



GS FOUNDATION BATCH FOR CSE 2024

**Polity - 15
(Judicial System)**

Feature of Indian Judiciary: Single Integrated and Independent System of Judiciary

Hierarchy of courts with Supreme court at top.

Single Judiciary for both Central and State Laws

Judiciary is independent from executive (Article 50)

This single system of courts, adopted from the Government of India Act of 1935.

The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India.

But the jurisdiction of supreme court is greater than that of erstwhile federal court.

Civil Cases	Criminal Cases	Jurisdiction
District Court		
District Judge	Session Judge	Any Sentence, but death sentence needs to be ratified by HC
Additional District Judge	Additional Session Judge	Any Sentence, but death sentence needs to be ratified by HC
Assistant District Judge	Assistant Session Judge	10 Years
Subordinate Courts		
Senior Civil Judge /Principal Junior Civil Judge	Chief Judicial Magistrate	7 Years
Junior Civil Judge	Judicial Magistrate-I	3 Years
Musif	Judicial Magistrate-II	1 Year

Why do we need Independent judiciary?

The principal role of the judiciary is to protect rule of law and ensure supremacy of law. It safeguards rights of the individual, settles disputes in accordance with the law and ensures that democracy does not give way to individual or group dictatorship. In order to be able to do all this, it is necessary that the judiciary is independent of any political pressures.

Broad features which ensures the judicial independence:

- The legislature is not involved in the process of appointment of judges so that party politics would not play a role in the process of appointment.
- The judges have a fixed tenure, they hold office till reaching the age of retirement. they have security of tenure. Security of tenure ensures that judges could function without fear or favour.
- The judiciary is not financially dependent on either the executive or legislature. The Constitution provides that the salaries and allowances of the judges are not subjected to the approval of the legislature.
- The actions and decisions of the judges are immune from personal criticisms.
- The judiciary has the power to penalise those who are found guilty of contempt of court. This authority of the court is seen as an effective protection to the judges from unfair criticism. Even, parliament cannot discuss the conduct of the judges except when the proceeding to remove a judge is being carried out. This gives the judiciary independence to adjudicate without fear of being criticised.



Judiciary and rights:

Supreme Court can remedy the violation of rights:

- Can restore fundamental rights by issuing writs of Habeas Corpus; mandamus etc. (article 32). The High Courts also have the power to issue such writs (article 226).
- Supreme Court can declare the concerned law as unconstitutional and therefore non-operational (article 13).
- the Supreme Court as the protector of fundamental rights of the citizen on the one hand and interpreter of Constitution on the other hand.
- Article 13 also implicitly includes Judicial Review: Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if the Court arrives at the conclusion that the law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable.
- Supreme Court includes power to review legislations on the ground that they violate fundamental rights or on the ground that they violate the federal distribution of powers. (Say, when Union enacts unduly in matters listed under the state list).
- The practice of entertaining PILs has further added to the powers of the judiciary in protecting rights of citizens.

Removal of Judge:

- can be removed from his Office by an **order of the president**.
- **On grounds only of proved misbehavior or incapacity.**
- only after an **address by Parliament** has been presented **to him in the same session** for such removal.
- The address must be supported by a special majority of each House of Parliament.

The Judges Enquiry Act (1968):

