

Debate over appointment of Judges:

The procedure of appointment of judges has been provided under Article 124 of the constitution.

This article was amended by the 99th Amendment Act 2015. Originally the article contained:

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 Court in the States as the President may deem necessary for the purpose.**"

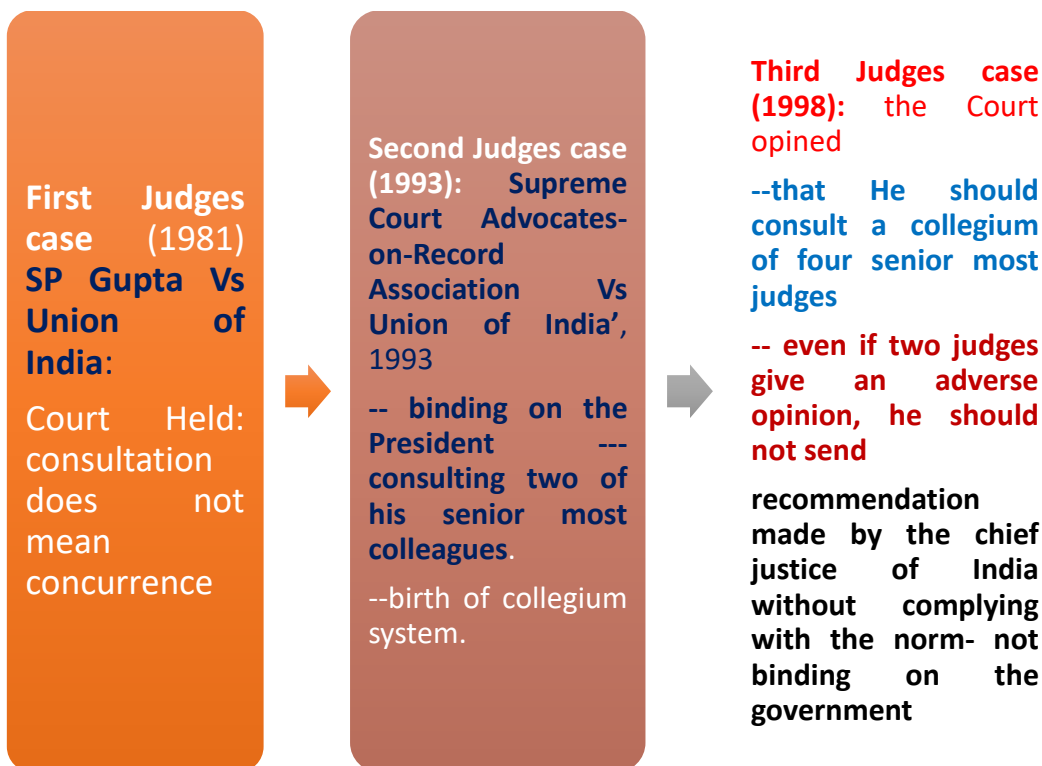
Further, the proviso to this article contained that- in the case of appointment of a Judge other than the Chief Justice, **the Chief Justice of India shall always be consulted:**".

As a matter convention, **the senior most judge is appointed to the office of the Chief Justice of India**. This is **now a well-established constitutional convention**, which has been departed from only on two well-known occasions. The first was when Justice AN Ray was appointed CJI in April 1973, superseding his three senior colleagues JM Shelat, KS Hegde and AN Grover JJ.

The supersession, as is well known, was viewed as the executive's retort to the decision in Kesavananda Bharati's case, where the three judges, had voted in favor of the majority holding that the exercise of constituent power by the Parliament under Article 368 cannot destroy or abridge the basic structure of the Constitution.

The second supersession was when MH Beg J who was appointed CJI in January 1977 upon the retirement of Ray CJ. Beg CJ was appointed superseding his senior colleague HR Khanna J. Khanna J was the sole dissenting judge in the ADM Jabalpur case.

In ADM Jabalpur: Supreme Court has held that- person's right to life cannot be upheld by a High Court under Article 226 of the Indian Constitution during a National Emergency.



The basic tenet behind the collegium system is that the **judiciary should have primacy over the government** in matters of appointments and transfers in order to remain independent. However, over time, the collegium system has attracted criticism, even from within the judicial institution, for its lack of transparency. It has even been accused of nepotism.

The principles set out in 3rd Judge Case decision for appointment of Judges to the Supreme Court are as follows:

- The Collegium, for the purposes of Article 124(2) must comprise of the CJI and **four senior-most puisne judges of the court.**
- The term “consultation” occurring in Article 124 **requires plurality of consultation with the members of the collegium.** The **sole opinion of the CJI does not constitute consultation and is not binding on the Government.**
- The opinion of the members of the collegium **must be obtained in writing** and must be conveyed to the Government of India along with the opinion of the CJI.
- Appointments **must ordinarily be in conformity with the opinion of the CJI.** If the CJI is in the minority in the collegium, then the President would be justified in not appointing such a candidate.
- The Chief Justice of India may, in his discretion, bring to the knowledge of the person recommended the **reasons disclosed by the Government of India for his non-appointment and ask for his response thereto.** The response, if asked for and made, should be considered by the collegium before it withdraws or reiterates the recommendation.
- **Merit is the predominant consideration for appointment to the Supreme Court.** Where there is outstanding merit, his/her place in all India seniority

or in his own high court cannot affect his chances for appointment to the court.

