence of the CJI and approval of the Appointments Committee of the Cabinet headed by the Prime Minister. The Chairman holds office for five years or until the age of sixty-five, whichever is earlier, while members serve for five years or until the age of sixty-two. The Chairperson enjoys the status of a High Court Judge, and CAT allows applicants to appear either in person or through a legal practitioner, thereby ensuring accessibility and efficiency in resolving service-related disputes.

b) **State Administrative Tribunals (SATs)** The Administrative Tribunals Act of 1985 empowers the Central government to establish SATs on the specific request of the concerned state governments. Like the CAT, the SATs exercise original jurisdiction in relation to recruitment and all service matters of state government employees. The chairman and members of the SATs are appointed by the President after consultation with the Governor of the concerned state. Presently, SATs have been set up in the nine states - Andhra Pradesh, Himachal Pradesh, Odisha, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, West Bengal, and Kerala.

c) **Joint Administrative Tribunal (JAT)**: Two or more States may enter into an agreement that the same Administrative Tribunal shall be the Administrative Tribunal for each of such States. If such an agreement is approved by the Central Government and published in the Gazette of India and the Official Gazette of those States, the Central Government may, by notification, establish a Joint Administrative Tribunal. Such an agreement must contain provisions related to the name of the Tribunal, the manner of selection of the Chairman and other Members, the places at which Benches shall sit, etc. It exercises all the jurisdiction and powers exercisable by the administrative tribunals for such states. The chairman and members of a JAT are appointed by the President after consultation with the Governors of the concerned states.

**II. Other Tribunals**

**Article 323B: Tribunals for other matters**

(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely

(a) levy, assessment, collection, and enforcement of any tax

(b) foreign exchange, import and export across customs frontiers

(c) industrial and labour disputes

(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any

rights therein or the extinguishments or modification of any such rights or by way of ceiling on agricultural land or in any other way
(e) ceiling on urban property
(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A
(g) production, procurement, supply, and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods
(h) rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants
(i) offences against laws with respect to any of the matters specified in sub-clause (a) to (h) and fees in respect of any of those matters
(j) any mailer incidental to any of the matters specified in sub-clause (a) to (i).

(3) A law made under clause (1) may -
(a) provide for the establishment of a hierarchy of tribunals;
(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
(d) exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under article 136 with respect to all or any of the matters falling within the jurisdiction of the said tribunals;
(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based, had arisen after such establishment;
(f) contain such supplemental, incidental, and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation- In this article, "appropriate Legislature", in relation to any matter, means Parliament or , as the case may be, a State Legislature competent to make laws with respect to such matters in accordance with the provisions of Part XI.

Article 323B gives concurrent powers to the Parliament and the State Legislatures to create tribunals for the adjudication of disputes and matters of a specific nature. This includes matters related to tax, foreign exchange, import and export, industrial and labour disputes, land reforms, ceiling on urban property, elections to Parliament and state legislatures, food stuffs, and other subjects. The 75th Amendment, 1993, added provisions for the establishment of Tribunals dealing with rent and tenancy rights, to provide

timely relief to rent litigants. Article 323B allows for the creation of tribunals to address the specialized needs of different subjects.

**Difference between Article 323A and Article 323B**

Article 323A contemplates the establishment of tribunals for only public service matters and can only be established by Parliament and not by state legislatures. Here, only one tribunal can be established for the Centre (CAT) and one for each state (SAT) or two or more states (JAT). Thus, there is no question of the hierarchy of tribunals. However, Article 323B contemplates the establishment of tribunals for certain other matters and can be established by both the Parliament and the State Legislatures with respect to matters falling within their legislative competence. Here, there can be a hierarchy of tribunals.

**Tribunal, Appellate Tribunal, and other Authorities Rules, 2020**

The Ministry of Finance, in exercise of powers under Section 184 of the Finance Act 2017, framed the 'Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020'. These apply to 19 Tribunals including CAT, Income Tax Appellate Tribunal, Customs, Excise, Service, Tax Appellate Tribunal, etc. However, Foreigners Tribunals are not covered.

1. Appointment: The Central Government shall make appointments to these tribunals based on the recommendations by the 'Search cum Selection Committee' comprises of - CJI or any other judge nominated by him, the President/chairperson of the concerned tribunal and two government secretaries from the concerned ministry/ department.
2. Removal: 'Search Cum Selection Committee' has the power to recommend the removal of a member and to conduct an inquiry into allegations of misconduct by a member.
3. Qualifications for Tribunal Members: Only people having judicial or legal experience are eligible for appointment.
4. Term of Office: Rules also provide a fixed term of four years for the Tribunal members.
5. Independence: The condition in the 2017 Rules (which were set aside by the Supreme Court) that the members will be eligible for reappointment has also been dropped in 2020 Rules.

**Key features of Tribunals in India**:

Tribunals in India are characterized by several key features. Firstly, tribunals are of statutory origin and must be created by a statute by Parliament/Legislatures. Secondly, they possess quasi-judicial powers, allowing them to hear evidence, examine witnesses, and make binding decisions based on their findings of fact and the application of law. Thirdly, they are independent bodies and not subject to administrative interference and are not bound by the Civil Procedure Code. Instead, they adhere to the Principles of Natural Justice, according to some flexibility in their approach. Fourthly, the adjudicatory process in tribunals is generally swifter compared to traditional courts, facilitating quicker resolution of disputes. Fifthly, tribunals often include members with specialized technical expertise relevant to their jurisdiction, which enhances their capacity to handle complex matters efficiently.