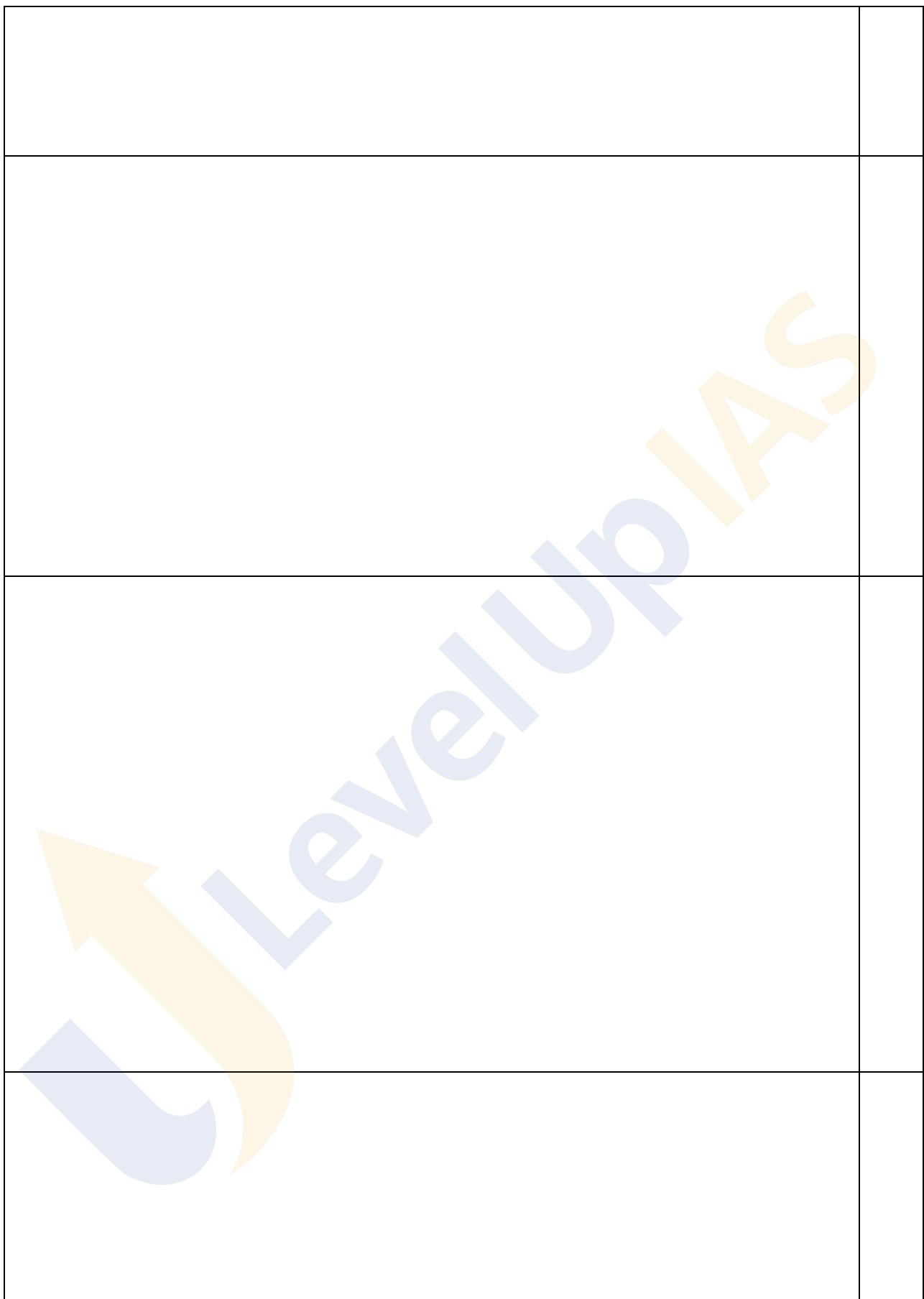
1. **Motion can be adopted in either house of parliament**
 1. signed by 100 members – LS
 2. 50 members (in the case of Rajya Sabha)
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. Other houses **constitute a three-member committee to investigate into the charges.**
 1. the chief justice or a judge of the Supreme Court,
 2. a chief justice of a high court, and
 3. a distinguished jurist.
4. **the House can take up the consideration of the motion.**
5. **by special majority, an address is presented to the president for removal of judge.**
6. Finally, the president passes an order removing the judge.