- It may well happen that some judges, even though are high on seniority, must never be appointed the court. In such In such cases, reasons must be recorded.
- **Judicial review would be available where**
 - the appointee is found to lack eligibility
 - where the recommendation is not a decision of the Collegium
 - where the views of the senior most Supreme Court judge who comes from the high court of the proposed appointee to the Supreme Court is not considered

Why Collegium is Criticised?

Justice chalmeshwar has given decending verdict were he has criticized the collegium system. has been opec and been in accessible to public.

- **system is non-transparent,**
- **closed-door affair with no prescribed norms**
- There are no official minutes of collegium proceedings: **the nature of the deliberations and whether there are any internal differences of opinion** on the suitability of a particular candidate are unknown.
- **Lawyers too are usually in the dark on whether their names have been considered for elevation as a judge.**
- **tussles between the judiciary and the executive, and the slow pace of judicial appointments.**
- Allegations of breeding nepotism
- In November 2008, the Law Commission in its 214th Report observed that the Supreme Court has virtually re-written the text of Articles 124 and 217 in the II and III Judges case by inventing a “collegium”.

What is the role of government in appointment of judges?

- The role of the government in this entire process is limited to if a lawyer is to be elevated as a getting an inquiry conducted by the Intelligence Bureau (IB) judge in a High Court or the Supreme Court.
- Can raise objections and seek clarifications regarding the collegium's choices, but if the collegium reiterates the same names, the government is bound to accept names.

Opinions on Collegium System:

“As the Chief Justice, I have to take the system as it is given to us... I am not saying every system is perfect but this is the best system we have developed. The object of this system was to maintain independence, which is a cardinal value. We have to insulate the judiciary from outside influences if the judiciary has to be independent. That is the underlying feature of Collegium.”- **CJI DY Chandrachud**

M N Venkatachaliah Commission to examine whether there was need to change the collegium system.

- -- recommended that a National Judicial Appointments Commission (NJAC) should be set up
- — The creation of the NJAC was one of the priorities of the [Narendra Modi](#) government,

- -- 99th Constitutional Amendment 2015 created NJAC.

Acting Chief Justice: The **President can appoint** a judge of the Supreme Court as an acting Chief Justice of India when:

1. the office of Chief Justice of India is vacant; or
2. the Chief Justice of India is temporarily absent; or
3. the Chief Justice of India is unable to perform the duties of his office.

Adhoc Judges:

- the **Chief Justice of India can appoint**
- consultation with the chief justice of the High Court concerned is required
- and the **previous consent of the president is also needed.**

Availing service of Retired Judges:

- The **chief justice of India can request a retired judge of the Supreme Court or a retired judge of a high court to act as a judge of the Supreme Court for a temporary period.**
- **previous consent of the president** and also of the person to be so appointed.
- Such a judge is entitled to **such allowances as the president may determine.**
- He will also enjoy all the jurisdiction, powers and privileges of a judge of Supreme Court.
- But he will not otherwise be deemed to be a judge of the Supreme Court.

Original jurisdiction of Supreme Court:

- Original jurisdiction means cases that can be directly considered by the Supreme Court without going to the lower courts before that.
- It is called original jurisdiction because the Supreme Court alone has the power to deal with such cases. Neither the High Courts nor the lower courts can deal with such cases.
- The Original Jurisdiction of the Supreme Court establishes it as an umpire in all disputes regarding federal matters.

Decides the disputes between different units of the Indian Federation:

- Between the Centre and one or more states; or
- Between the Centre and any state or states on one side and one or more other states on the other side; or
- Between two or more states.

Exceptions:

- (a) A dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, Sanad or other similar instrument
- (b) A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extend to such a dispute.
- (c) Inter-state water disputes.
- (d) Matters referred to the Finance Commission.

(e) Adjustment of certain expenses and pensions between the Centre and the states.

(f) Ordinary dispute of Commercial nature between the Centre and the state.

Appellate Jurisdiction: The Supreme Court is the highest court of appeal. A person can

appeal to the Supreme Court against the decisions of the High Court.

In Constitutional Matters

- A matter of law which requires interpretation of constitution: -, an appeal can be made to the Supreme Court against the judgement of a high court.