Sixthly, the decisions of the Tribunals are legally binding on the parties, subject to appeal. Originally, appeals against their orders could be made only in the Supreme Court, bypassing the jurisdiction of High Courts. The Supreme Court, in the Chandra Kumar case, 1997, emphasized that the tribunals cannot

infringe upon the judicial review power of the High Courts. It laid down that the appeals against the orders of the Tribunals shall lie before the division bench of the concerned High Court and later, before the Apex Court. Thus, the writs of prohibition and certiorari are available against decisions of Tribunals. In 2023, the Supreme Court in Union of India & Ors. vs AIR Commodore N.K. Sharma further clarified that Tribunals functioning under the strict parameters of their governing legislations cannot direct the government to make policies.

**National Green Tribunal**

The National Green Tribunal was established in 2010 under the National Green Tribunal Act, 2010 as a statutory body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. It is mandated to make every effort to resolve applications or appeals within 6 months of their filing. New Delhi is NGT's Principal Bench, with Bhopal, Pune, Kolkata, and Chennai being other benches.

**Some Other Tribunals**

1. Armed Forces Tribunal (AFT), established in 2009, adjudicates matters related to the armed forces, including disputes and service- related issues of military personnel.
2. Foreigners' Tribunals (FTs), first set up in 1964 and unique to Assam, determines whether individuals are foreign nationals under the Foreigner's Act, 1946, while foreigners in other states are handled by local courts and subsequently deported or detained.
3. Securities Appellate Tribunal, established in 1992, addresses disputes related to securities and capital markets, including appeals against the Securities and Exchange Board of India (SEBI) decisions.
4. National Company Law Tribunal (NCLT), created under the Companies Act, 2013 and constituted in 2016, deals with issues related to Indian companies. Since 2017, appeals from NCLT go to the National Company Law Appellate Tribunal (NCLAT), previously overseen by the Competition Appellate Tribunal.
5. Telecom Disputes Settlement and Appellate Tribunal (TDSAT), founded in 2000, resolves disputes, and appeals in the telecommunications sector to protect the interests of service providers and consumers.
6. Income Tax Appellate Tribunal (ITAT), established in 1941, handles income tax matters, including appeals against orders of the Commissioner of Income Tax.
7. Consumer Disputes Redressal Commissions, established at state, district, and national levels, adjudicate consumer complaints and appeals related to product defects, service deficiencies, and unfair trade practices.

**'Tribunalization of justice' - the panacea for justice delivery?**

Tribunalization of justice refers to the transfer of cases from traditional courts to specialized tribunals. This was intended to ensure expertise in handling technical matters and to provide speedy and affordable justice. Tribunals are not bound by rigid procedures of the Civil Procedure Code and Evidence Act and instead function on the Principles of Natural Justice, which makes them more flexible. Their

specialization improves the quality of adjudication, particularly in social welfare matters, and they also reduce the burden on regular courts by handling small claims and large volumes of disputes.

Despite these advantages, the functioning of tribunals faces serious challenges. Many tribunals suffer from lack of transparency, outdated websites and increasing pendency of cases similar to that of higher courts. Their dependence on parent ministries for appointments, funding and rule-making raises concerns of executive control and undermines the principle of separation of powers. Short tenure of members and provisions for reappointment make them vulnerable to external influence. Frequent delays, such as the long wait for the Cauvery Water Dispute Tribunal's award, highlight inefficiency. The decision in the L. Chandrakumar case, which restored the power of judicial review to High Courts, has also weakened the purpose of speedy dispute resolution. Issues of poor infrastructure, high vacancies, absenteeism and shortage of technical expertise further affect their credibility.

Reforms are needed to strengthen the system. The 74th Report of the Parliamentary Standing Committee recommended a National Tribunal Commission to regulate appointments and monitor functioning. Timely filling of vacancies, rationalization of tribunals and ensuring independence from executive control are also essential. Tribunalization was aimed at making justice cost-effective and accessible, but unless these reforms are undertaken, it may turn into trivialisation of justice.

**Alternative Dispute Redressal Mechanisms**

The mechanisms for resolving a dispute can be broadly categorized into two types - traditional court systems and Alternative Dispute Resolution (ADR) mechanisms. The formal court system is the traditional method for resolving disputes which involves legal proceedings where a judge or a jury makes a binding decision based on the law. The Alternative Dispute Resolution (ADR), on the other side, is the process and technique that act as a means for disagreeing parties to resolve disputes outside of traditional court proceedings.

The traditional court systems, generally, can be lengthy, costly, and adversarial, leading to strained relationships between the parties involved. The ADR offers a more flexible and cooperative approach to dispute resolution, designed to facilitate amicable settlements without the need for formal litigation. Both are vital for resolving conflicts and ensuring that individuals and groups can coexist peacefully.