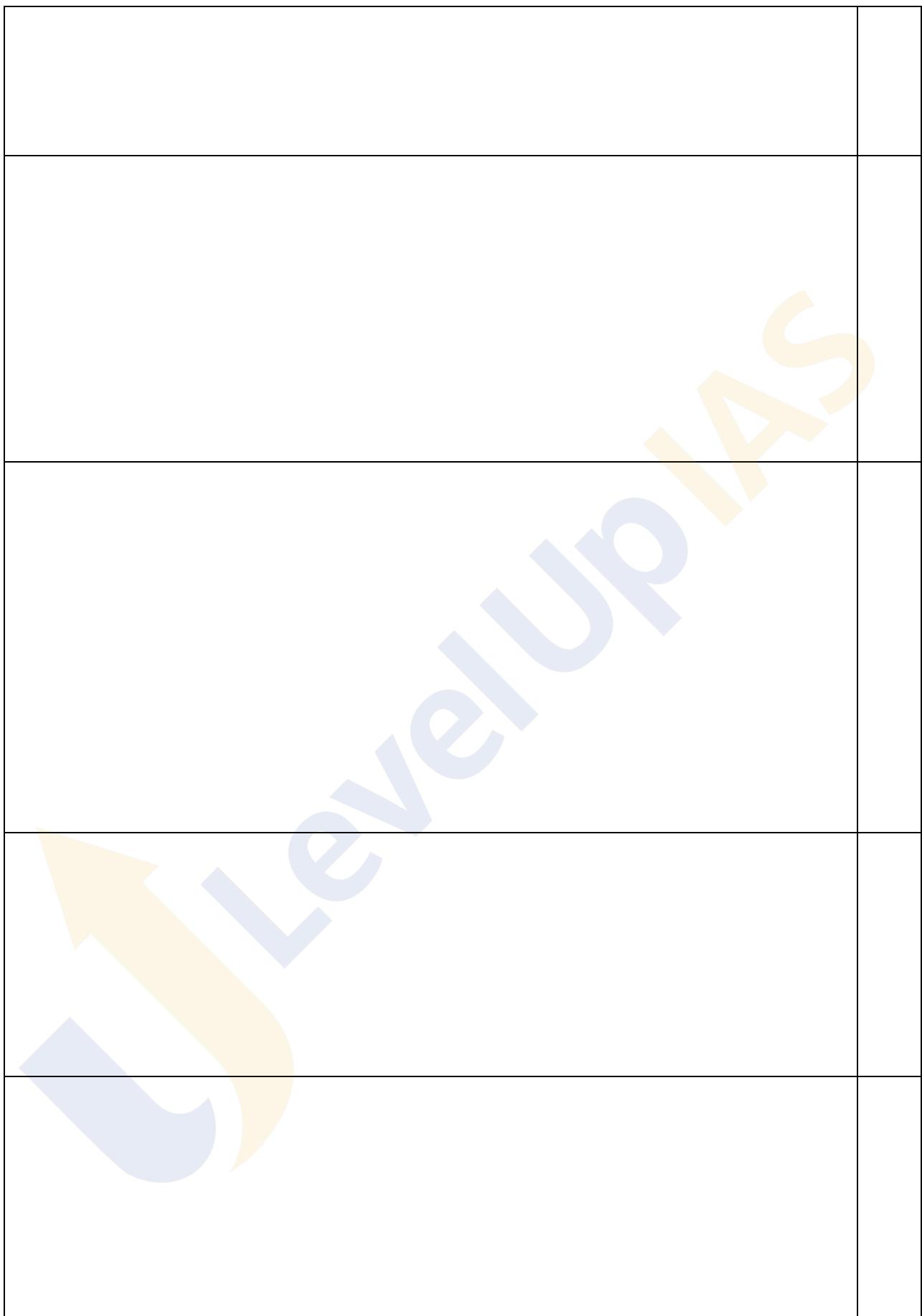
Comparison with Other Countries: Removal of Judges

- **England:** In England there is no such majority specified. In India, there are provisions for investigation of the Judge whereas there are no such provisions in England.
- **United States:**
 - **Ground:** US it is the **judicial misconduct** by which a Judge can be removed.
 - After the motion is passed in both the Houses by the two-third majority then it is addressed to the Governor for removal of the Judge.
- **Canada:** In Canada, the Canadian Judicial Council investigates the alleged federally appointed Judge for misconduct. After investigating, the Council may recommend the Minister of Justice for the removal of the alleged Judge. The minister then gets the approval of both the Houses i.e. House of Commons and Senate before he removes the Judge.

Unsuccessful Attempt to Remove a Judge

- In 1991 the first-ever motion to remove a Supreme Court Justice was signed by 108 members of Parliament.
- Erstwhile CJ of Punjab High Court was **accused of misappropriating funds**.
- The commission **consisting of Judges of Supreme Court found Justice V. Ramaswamy “guilty of willful and gross misuses of office”**.
- The motion recommending his removal got **the required two-third majority among the members who were present and voting**, but the Congress party abstained from voting in the House. **Therefore, the motion could not get the support of one-half of the total strength of the House.**





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.

**First Judges case (1981)
SP Gupta Vs Union of India:**

Court Held: consultation does not mean concurrence

Second Judges case (1993): Supreme Court Advocates-on-Record Association Vs Union of India', 1993
 -- binding on the President --- consulting two of his senior most colleagues.
 --birth of collegium system.

Third Judges case (1998): the Court opined

--that He should consult a collegium of four senior most judges

-- even if two judges give an adverse opinion, he should not send

recommendation made by the chief justice of India without complying with the norm- not binding on the government

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 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?

- **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?