In civil cases:

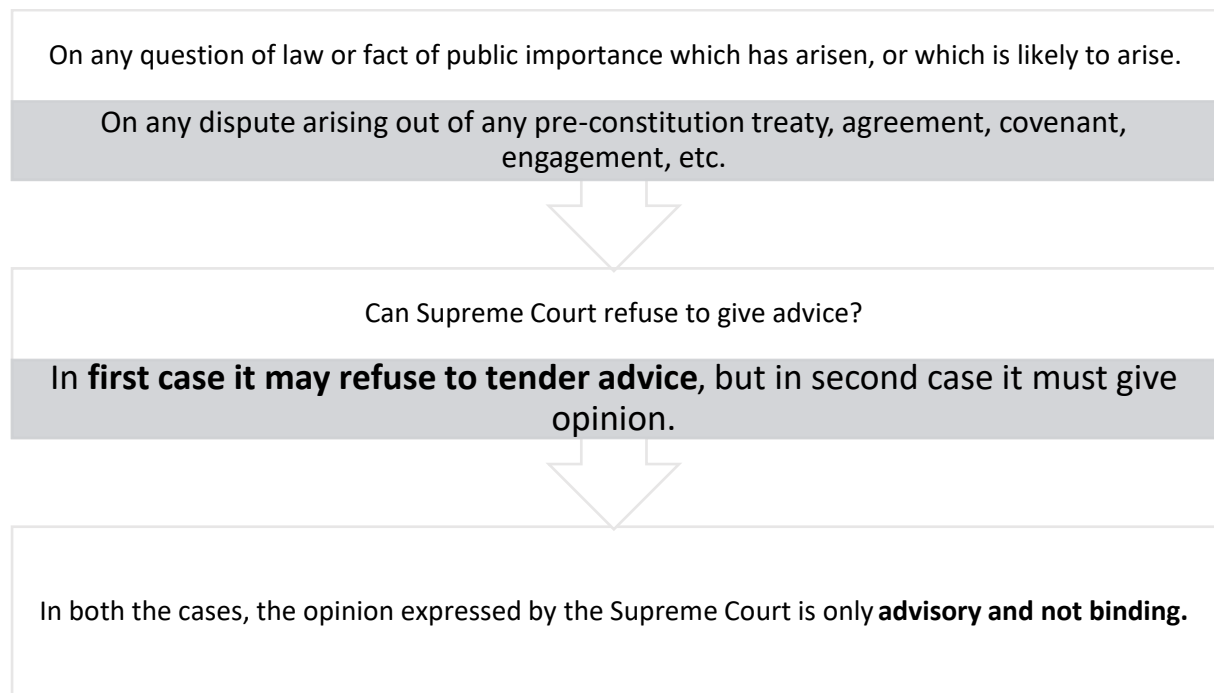
- an appeal lies to the Supreme Court from any judgement of a high **court if the high court certifies–**
- that the case involves **a substantial question of law of general importance;**

In Criminal Matters:

- has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
- has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to death; or
- certifies that the case is a fit one for appeal to the Supreme Court
- In the first two cases, an appeal lies to the Supreme Court as a matter of right (ie, without any certificate of the high court).

Advisory Jurisdiction (Article 143): Supreme Court of India possesses advisory jurisdiction also. However, the Supreme Court is not bound to give advice on such matters and the President is not bound to accept such an advice.

Utility: In the first place, it allows the government to seek legal opinion on a matter of **importance before taking action on it**. This **may prevent unnecessary litigations later**. Secondly, in the light of the advice of the Supreme Court, the **government can make suitable changes in its action or legislations**.




Other Powers of supreme court:

- decides the **disputes regarding the election of the president and the vice president**. In this regard, it has the original, exclusive and final authority.
- enquires into the **conduct and behavior of the chairman and members of the Union Public Service Commission on a reference made by the president**. If it finds them guilty of misbehavior, it can recommend to the president for their removal.
- **has power to review its own judgement or order**. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare.
- **authorized to withdraw the cases pending before the high courts and dispose them by itself**.
- **Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court.**
- **power of judicial superintendence and control over all the courts and tribunals functioning in the entire country.**

Original Jurisdiction of High Court

1. Matters of admiralty and contempt of court.
2. Disputes relating to the election of members of Parliament and state legislatures.
3. Regarding revenue matter or an act ordered or done in revenue collection.
4. Enforcement of fundamental rights of citizens.
5. Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.