**Alternate Dispute Resolution & Indian Constitution**

Alternative Dispute Resolution (ADR) in India is backed by several constitutional provisions that uphold justice and equality. Article 14, which ensures equality before law and equal protection of the laws, is central to ADR as it guarantees a fair process where all parties can resolve disputes without bias. Article 21, which protects the right to life and personal liberty, supports the use of less adversarial and more dignified methods of conflict resolution that preserve relationships. Further, Article 32 reinforces access to justice by allowing individuals to approach the Supreme Court for the enforcement of Fundamental Rights, with ADR serving as an additional tool to make justice more accessible and efficient. Article 39A of the Directive Principles of State Policy also emphasizes equal justice and free legal aid, encouraging legal processes that are affordable and inclusive. ADR mechanisms, being simple, cost-effective and less formal, align with this constitutional vision by expanding access to justice, particularly for marginalized and economically weaker groups.

**Types of ADR mechanisms** Methods such as mediation, arbitration, and conciliation are key tools within the ADR (Alternative Dispute Resolution) mechanisms:

1. Negotiation: Negotiation is an informal, voluntary, and non-binding method of dispute resolution where parties communicate directly to resolve their issues without the involvement of a third party. It is often seen as a self-counselling process in which the parties exchange views and work together to reach a mutually acceptable solution. Since there are no rigid rules, negotiation is flexible and can be adapted to the needs of the parties, making it both cost-effective and efficient compared to formal dispute resolution mechanisms. In India, however, negotiation has no statutory recognition, as there is no specific legislation that governs it as a formal ADR method.
2. Mediation: Mediation is a voluntary and non-binding process where a neutral third party, called a mediator, assists parties in conflict to reach an agreement. The mediator does not impose any decision but instead facilitates communication, helps clarify priorities, and guides the parties toward a mutually acceptable solution. Mediation is especially useful when communication gaps or emotional barriers exist, and it also helps the parties avoid the high costs and delays of litigation.

   Since settlements reached through mediation are voluntary and consensual, the process helps individuals and businesses in conflict preserve their relationships. Presently, the use of Mediation is confined largely in family matters, etc. and in disputes referred by Courts, to court annexed mediation centres.

**Mediation Act, 2023**

Till recently, mediation as a tool was not formalised and structured as there was no express recognition of the settlement arrived at between the parties under law. Thus, parties felt discouraged to participate in the mediation process. This hampered the growth of mediation as an effective mechanism for dispute resolution. The Mediation Act, 2023 seeks to address the 499 legal and procedural shortcomings in this regard. The Act also adds India to the list of countries having a dedicated standalone mediation legislation in the country, like in Australia, Singapore, and Italy, etc. The key features of the Act include:

1. Parties must attempt to settle civil or commercial disputes by mediation before approaching any court or certain tribunals. Even if they fail to reach a settlement through pre-litigation mediation, the court or tribunal may at any stage refer the parties to mediation.
2. Agreements resulting from mediation (other than community mediation) will be final, binding, and enforceable in the same manner as court judgments. These settlements may be challenged on grounds such as fraud, corruption, impersonation, or if the dispute is not suitable for mediation.
3. Mediation proceedings will be confidential and must be completed within 180 days (may be extended by 180 days by the parties). A party may withdraw from mediation after two sessions.
4. Mediators may be appointed either by mutual agreement between the parties or by a mediation service provider. Mediators must disclose any conflict of interest that may raise doubts on their independence.
5. The central government will establish the Mediation Council of India, consisting of - a chairperson, 2 full-time members (with experience in mediation or ADR), 3 ex-officio members (including the Law Secretary, and the Expenditure Secretary), and a part-time member from an

industry body. The Council will ensure the registration of mediators, recognizing mediation service providers and mediation institutes, etc.

6. Community mediation may be attempted to resolve disputes likely to aff ect the peace and harmony amongst residents of a locality. It will be conducted by a panel of three mediators.
7. The Act will apply to mediations conducted in India that: (i) involve only domestic parties, (ii) involve at least one foreign party and pertain to a commercial dispute (i.e., international mediation), and (iii) specify in the mediation agreement that the process will be governed by this Act. The Act contains a list of disputes which are not fit for mediation. These include disputes relating to claims against minors or persons of unsound mind, involving criminal prosecution, and affecting the rights of third parties. The central government may amend this list.

India has several other statutes that have mediation provisions, including the Code of Civil Procedure, 1908, the Arbitration and Conciliation Act, 1996, the Companies Act, 2013 and the Consumer Protection Act, 2019. The Commercial Courts Amendment Act, 2018, promotes mediation by requiring parties to attempt resolution through mediation before initiating lawsuits for cases not needing immediate legal action. This Act also establishes specific rules to ensure structured and effective mediation.
Mediation is seen as a promising solution to reduce court case backlog and is supported by the Mediation and Conciliation Project Committee of the Supreme Court of India. Additionally, as a signatory to the Singapore Convention on Mediation, 2018, India is well-positioned to effectively implement the Mediation Act, 2023 and enhance its role as an International Mediation Hub.

3. Conciliation: Conciliation is a voluntary method of dispute resolution where a neutral third party, called a conciliator, helps the parties communicate, identify issues, and explore possible solutions. Unlike arbitration, it does not lead to a binding decision. The conciliator does not impose a resolution but guides the parties toward a mutually acceptable settlement. Conciliation is flexible and confidential, as anything discussed during the process cannot be used later in court. In India, it is governed by the Arbitration and Conciliation Act, 1996, which ensures impartiality and allows parties to withdraw from the process at any stage.
4. Arbitration: Arbitration is a formal process of dispute resolution where the parties agree to appoint one or more arbitrators as neutral third parties to settle their dispute. The arbitrators hear both sides and give a decision, known as an award, which is legally binding on the parties. It is more private and usually faster than traditional court proceedings, but since it results in a binding outcome, it may sometimes put additional strain on the relationship between the parties. In India, arbitration is governed by the Arbitration and Conciliation Act, 1996, which lays down the powers and functions of arbitral tribunals.