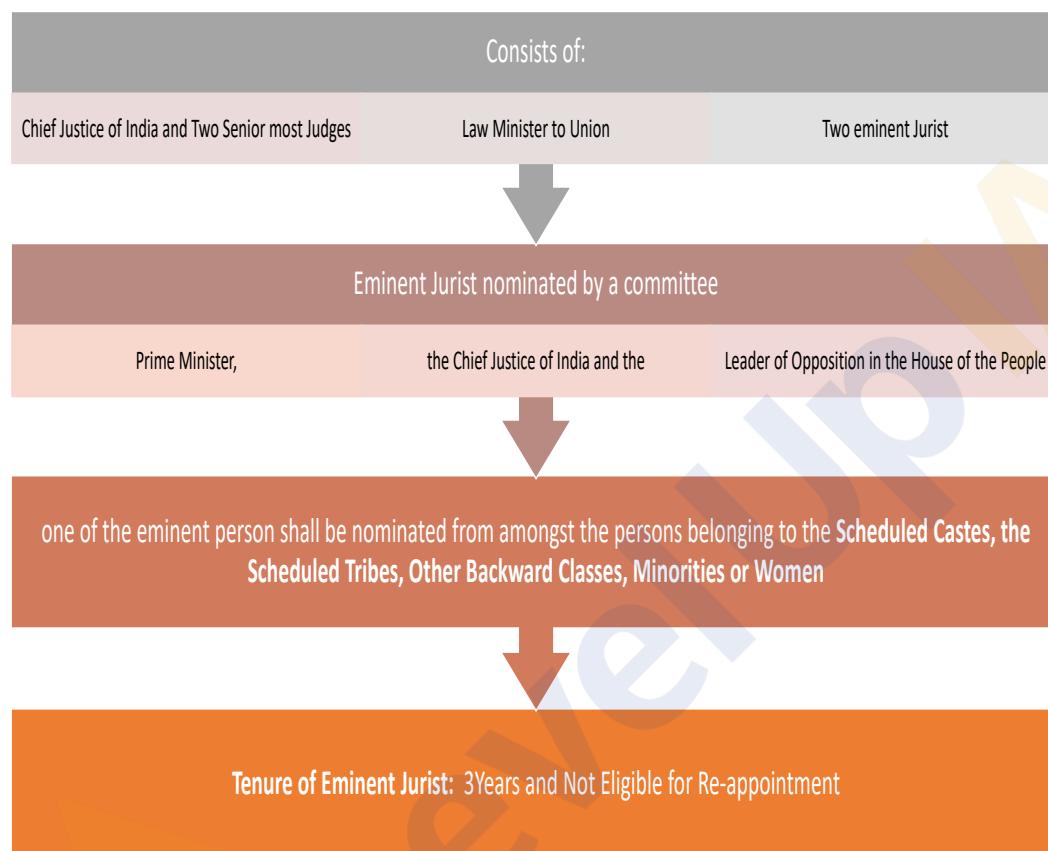
- The role of the government in this entire process is limited to if a lawyer is to be elevated as a getting an inquiry conducted by the Intelligence Bureau (IB) judge in a High Court or the Supreme Court.
- **Can raise objections and seek clarifications regarding the collegium's choices, but if the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



Functions of NJAC

- recommend **persons for appointment as Chief Justice of India**, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts.
- recommend transfer of Chief Justices** and other Judges of High Courts from one High Court to any other High Court; and ensure that the person recommended is of ability and integrity.

Verdict of Supreme Court 4th Judge Case:

- Declared that NJAC is violative of basic feature- Independence of Judiciary
- Court opined- "**There is no question of accepting an alternative procedure, which does not ensure primacy of the judiciary** in the matter of selection and appointment of judges to the higher judiciary," the court said in its majority opinion.

- Justice J Chelameswar wrote the dissenting verdict, in which he criticized the collegium system, saying that its proceedings were “absolutely opaque and inaccessible both to public and history, barring occasional leaks”.

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

7. the office of Chief Justice of India is vacant; or
8. the Chief Justice of India is temporarily absent; or
9. the Chief Justice of India is unable to perform the duties of his office.

Ad-hoc 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:

- If High Court 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 (i.e., 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**.

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

On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, etc.

Can Supreme Court refuse to give advice?

In first case it may refuse to tender advice, but in second case it must give opinion.

In both the cases, the opinion expressed by the Supreme Court is only **advisory and not binding**.

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**.