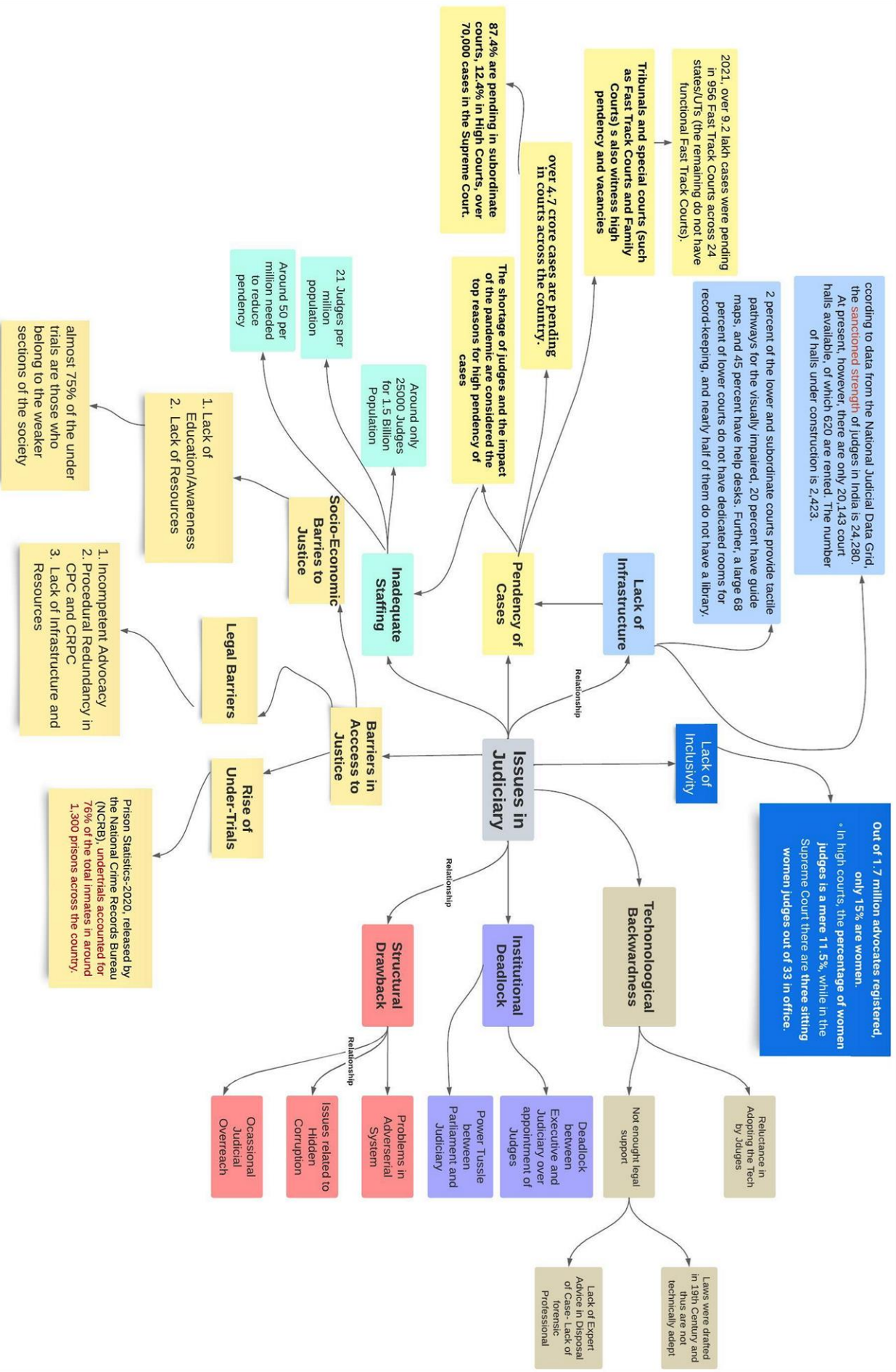
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6. The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value.

Appellate Jurisdiction: hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction.

Supervisory Jurisdiction: high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals).

Control over Subordinate Courts: a high court has an administrative control and other powers over them:

- consulted by the governor in the matters of appointment, posting and promotion of district judges
- deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state.
- can withdraw a case pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution.
- Its law is binding on all subordinate courts functioning within its territorial jurisdiction.



ADVERSARIAL AND INQUISITORIAL SYSTEMS: There are two forms of judicial process – inquisitorial and adversarial. These are followed in civil law and common law jurisdictions respectively. The form of judicial process affects the way in which disputes are brought before the court, the role of judges and lawyers, the investigation procedures and the rights of the defendant. Hence, it is crucial to compare and contrast the approach taken by different forms of judicial process. The difference between adversarial and inquisitorial systems can be explained as follows:

- **Burden of Proof:** In an adversarial system, **the accused is innocent until proven guilty and it is the duty of the prosecution to prove guilt beyond reasonable doubt.** The aim of the criminal justice system is thus to punish the guilty and protect the innocent.
In an inquisitorial system, the accused is presumed to be innocent and it is the duty of the judge to determine the truth. Thus, the standard of proof required is the inner satisfaction or conviction of the Judge.
- **Conduct of Trial:** In an adversarial system, the scope of the dispute is largely determined by the parties. They select the evidence that is presented before the court and the **methods of examination and cross examination are used to prove veracity of the information** before the judge. In an inquisitorial system, the role of the parties is restricted to suggesting the questions that may be put to the witnesses. **It is the Judge who puts the questions to the witnesses and there is no cross-examination as such.**
- **Investigation and Discretion to Prosecute:** In an adversarial model, responsibility for gathering evidence rests with the parties. During the trial, a neutral judge evaluates the evidences produced. Determining whether or not there is sufficient evidence to go to trial, is a matter left to the discretion of the prosecutor. There is also an option for defendants to plead guilty and avoid trial.
In an inquisitorial model, the investigation is typically overseen by the Judge of Instruction, who can seek particular evidence; direct lines of inquiry favourable to either prosecution or defence; interview complainants, witnesses and suspects; and ultimately determine whether there is sufficient evidence to take the case to trial. The Judge of Instruction then prepares a dossier and forwards it to the trial judge. Thus, the discretion of the prosecutor is limited and the defendant does not traditionally have the option to plead guilty.
- **Role of Judge:** In an adversarial process, **the Judge is a neutral referee during trial.** It is the function of the judge to ensure that due process is observed. The Judge must also decide whether the defendant is guilty beyond reasonable doubt and accordingly determine the sentence. The lawyer's role is to introduce evidence in favour of his party, cross-examine the opposite party's witnesses and present arguments in favour of his client.
In an inquisitorial process, the Judge acts as the principal interrogator of witnesses and the defendant, and is under an obligation to take evidence until the truth is ascertained.
- **Admissibility of Evidence:** In the adversarial system, evidence which is prejudicial or of little probative value, is more likely to be withheld from juries,