**History of Arbitration in India**
The first formal statute regarding the subject of arbitration in India was the Indian Arbitration Act, 1899, applicable only to the Presidency towns of Madras, Bombay and Calcutta. Subsequently, after the Code of Civil Procedure, 1908 came into force, the Second Schedule of the said code provided for the recourse to arbitration.

Subsequently, above laws laid down the groundwork for a comprehensive legislation relating to arbitration i.e., the Arbitration Act, 1940, predominantly based on the English Arbitration Act of 1934 and was in force for the next more than half a century. It dealt only with domestic arbitrations while the enforcement of foreign awards was dealt with by the Arbitration (Protocol and Convention) Act, 1937 for the Geneva Convention Awards and the Foreign Awards (Recognition and Enforcement) Act, 1961 for the New York Convention Awards.

Internationally, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, 1985 was adopted with the aim to create uniformity in arbitration related statutes, enacted by the member countries. The UNCITRAL model law enabled the participating nations to consider the said law while enacting laws pertaining to domestic arbitration to have uniformity across various jurisdictions as far as arbitration is concerned.

**Arbitration and Conciliation Act, 1996**

The Arbitration and Conciliation Act, 1996 was enacted in response to the globalization and liberalization of the Indian economy post-1991, which created an environment conducive for foreign investments. To align domestic laws with international standards and to meet investor expectations for a robust & efficient dispute resolution mechanism, significant reforms were necessary.

As the previous Arbitration Act, 1940, did not meet the investors' demands, the Indian Parliament, based on the UNCITRAL Model Law, adopted the Arbitration and Conciliation Act, 1996. This legislation, which came into effect on August 22, 1996, was designed to bring Indian arbitration law in line with international practices and expectations. The Arbitration and Conciliation Act, 1996 is divided into four parts - (a) Part I - Arbitration; (b) Part II - Enforcement of Certain Foreign Awards; (c) Part III -Conciliation and (d) Part IV - Supplementary Provisions. Apart from these Parts, there are Seven Schedules to the Act.

**Key objectives of the Arbitration and Conciliation Act, 1996**

a) Reducing Court intervention.
b) Providing for speedy disposal of the disputes.
c) Amicable, swift , and cost-efficient settlement of disputes.
d) Ensuring that arbitration proceedings are conducted in a just, fair, and effective manner.
e) Comprehensively dealing with international commercial arbitration and conciliation, along with domestic arbitration and conciliation.
f) Facilitating arbitrators to resort to mediation, conciliation, or other procedure during the arbitral proceedings to encourage settlement of disputes.
g) Provide that every arbitral award is enforced in the same manner as if it was a decree of the court.

**Salient features of the Act - After amendments in 2015, 2019 and 2021**

The Arbitration and Conciliation Act, 1996 has been amended by the Arbitration and Conciliation (Amendment) Acts in 2015, 2019 and 2021. The changes were made to enable the conduct of arbitration proceedings in India to be time bound, efficacious, and amenable to further litigation only on limited grounds. The significant features include:

1. Establishment of the Arbitration Council of India (ACI): The Act creates an independent body, the ACI, responsible for promoting arbitration, mediation, and conciliation. It will frame policies for grading arbitral institutions & accrediting arbitrators and maintain a depository of arbitral awards.
2. Qualifications of arbitrators: The original Act specified that the arbitrator must be- an advocate under the Advocates Act, 1961 with 10 years of experience, or an officer of the Indian Legal Service, among others. The amendment in 2021 removed the Schedule for arbitrators and states that the qualifications, experience, and norms for accreditation of arbitrations will be specified under the regulations.
3. Appointment of Arbitrators: The amendment shifted the responsibility of appointing arbitrators from the courts to designated arbitral institutions. For international commercial arbitration, appointments will be made by institutions designated by the Supreme Court, while domestic arbitration appointments will be handled by institutions designated by the relevant High Court.
4. Time Limits: The Act removes the strict 12-month time limit for international commercial arbitration awards but encourages tribunals to resolve such matters within this timeframe. For domestic arbitration, the requirement remains. Grounds for challenge to arbitral awards were clarified to convey that the scope of the challenge is intended to be limited. This would enable finality to arbitral awards.
5. Automatic stay on awards: The 1996 Act allowed a party to file an application to set aside an arbitral award (i.e., the order given in an arbitration proceeding). The amendment in 2021 specified that a stay on the arbitral award can be provided (even during the pendency of the setting aside of the application) if the court is satisfied that: (i) the relevant arbitration agreement or contract, or (ii) the making of the award, was induced, or effected by fraud or corruption.
6. Interim orders that can be passed by the courts or arbitral tribunals , as the case may be, relating to arbitral proceedings, have been detailed out, to enable protection of the value of the subject matter of dispute during the pendency of the arbitration proceedings.
7. Written Submissions: The amendment mandates that written claims and defences must be completed within six months from the appointment of arbitrators, introducing a structured timeline for submissions.
8. Confidentiality: It establishes that the arbitration proceedings are confidential, with details disclosed only when necessary for the implementation or enforcement of the arbitral award.
9. Judicial Intervention: The Act aims to reduce judicial interference in arbitration processes, promoting a more streamlined and efficient resolution of disputes.