Court of Record:

A court of record has—

- (1) power to determine its own jurisdiction, and
- (2) it has power to punish for its contempt.

the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court.

In **Swapnil Tripathi v Supreme Court of India**, it was held that the **publication of court proceedings of the Supreme Court is a facet of the status of this court as a court of record** by virtue of Article 129 of the Constitution, whose acts and proceedings are enrolled for perpetual memory and testimony.

Live streaming of court proceedings in the prescribed digital format was held to be an affirmation of the constitutional rights bestowed upon the public and the litigants in particular.

What Amounts to Contempt?

The following inter alia have been held to constitute contempt of court (**Hira Lal Dixit v State of Uttar Pradesh**,)

- **insinuations derogatory** to the dignity of the court which are calculated to undermine the **confidence of the people in the integrity of the judges**;
- an attempt by one party to **prejudice the court against the other party** to the action.
- **to stir up public feelings** on the question pending for decision before the court and to try to influence the judge in favour of himself.
- an attempt to affect the minds of the judges and to deflect them from performing their duty by flattery or veiled threat.
- an act or publication which scandalizes the court attributing dishonesty to a judge in the discharge of his functions.
- willful disobedience or non-compliance of the court' order.

Under the Contempt of Courts Act, 1971, contempt is characterized either as civil or criminal.

Civil Contempt: Any **wilful disobedience** of a court order to do or abstain from doing any act.

- Civil contempt arises when the power of the court is invoked or exercised **to enforce obedience to court orders**.

Criminal contempt: includes outrages on judges in open court, defiant disobedience to the judges in the court, libels on judges or courts or interfering with the course of justice or any act which tends to prejudice the course of justice.

- The court can take cognizance of its contempt **suo motu or even an advocate can bring the issue before the court**.

Under section 14 of the Contempt of Courts Act, in case of a criminal contempt of the Supreme Court, the court may take action in either of the three ways:

- (1) **on its own motion;**
- (2) on the **motion of the Attorney-General or the Solicitor-General**; or
- (3) any other person **with the consent of the Attorney-General/Solicitor-General**.

- If, therefore, a citizen wants to initiate proceedings for contempt of court, he must first seek the consent in writing either of the Attorney-General or the Solicitor-General.
- If any of **these refuses to give consent, the matter can be brought before the court for judicial review** of the refusal.

Original Jurisdiction of High Court

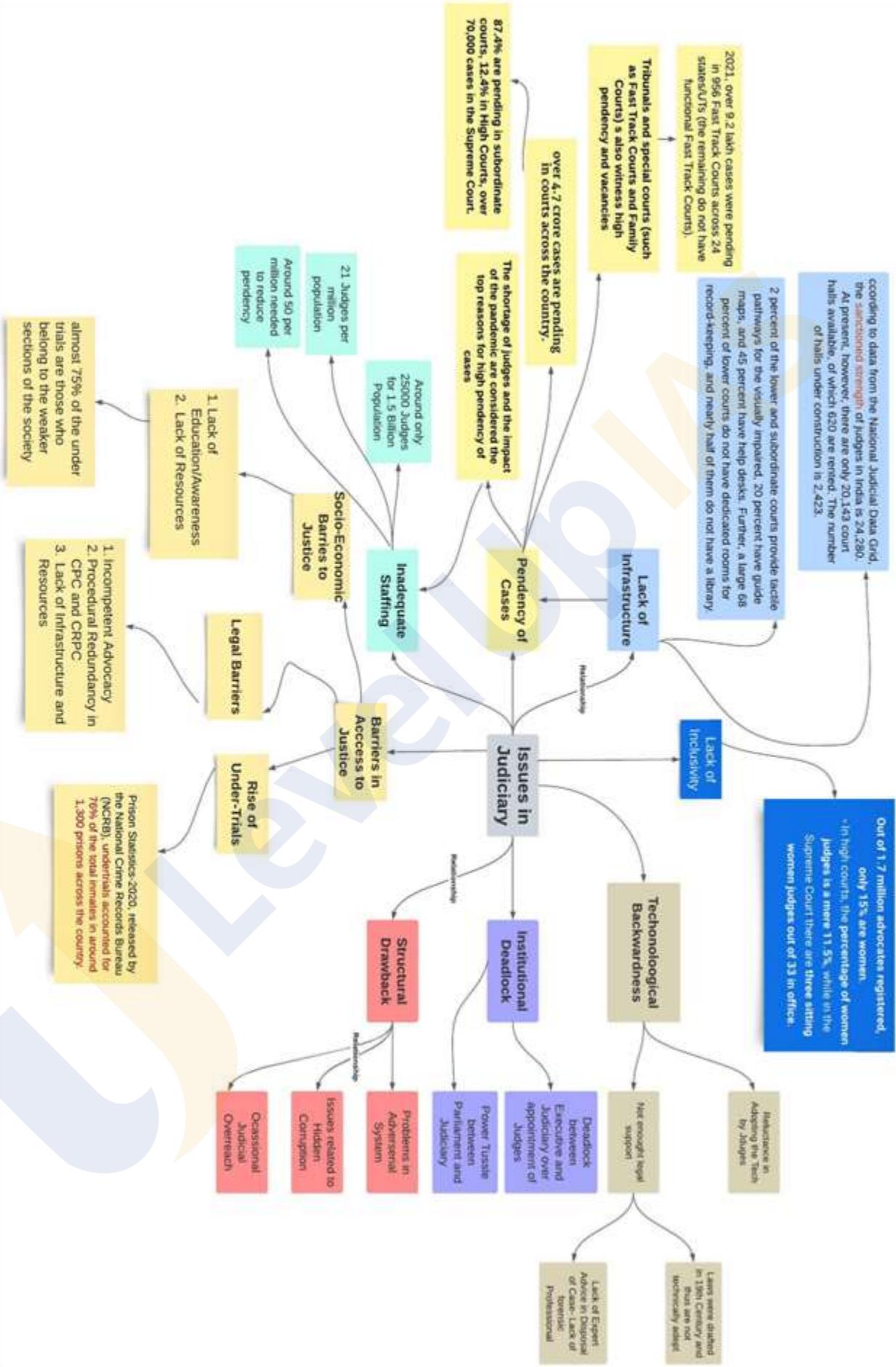
1. Matters of admiralty and contempt of court.
2. Disputes relating to the election of members of Parliament and state legislatures.
3. Regarding revenue matter or an act ordered or done in revenue collection.
4. Enforcement of fundamental rights of citizens.
5. Cases ordered to be transferred from a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