as they are not well-versed with the amount of importance that is to be given to such evidence. Hearsay evidence, which is a statement made by a person other than the witness is usually admissible if it is considered to be reliable. In an inquisitorial system, the admissibility of evidence is dependent on the Judge's evaluation of it being relevant. Thus, evidence is likely to be admitted regardless of its reliability and prejudicial nature, as long as the Judge deems it to be relevant.

- **Rights of Defendant:** In an adversarial system, the accused enjoys the right to silence and cannot be compelled to reply to a question put to him. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the case of opposite party and to discover information the other side has not brought out. In both inquisitorial and adversarial systems, the accused is guaranteed the right to a fair trial and is protected from self-incrimination. However, in an inquisitorial system, **the defence has only a limited right of suggesting questions to the Judge. It is left to the discretion of the Judge whether to accept the suggestions or not.**
- **Role of Victim:** In adversarial proceedings, victims (criminal law cases) are not a party to the proceedings. Prosecutors are appointed to act on behalf of the State and do not specifically represent the victim. In an inquisitorial system, **victims have a more formal role in the pre-trial investigative stages, including a recognised right to request particular lines of inquiry or to participate in interviews by the investigating authority.** Some civil law jurisdictions also allow the victim to be represented by a lawyer during the trial stage.

In its 221st report, the Law Commission dealt with reforms in the civil justice system and specifically targeted adversarial procedures that tend to be too complicated and time-consuming. **The Commission suggested amendments to the Civil Procedure Code and the Criminal Procedure Code in order to do away with multiple forums to resolve the same issue and allow for a uniform process instead.**

The Justice Malimath Committee on Reforms of the Criminal Justice System discussed the merits and demerits of adopting an adversarial process in India. The Committee noted that the benefits of an adversarial system in criminal trials is that the rights of accused are better protected, ensuring a fair trial. However, the committee felt that certain inquisitorial elements should be included in the Indian judicial process to make it more effective.

- For instance, the present adversarial system is **not geared towards protection of weaker communities, minorities and indigenous people.**
- The adversarial **system requires high burden of proof and correspondingly involves a high cost, making justice inaccessible to the poor.**
- The adversarial process also **takes a long time for trial**, as a result of which several thousands of people are languishing in courts as under trials.

- There is limited availability of legal aid, due to which they are not able to get sufficient representation.
- Another problem identified with the present system was that a difficulty it created for the prosecution. The committee said that it should be enough for the accused to be proven guilty if the evidence against him is "**clear and convincing**". The standard of proof -- "beyond reasonable doubt" -**was in the opinion of the committee a very high burden on the prosecution which led to acquittal due to lack of sufficient evidence in many cases.**

Further, the adversarial process needs to be modified to allow for better protection to the victims of the crime. Presently, the focus is on punishing and deterring the wrong-doer, rather than providing any sort of rehabilitation or protection to the victim. Thus, the Malimath Committee made several recommendations which include the right of the victim to participate in cases involving serious crimes and to adequate compensation.

Some Reforms needed in India's CJS:

- Greater role of judges judicial and oversight in the trial and investigation
- separation of investigation, from the law and order wing of the police
- Incorporate Inquisitorial features
- Better protection to the victims
- Discourage frivolous litigation
- The reduce the rigors of adversarial system which requires high burden of proof and correspondingly involves a high cost, making justice inaccessible to the poor
- Curb misuse of procedures by lawyers to adopt dilatory tactic or making money
- Rationalising legal profession
- Facilitate the resolution of disputes via ADRs

Access to Justice therefore cannot be treated as an end in itself but as a means to achieving social justice through the participation of all its stakeholders including the litigants, the administration, the executive, the bar and the bench alike.

Justice:

- Must be done
- Every section shall have equal recourse to seek justice
- Justice means complete justice
- Justice must be reflected in the society.

Barriers to the Access of Justice:

1. Socio Economic Barriers: Social Barriers are those impediments which arise by virtue of the social setting in which the person resides, or has grown up or nurtured in. When the very society in which the person resides becomes the impediment in voicing his opinions, this leads to obfuscation of justice.

- a. **Lack of Education/Awareness:** The general population is often uninformed about their constitutionally sanctioned rights. They lack awareness of their rights as property owners, the value of their proprietary interests, or the rights of coparceners in a family estate. This lack of awareness is primarily caused by a lack of primary education, resulting in many people being compelled to live lives of labour and servitude.

Additionally, the lack of awareness about informal access to justice mechanisms and the ongoing work of Legal Services Committees at the district, state high court, and Supreme Court levels contributes to the obstacles faced. Moreover, the lack of knowledge deprives indigent individuals of their rights to represent themselves in civil matters, as well as the beneficial provisions available to them. In criminal cases, the complainant or aggrieved party is often unrepresented and their role is limited to being a spectator after providing their testimony. Due to this lack of awareness, indigent individuals rarely file protest petitions if the police decide to drop all charges against the accused.