**India International Arbitration Centre Act, 2019**

The India International Arbitration Centre Act, 2019 provides for the establishment of an institution of national importance, namely the India International Arbitration Centre for creating an independent and autonomous regime for institutional arbitration. It is proposed to develop the Centre as a preferred seat for domestic and international commercial arbitration.

The India International Arbitration Centre shall, inter alia, provide facilities and administrative assistance for conciliation, mediation and arbitral proceedings, maintain panels of accredited

arbitrators, conciliators and mediators, both at National and International levels or specialists such as surveyors and investigators; provide facilities and administrative assistance for conciliation, mediation and arbitral proceedings; promoting research and study, providing teaching and training, and organizing conferences and seminars in arbitration, conciliation, mediation and other alternative dispute resolution matters. The Chairperson and part-time members of the Centre have been appointed.

**ADR - an analytical perspective**

Alternative Dispute Resolution (ADR) is an important mechanism for delivering justice in India. Its main advantage lies in the speedy disposal of cases, avoiding delays in formal courts and reducing the judicial burden. ADR ensures fairness, maintains confidentiality, and helps preserve social relations, especially in sensitive cases like divorce. It is cost-effective, less formal, and enhances access to justice for citizens. By applying equity rather than rigid legal rules, ADR also furthers constitutional goals such as equality before law (Articles 14 and 21) and equal justice opportunities (Article 39A). With rising pendency in Indian courts, its significance has grown considerably.

Yet, ADR has limitations. It is less effective in cases involving systemic injustices, human rights issues, or when power imbalances exist between parties. It is unsuitable for disputes requiring public sanction or legal precedents, and its settlements lack punitive effect. Multi-party disputes or cases with uninformed participants may also undermine the process, often pushing dissatisfied parties back to courts.

To strengthen ADR, the BN Srikrishna Committee suggested measures such as establishing an Arbitration Promotion Council of India (APCI), setting up a specialized Arbitration Bench, promoting arbitration in government contracts under a National Litigation Policy (NLP), and assigning the Ministry of External Affairs the responsibility for Bilateral Investment Treaty (BIT) arbitrations. Expanding ADR centres and mediation facilities at the district level is equally important.

Given these benefits, strengthening ADR is sine qua non for timely and accessible justice. As noted by the Malimath Committee Report (1990), it is vital to ensure justice is not delayed or denied by the rigidities of traditional litigation.

**ODR - Online Dispute Resolution**

Online Dispute Resolution (ODR) is the use of technology to 'resolve' disputes. The disputes are resolved online through techniques of Alternate Dispute Resolution (ADR) such as arbitration, conciliation, and mediation. It was realized during the Covid-19 pandemic that timely access to justice can be derailed if the technology is not duly harnessed.

The pandemic led to a deluge of disputes, further burdening the already lengthy court processes. Hence, ODR has the potential to help reduce the burden on the court and efficiently resolve several categories of cases. It can further minimize the high time and cost associated with traditional processes of dispute redressal. It also offers the benefits of convenience and efficiency, along with the flexibility to develop customizable processes. It can reduce unconscious bias associated with human interactions

and contributes to all layers of justice — dispute avoidance, containment, and resolution. The widespread adoption of ODR can enhance legal health, increase contract enforcement, and improve India's Ease of Doing Business Rankings. Combined with digital courts, ODR has the potential to transform the legal landscape, ultimately increasing access to justice.

The NITI Aayog report has provided recommendations for advancing the ODR framework in India at three levels. At the structural level, it suggests enhancing digital literacy, improving access to digital infrastructure, and training professionals as neutrals for ODR services. Behaviourally, it advocates for the use of ODR in resolving disputes involving government departments and ministries. At the regulatory level, the report calls for the establishment of design and ethical principles to guide ODR service providers, promoting self- regulation while encouraging growth and innovation within the ODR ecosystem.

**Additional Mechanisms for Dispute Resolution**

Over the years, there has been a significant push to develop a more informal justice system through mechanisms like Lok Adalats, Gram Nyayalayas, and Family Courts. These platforms aim to simplify procedures to speed up the resolution of smaller disputes. They draw inspiration from traditional village justice systems, although they have become somewhat formalized by the State.

1. **Lok Adalats:** Lok Adalat, meaning 'People's Court,' is a significant innovation in India's legal system that aligns with the Gandhian principle of justice and has roots in the traditional village dispute resolution systems known as Panchayats. It serves as a forum where disputes at the pre-litigation stage or pending in the court of law are settled or compromised amicably.
   The Lok Adalat system emphasises mediation, negotiation and arbitration, allowing parties directly affected by disputes to engage in discussions aimed at reaching a mutually agreeable settlement. This approach not only alleviates the burden on the judiciary but also ensures that justice is delivered in a timelier manner, particularly benefiting those who may face economic or social barriers to accessing conventional legal avenues.
   The first Lok Adalat took place on March 14, 1982, in Junagarh, Gujarat, and the concept has since spread across the country. Lok Adalats were given the statutory status under the Legal Services Authorities Act, 1987. The Act established Legal Services Authorities to facilitate access to justice and mandated the organization of Lok Adalats to promote equal opportunities for all citizens.