- b. **Economics Barriers:** Another very important impediment to access to justice was the economic divide, which occasioned because of the social divide which already existed in the society. Access to Justice has never been a problem for one, who has access to all means and is financially sound. Access to Justice is a colossal difficulty for someone who has no recourse to financial resources and therefore had no recourse to pursue legal remedies, assuming that he was in fact aware about his rights.

2. Legal Barriers to access of Justice: Legal impediments to access to justice are not just a simple problem but rather a complex and interconnected cycle that encompasses various causes leading to the denial of justice. Despite the existence of appropriate mechanisms, the dream of accessing justice remains elusive due to factors such as the presence of multiple forums and a lack of

coordination between different departments. In order to address these obstacles, the first crucial step is to identify and recognize them. Some of the legal barriers that contribute to this cycle include the following:

1. **Incompetency of Advocates**
2. **Procedural Barriers:** Internal management system still remains quaint with very little or no reliance on computers and modern modes of communication. In the context of Courts, the litigants had to bear with insurmountable number of delays, right from the stage of filing their complaints till the disposal of case.

There are some other procedural delays, which are implicit under the CPC and CRPC itself. However these procedures were drafted to give protection to parties rather they are now getting manipulated and used to their own respective advantage by the parties or their counsels.

Say for E.g. During the process of recording evidence, the accused's presence is typically mandatory, unless exceptions provided in the legal code allow for his or her absence. In other types of cases, the presence of the judge, accused, public prosecutor, and defense counsel is essential for the witness to give an effective testimony. However, it is often challenging to have all these individuals present simultaneously. This situation hampers the legislature's sincere intention of ensuring a fair trial, as parties may intentionally cause delays by seeking adjournments or instructing clients to do so. This undermines the very purpose of justice, which is to ensure a prompt resolution of the case.

3. **Lack of Infrastructure and resources:**


Steps Taken in this regard:

With the inception and focus on the alternative modes of dispute resolution, and by taking recourse to the ancient forums of dispute resolution such as Panchayats, Lok Adalats and Gram Nyayalayas, a serious attempt has been made to eradicate the system of court pendency and backlog of cases.

With countless awareness programs being introduced through telephonic, electronic and print media, the people are being made aware about their Rights, and how to enforce a remedy in case there is any threat to those rights. The Ministry of law and Justice has organized various campaigns through Street Plays, simulations, radio channels, etc. to bring about awareness of the problem, so that the people can have better access to the instruments of justice. Furthermore, the Government has also taken steps to educate people about the informal modes of dispute resolution such as pre – trial mediation, negotiation, or judicial settlement. For petty trifles, reference to Lok Adalats and Gram Nyayalaya has been made the order of the day.

Alternative Dispute Resolution (ADR) and its rationale

Alternative Dispute Resolution (ADR) has gained significance due to the delay and frustration associated with traditional adjudication processes. The prolonged resolution of disputes undermines faith in the justice system and creates



dissatisfaction. The importance of expeditious dispute resolution lies in establishing legal norms, promoting justice and equity, preserving human relationships, and optimizing financial and human resources. Litigation in India is known for its time-consuming nature, high costs, and the physical and emotional trauma experienced by the parties involved. The complex and lengthy court procedures, along with multiple levels of appeals, result in disputes taking years to reach a final resolution.

Against this backdrop, ADR has emerged as a litigation-free alternative for resolving disputes, based on the consent of the parties involved. While ADR mechanisms are not new to India and have historical roots, their current principles and processes are necessary given the massive backlog of cases and the burden on the Indian judiciary. The need for consent-based mechanisms in ADR is evident, as they provide a more efficient and effective approach to resolving disputes.

Arguments in Favour of Resorting to ADR Techniques:

- Speedy and expeditious resolution of disputes
- Cost effective
- Reduces the burden on public finances in a country where resources are already strained
- Fewer traumas to the people involved
- Confidentiality
- Harmonious resolution of disputes and interest to society at large

LOK ADALATS AND OTHER MECHANISMS

Lok Adalat, plainly means 'People's Court'. **It is one of the alternative system of dispute resolutions** and has a long history in India. The silent feature of this form of dispute resolution are: **participation, accommodation, fairness, voluntariness, efficiency and lack of animosity, final viability etc.** It has **statutory recognition** under Legal Services Authorities Act, 1987.

Directive Principles of State Policy in the Constitution of India 1950, casts a duty upon the state to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. To fulfill the **said objective Gram Nyayalayas Act 2008, was passed by the parliament for establishment of Gram Nyayalayas or village courts for speedy and easy access to justice in the rural India.**

Technology can expedite justice system

The Indian legal system is facing a significant backlog of cases, resulting in delays in the delivery of justice. This is a major concern as it undermines the rule of law, and can lead to a lack of faith in the judiciary and the legal system as a whole.

The Indian court system is known for its slow pace, with cases often taking several years to be resolved. This is due to a number of factors, such as a lack of technology, inadequate infrastructure and resources, and a lack of training for court staff. Additionally, the legal process is often bogged down by delays and adjournments, further adding to the time it takes for cases to be resolved.

Technology can be leveraged in various ways:

How does IT can enable the courts to be modern that is efficient, effective and equitable. IT can be a useful tool in the following areas:

- (1) text creation, storage and retrieval;
- (2) Improved Access to the Law;
- (3) Recording of Court Proceedings;
- (4) Case Management and producing data for administrative purposes;
- (5) Continuing Education;
- (6) Communication

Use of AI in Courts:

Artificial intelligence (AI) has the potential to significantly reduce the backlog of cases in Indian courts. However, it is important to approach the implementation of AI in the legal system with caution and consideration of potential challenges and limitations.

One potential use of AI in the Indian courts is through the use of predictive analytics. Predictive analytics can be used to analyse patterns and trends in past case decisions, allowing judges and lawyers to make more informed decisions in current cases. This could potentially speed up the legal process and reduce the backlog of cases. However, it is important to ensure that the algorithms used for predictive analytics are unbiased and do not discriminate against certain groups of people.

Another potential use of AI in the Indian courts is through the use of automated document review. Automated document review can be used to quickly sort through large amounts of legal documents, allowing lawyers and judges to identify relevant information. However, it is important to ensure that the AI system is able to accurately identify relevant information and is not prone to errors or false positives.

Technology shall be cautiously used: IT acquisition is not an end in itself. It is a tool. The process of acquiring this rather highly sophisticated tool is quite important as it will impact on whether the acquisition of IT meets the goals set and intended benefits.

Research in the US has established that there is a significant failure rate in IT projects. There are many reasons advanced for this failure and these include:

- Lack of top management commitment
- Inadequate planning
- Abandoning the project plan
- Inadequate user input
- Inexperienced project managers
- Flawed technical approach
- Anticipating advances in technology
- Failure to satisfy user needs
- Inadequate documentation
- Unwieldy procurement processes
- Burdensome oversight reviews
- Unrealistic Cost Estimates
- Imprecise specifications

E-Courts Mission Mode Project

The eCourts Project was conceptualized on the basis of the “**National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005**” submitted by eCommittee, Supreme Court of India **with a vision to transform the Indian Judiciary by ICT enablement of Courts.**

Ecommittee is a **body constituted by the Government of India in pursuance of a proposal received from Hon’ble the Chief Justice of India to constitute an eCommittee to assist him in formulating a National policy on computerization of Indian Judiciary** and advise on technological communication and management related changes.


The eCourts Mission Mode Project, is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country. The eCourts Project beginning from 2007.

THE PROJECT ENVISAGES

- To provide efficient & time-bound citizen centric services delivery as detailed in eCourt Project Litigant’s Charter.
- To develop, install & implement decision support systems in courts.
- To automate the processes to provide transparency in accessibility of information to its stakeholders.
- To enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent.

Inter-operable Criminal Justice System (ICJS),

The Inter-operable Criminal Justice System (ICJS), conceptualised by the eCommittee, Supreme Court of India and implemented as a project under the Ministry of Home Affairs, seeks to enable seamless transfer of data and



information among different pillars of the criminal justice system, like courts, police, jails and forensic science laboratories, from one platform.

Objectives

- **Interoperability of data across all Pillars of criminal Justice System:** In order to build an effective criminal justice system across the country, it is essential that data across all pillars of criminal justice is interoperable and is accessible across all the pillars.
- **National Crime & Criminal Data Search across all Pillars:** It is also essential that the crime & criminal data is available at a centralized/ national application for search across data from all pillars using key identify fields such as FIR, Case No, Prison ID, etc. **This shall help in tracing a record from right from registering FIR against suspects to imprisonment of convicts till the imprisonment period involving court case details, trials/ judgments, prosecution & forensics information.**
- **MIS Dashboard and Reporting of FIR/Case/ Case pendency/ Prisons/ Prisoner status** based information for investigation, search, case history, judgments provided, and other details pertaining to criminal justice required from time to time.
- **Data Analytics for Forecasting/ Predictive Trends in Crimes reported region-wise, category-wise, and basis other parameters for effective management & control of crimes in future.**
- **Seamless data sharing across all pillars through a common Network Connectivity:** It is essential that all sites are connected through a common, dedicated, high speed, robust & reliable network for seamless exchange & interoperability of data between all pillars of ICJS such as crime & criminal related data such as FIR information, Court case data with photographic/video-graphic & documentary evidences, videorecordings of court proceedings, and for enabling court proceedings over video conferences for faster delivery of justice in the country.