**Key features of Lok Adalats:**

1. No Legal Representation Required: Parties are encouraged to represent themselves and engage directly with the judge to reach a settlement.
2. No Fees: There are no court fees involved for the parties, making it accessible to all.
3. Informal Procedures: The strict rules of civil procedure and evidence do not apply, allowing for a more flexible and expedited resolution process.
4. Binding Decisions: The awards made by Lok Adalats are deemed equivalent to civil court decrees and are binding on the parties, with no option for appeal. **[PYQ 2009]**
5. Jurisdiction: Lok Adalats can handle –(a) disputes that are already pending before any court; (b) disputes at the pre-litigation stage that fall within the jurisdiction of a court but have not yet been

brought before it; and (c) criminal cases, provided they are compoundable under the relevant laws. However, they do not have jurisdiction over non- compoundable offences or divorce cases.

6. Specific Areas of Competence: Lok Adalats can manage a variety of cases, including compoundable civil and criminal cases, Motor accident compensation claims, Partition claims, Pension claims **[PYQ 2005]** Damage claims, Matrimonial and family disputes, Land mutation and acquisition disputes, Cases related to bonded labour, Bank loan recovery cases, Arrears of retirement benefits, Family court matters, Any case not currently sub-judice (under judicial consideration).
7. Pecuniary Jurisdiction: Lok Adalats typically have a monetary limit for the disputes they can handle, which is generally set at Rs. 10 Lakhs. However, Permanent Lok Adalats can address disputes involving amounts up to Rs. 1 Crore, particularly in public utility services.

**Powers of Lok Adalat**

The Lok Adalat shall have the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:

1. Power to summon and enforce the attendance of any witness and to examine him/her on oath.
2. Power to enforce the discovery and production of any document.
3. Power to receive evidence on affidavits,
4. Power for requisitioning of any public record or document or copy thereof or from any court.
5. Such other matters as may be prescribed.

**Permanent Lok Adalats**

The Permanent Lok Adalats were established through amendments to the Legal Services Authorities Act, in 2002. These Adalats serve as permanent bodies designed to facilitate the resolution of disputes related to public utility services, such as transport and telecommunications. Each Permanent Lok Adalat is composed of a chairman and two members, who work to provide a pre-litigation conciliation mechanism, allowing parties to settle disputes before they escalate to the formal litigation stage.

The jurisdiction of the Permanent Lok Adalats is limited to cases involving amounts up to one crore rupees. Their awards are final and binding on the parties involved, ensuring a swift resolution process. Unlike traditional Lok Adalats, which can handle both pending and pre-litigation matters, Permanent Lok Adalats are restricted to pre-litigation issues only. However, they possess similar powers to that of Lok Adalats in terms of dispute resolution. Mobile Lok Adalats are organized to travel to various locations, making it easier for individuals to access this dispute resolution mechanism.

**LEGAL AID & AWARENESS**

The idea of a legal aid programme was floated in the 1950s when the Government of India started addressing the question of legal aid for the poor in various conferences. It deepened with the establishment of the CILAS (Committee for Implementing Legal Aid Schemes), in 1980, under the chairmanship of Justice P.N. Bhagwati to oversee and supervise legal aid programmes throughout the country.

The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country. It succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their

disputes. In 1987, the Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was enforced on the 9th of November 1995 after certain amendments were introduced therein by the Amendment Act of 1994. In this regard, since 2009, the 9th of November has been celebrated every year by all Legal Services Authorities as "Legal Services Day."

**LEGAL SERVICES AUTHORITY ACT, 1987 (LSAA)**

The Legal Services Authorities Act, 1987 was enacted to fulfil the constitutional goal of providing free legal aid to the poor and weaker sections of society to ensure justice is accessible to everyone, as set out in Article 39A. Under the Act, several services are provided to support individuals in need of legal assistance. These include free legal awareness initiatives aimed at educating the public about laws and schemes issued by public authorities, with legal camps and aid centres organized to offer advice.

Additionally, free legal aid counsel is available for those unable to afford an advocate, ensuring they can defend or file cases in court. Lok Adalats serve as a primary method for resolving disputes through these legal services authorities. Other services include victim compensation and the settlement of disputes through Alternative Dispute Resolution (ADR) mechanisms, such as arbitration, conciliation, judicial settlement, or mediation, including through Lok Adalat.


**Structural Organization under LSAA**

The nationwide network of Legal Services Authorities - at the national, state and district levels - has been envisaged under the Act for providing legal aid and assistance.

1. National Legal Services Authority (NALSA) was constituted under the Legal Services Authorities Act, 1987 at the national level.
2. State Legal Services Authority (SLSA), headed by the State HC's CJ as its Patron-in- Chief, are created at the state level.

3. District Legal Services Authority (DLSA), in which the District Judge of the District is its ex-officio Chairman, is established at the district level.
4. Taluka Legal Services Committee, headed by a senior Civil Judge, is established at the taluka /sub-division level.
5. 'Legal Services Committees' - Judiciary: The Supreme Court Legal Services Committee (SCLSC), established under Section 3A of the Legal Services Authorities Act of 1987, is responsible for implementing legal services programs in the Supreme Court of India. Similarly, at the State level, we have the High Court Legal Services Committee (HCLSC).

**National Legal Services Authority of India**

The National Legal Services Authority of India (NALSA) oversees the implementation of legal aid programs and aims to provide free and competent legal services to the weaker sections of society on the basis of equal opportunity (PYQ 2013). The Authority came into force with the LSAA, only in November 1995 and was constituted on 5th December 1995. The CJI is the Patron-in-Chief and the second senior-most Judge of the Supreme Court is the Executive Chairman of NALSA. It is housed at the Supreme Court of India, New Delhi.

NALSA works towards the establishment of an inclusive legal system. It legally empowers the marginalized groups of the society by providing effective legal representation, legal literacy and awareness. Also, it strengthens the system of Lok Adalats and other ADR mechanisms to provide for informal, quick, inexpensive & effective resolution of disputes and to minimize the load of adjudication on the overburdened judiciary.

The State Legal Services Authority, District Legal Services Authorities and Taluk Legal Services Committees give effect to the policies and directions of the NALSA, provide free legal services to the people and conduct Lok Adalats. NALSA provides funds and issues guidelines for the implementation of legal aids, programmes and schemes throughout the country (PYQ 2013). It has also called upon Legal Authorities to set up Legal Aid Cells in jails to provide prompt & efficient legal aid to the prisoners. 'Nyaya Deep', the official newsletter of NALSA, promotes a healthy working relationship between legal services functionaries throughout the country and is proving immensely useful for the exchange of views and sharing of ideas.

**Eligibility – Free Legal Services**

The following sections of the society as enlisted under Section 12 of the LSAA are entitled to free legal services:

a) A member of a Scheduled Caste or Scheduled Tribe;
b) A victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
c) A woman (irrespective of her income or financial status) or a child (till the age of 18 years);
d) A mentally ill or otherwise disabled person;
e) A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster;
f) An industrial workman;

g) In custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987 (14 of 1987);

h) A person with an annual income of less than Rs 1,00,000 or who falls within the Annual Income Ceiling Limit, as prescribed u/S 12(h) of the Act, for their State (or any other higher amount as may be prescribed by the State Government), if the case is before a Court other than the Supreme Court, and less than Rs 5 Lakh, if the case is before the Supreme Court. An affidavit made by a person as to his income is generally regarded as sufficient for making him/her eligible for the entitlement of legal services under the Act unless the concerned Authority has reasons to question or disbelief such an affidavit.

**Note:**

- The eligibility of the Senior citizens is determined according to the rules framed by the respective State Governments in this regard. For instance, senior citizens in Delhi are eligible for free legal aid subject to a prescribed ceiling of annual income. Any individual above the age of 60 can apply for free legal aid/services.
- Provision for free legal aid to transgenders up to 2 lakhs in Delhi. It is yet to be implemented at an all-India level (PYQ 2020).
- Thus, senior citizens & OBCs are not covered under LSAA (PYQ 2020).

Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required fee in the matter and bear all incidental expenses in connection with the case. These services include payment of court fees, process fees, and all other charges payable or incurred in connection with any legal proceedings, providing the service of lawyers in legal proceedings. It also includes obtaining and supplying certified copies of orders and other documents in legal proceedings, preparation of appeals, and paper books, including printing and translation of documents in legal proceedings.

The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority. These authorities, thus, commit to fulfilling the Preamble's promise of securing justice — social, economic, and political — for all citizens and reinforcing the Fundamental Rights, specifically Articles 14 and 22(1), which mandate the State to ensure equality before the law.

**Lok Adalat – an analytical perspective**

Lok Adalat, as an institution, plays a significant role in justice delivery by ensuring cost-effective, accessible and expedited dispute resolution in an informal setting. A primary benefit is the elimination of court fees; any fees paid prior to Lok Adalat's intervention are refunded if the case is resolved there. This ensures that justice is available to individuals across various socio-economic strata. Lok Adalats are renowned for their efficiency, often resolving disputes in a single session, which contrasts sharply with

the prolonged delays typical in traditional courts due to procedural complexities and case backlogs. Recently, the Executive Chairman of the National Legal Services Authority (NALSA) announced that over 7.7 crore cases were resolved through three National Lok Adalats in 2024. The less formal nature of Lok Adalats fosters open dialogue and cooperation between disputing parties, promoting amicable settlements and long-term reconciliation. Importantly, the decisions rendered are binding and carry the same legal weight as those from civil courts, thereby providing finality and preventing further appeals.

However, Lok Adalats also encounter several challenges. Firstly, Lok Adalats lack continuity in hearings, as repeated sessions with the same judge are uncommon, potentially disrupting the negotiation process and the continuity of discussions. Secondly, confidentiality concerns arise because proceedings are held in open court, which may inhibit parties from discussing sensitive issues freely, thereby affecting the thoroughness of mediation. Thirdly, there is a risk that parties might feel pressured into accepting settlements that are less than satisfactory, particularly in situations involving significant power imbalances. Fourthly, Lok Adalats may also be less effective for complex cases that require intricate legal scrutiny. Moreover, the voluntary nature of participation means that the process may be less effective if one party is unwilling to engage.