Pan India Search 🔍

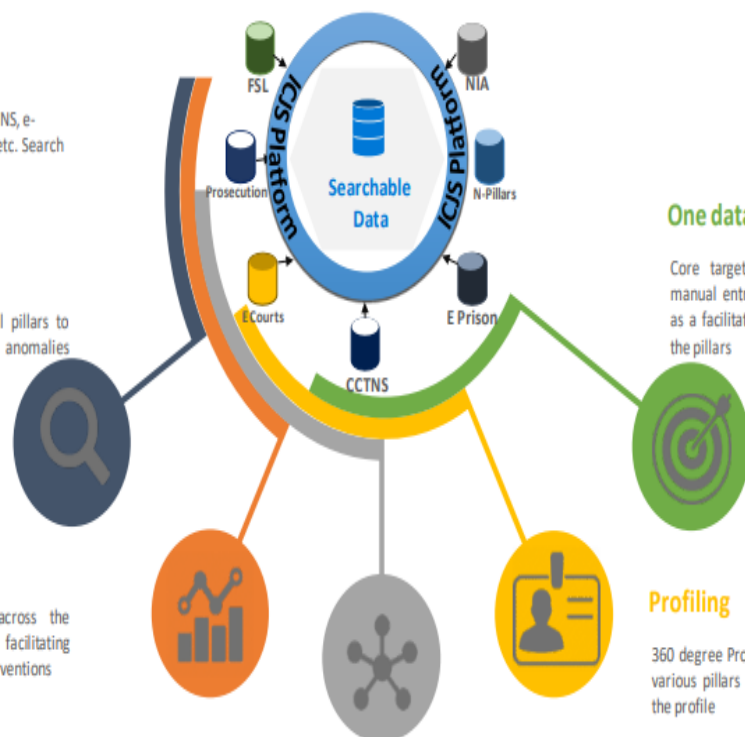
Search across the pillars data of CCTNS, e-Courts, e-Prisons, Prosecution, NIA etc. Search empowered by Phonetics and NLP

Pillar Analytics 📊

Analyze the data of the individual pillars to understand the trends, patterns, anomalies etc. in the network

Exchange Data 🌐

Secured information exchange across the pillars through secured protocols facilitating data exchange without manual interventions



One data once entry 🎯

Core target of ICJS is to eliminate the manual entry of the person details and act as a facilitator to exchange the data across the pillars

Profiling 📄

360 degree Profiling of the persons involved in various pillars and facility to tag or exchange the profile

. Conceptual diagram of ICJS implementation

Implementation agencies

National Crime Records Bureau (NCRB) will be responsible for the implementation of the project in association with National Informatics Center (NIC). The project will be implemented in collaboration with the States and Union Territories.

- The Supreme Court in *Swapnil Tripathi vs Supreme Court of India* (2018) had ruled in favour of opening up the apex court through live-streaming.
- It held that the **live streaming proceedings are part of the right to access justice under Article 21 (Protection of Life and Personal Liberty) of the Constitution**
- Gujarat High Court was the first high court to livestream court proceedings followed by Karnataka high court.
- In 2019, a **Constitution Bench** has also held that the **Office of the Chief Justice of India (CJI)** was a 'public authority' under the RTI Act.

Arguments in Favour

Historically Indian Judicial System is based on system of open courts. As Kautilya said in the Arthashastra, and during that time, when judges delivered a judgment, they did so in an open court.

Another cardinal principles of justice is: **Justice should not only be done, it should also be seen to be done.**

will not just **increase legal literacy but potentially enhance the public's continuous engagement with the Constitution and laws.**

de-congestion of courts and improving physical access to courts for litigants who have to otherwise travel long distances

Recommendations of Attorney General of India

- Recommended introducing live streaming as a pilot project in Court No.1, which is the CJI's court, and only in Constitution Bench cases.
- the A-G suggested that the **court must retain the power to withhold broadcasting**, and to also not permit it in cases involving:
 - Matrimonial matters,
 - Matters involving interests of juveniles or the protection and safety of the private life of the young offenders,
 - Matters of National security,
 - To ensure that victims, witnesses or defendants can depose truthfully and without any fear.

- To protect confidential or sensitive information, including all matters relating to sexual assault and rape,
- Matters where publicity would be antithetical to the administration of justice, and
- Cases which may provoke sentiments and arouse passion and provoke enmity among communities.

The Model Rules for Live Streaming and Recording of Court Proceedings state that cases concerning matrimonial matters, child adoption and child custody, sexual offences, child sexual abuse, and juveniles in conflict with the law should be excluded from live streaming.

Other Countries?

- Australia: Live or delayed broadcasting is allowed but the practices and norms differ across courts.
- Brazil: Since 2002, live video and audio broadcast of court proceedings, including the deliberations and voting process undertaken by the judges in court, is allowed.
- United Kingdom: After 2005, proceedings are broadcast live with a one-minute delay on the court's website, but coverage can be withdrawn in sensitive appeals.
- South Africa: Since 2017, the Supreme Court of South Africa has allowed the media to broadcast court proceedings in criminal matters, as an extension of the right to freedom of expression.

Presently: only nine out of the 25 High Courts in the country have opened their virtual doors to the public. In the Supreme Court itself, **live streaming is limited to only Constitutional cases.**

Concerns:

- With the advent of social media, every citizen became a potential journalist, **lack of editorial control has in fact meant informational anarchy, with fake news and propaganda dominating YouTube and social media feeds**
- A 2018 paper by Felipe Lopez titled 'Television and Judicial Behavior: Lessons from the Brazilian Supreme Court' that studied the Brazilian Supreme Court concluded that **justices behave like politicians when given free television time, they act to maximize their individual exposure.**