To address these challenges and enhance the efficacy of Lok Adalats, it is important to expand legal literacy and aid programs while improving the quality of legal representation within Lok Adalats through competent and effective advocacy. The jurisdiction of Lok Adalats can be expanded to include more complex disputes, such as business conflicts, to increase their utility. Providing social workers with specialized legal training could help protect vulnerable individuals from exploitation and ensure better support. The judiciary can implement mandatory referrals to Lok Adalats to help parties overcome biases and gain a clearer understanding of the benefits of this alternative dispute resolution mechanism.

**2. Gram Nyayalaya:**

Gram Nyayalayas or village courts are established under the Gram Nyayalayas Act, 2008 for speedy and easy access to the justice system in the rural areas of India. These courts are intended to provide a more accessible and efficient judicial process at the grassroots level, specifically for every Panchayat or a group of contiguous Panchayats within a district.

**Structure & Jurisdiction - Gram Nyayalaya**

Each Gram Nyayalaya is presided over by a Nyayadhikari, who possesses the same authority and benefits as a Judicial Magistrate of the First Class. The appointment of Nyayadhikaris is made by the State Government in consultation with the respective High Court. The jurisdiction of a Gram Nyayalaya is determined by notifications from the State Government, allowing these courts to operate as mobile courts within their designated areas, provided they publicize their locations and schedules adequately.

A Gram Nyayalaya has jurisdiction over an area specified by a notification by the State Government in consultation with the respective High Court. Also, it can function as a mobile court at any place within the jurisdiction of such Gram Nyayalaya, after giving wide publicity in that regard. It has both civil and criminal jurisdiction over the offences, enabling it to handle a variety of cases as specified in the Act (PYQ 2016). It allows for conciliation of the dispute and settlement of the same in the first instance. The pecuniary limits for the cases they can adjudicate are set by the respective High Courts. The courts can also accept certain types of evidence that may not typically be admissible under the Indian Evidence Act, thereby streamlining the judicial process.

**Procedure & Approach - Gram Nyayalaya**

In terms of procedure, Gram Nyayalaya follows special procedures in civil matters, in a manner it deems just and reasonable in the interest of justice. Gram Nyayalaya is designed to expedite case resolution. Civil cases should be resolved within six months of filing, and criminal appeals can be made to the Sessions Court, which also has a six-month timeline for resolution. Therefore, the Act encourages plea bargaining, allowing the accused individuals to negotiate lesser charges or sentences, which further facilitates a quicker judicial process. The appeal in criminal cases shall lie to the Court of Session and the appeal in civil cases shall lie to the District Court, and in both cases, it shall be heard and disposed of within a period of six months from the date of filing of such appeal.

The Gram Nyayalaya system aims to provide affordable and swift access to justice for rural populations, addressing the challenges posed by traditional judicial processes. It offers a decentralized and participatory approach to justice, allowing local social activists and lawyers to serve as mediators. As per the act, the District Court shall, in consultation with the District Magistrate, prepare a panel consisting of the names of social workers at the village level having integrity for appointment as Conciliators who possess such qualifications and experience as may be prescribed by the High Court (PYQ 2016). This initiative serves as a statutory alternative to informal systems like traditional panchayats, which often suffer from issues such as caste discrimination.

**Gram Nyayalayas—an analytical perspective**

One of the core principles of the Gram Nyayalayas is to ensure that no citizen is denied justice due to social or economic disadvantages, as mandated by Article 39A of the Indian Constitution. This commitment to inclusivity is further demonstrated by the provision of mobile courts, which enhance physical access to judicial proceedings by allowing trials to be held in local communities rather than centralized court locations. The Gram Nyayalaya is required to resolve cases within six months of their filing, promoting efficiency in the judicial process. Additionally, conducting proceedings in the language of the state makes these courts more accessible to the local populace, thereby facilitating better understanding and participation in the legal process.

Gram Nyayalaya faces several challenges, including slow implementation with only around 5% of the planned courts being operational. There are gaps in the infrastructure while some states show resistance due to conflicts with local laws. Many operate as extensions of existing Judicial Magistrate courts, causing jurisdictional confusion, and their focus on formal procedures rather than conciliation undermines their purpose. Additionally, there is a lack of awareness among rural populations about these courts, limiting their effectiveness.

**3. Family Courts:**

The Family Courts Act, 1984, was enacted to establish Family Courts across India with the aim of promoting conciliation and ensuring the swift resolution of disputes related to marriage and family matters. It reflects the recognition of the need for specialized judicial mechanisms to handle family-related issues, which often require a more sensitive and expedient approach compared to conventional civil courts.

**Objectives and reasons for setting up of Family Courts:**

- To create a Specialized Court that will exclusively deal with family matters so that such a court may have the necessary expertise to deal with these cases expeditiously. Thus, expertise and expedition are two main factors for establishing such a court.
- To institute a mechanism for conciliation of disputes relating to family.
- To provide an inexpensive remedy.
- To have flexibility and an informal atmosphere in the conduct of proceedings.

It is mandatory for State Governments, under Section 3 of the Act, to set up a Family Court in every city or town with a population exceeding one million. In areas with smaller populations, the establishment of Family Courts is at the discretion of the State Governments, allowing them to assess local needs and resources.

The Act emphasizes not only the judicial aspect but also encourages the involvement of social welfare agencies and professionals to facilitate mediation and conciliation, thereby fostering a supportive environment for families in conflict. The Family Courts are free to evolve their own rules of procedure, and once a Family Court does so, the rules so framed override the rules of procedure contemplated under the Code of Civil Procedure.