'Justice' means to treat **each individual fairly, reasonably and equitably**. '**Access to justice**' means to provide an effective mechanism to the aggrieved person for redressal of his grievances. Access to justice exists if people who are poor, ignorant, vulnerable, whose fundamental rights are violated or who are victims of exploitation get equal opportunity for the enforcement of their rights. Access to justice has some fundamental elements such as right to move the court, legal assistance and free legal aid to ensure that even the weakest among the weak does not suffer injustice arising out of any arbitrary action on the part of the State or a private individual.



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 Barries:** 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 plaints/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:

Legal Aid In India:

The origin of the concept of legal aid can be traced to the historic Magna Carta of 1215. The 40th paragraph of the Magna Carta provides, "**To no one will we sell, to no one will we deny or delay right or justice**".

The international concern for human rights found expression, after First World War in Covenant of the League of Nations and further in the Universal Declaration of Human Rights. The Conventions which followed specifically incorporated the concept of legal aid.

Article 8 of the Universal Declaration of Human Rights 1948 provides that, "everyone has the right or an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law.

In India, the need to have an active and widespread legal aid system that enables the law to reach the people, rather than requiring people to reach the law, was felt for long. Since 1952, the Government of India started addressing to the question of legal aid for the poor and indigent in various Law Conferences and by appointing Commissions and expert Committees to examine the feasibility of providing free legal aid to the needy.

In 1958, the Law Commission of India in its 14th Report on "Reform of Judicial Administration", prepared under the leadership of leading jurist MC Setalvad, emphasized the need for setting up of legal aid agencies all over the country to redress the economic inequalities and provide assistance to indigent litigants

Acting on the recommendations of the Law Commission, the Government of India in 1960 prepared a national scheme of legal aid providing for legal aid in all courts including tribunals.

In 1973, the Government of India formed an expert committee under the Chairmanship of Justice VR Krishna Iyer to see as to how the States should go about devising and elaborating the legal aid scheme. The Committee recommended establishment of legal aid committees in each District, at State level and at the Centre. It was also suggested that an autonomous corporation be set up, law clinics be established in Universities and lawyers be urged to help.

Courts Judgement:

In *MH Hoskot v State of Maharashtra*, the Supreme Court laid down that right to free legal aid at the cost of the State to an accused, who cannot afford legal services for reasons of poverty or indigence is part of fair, just and reasonable procedure implicit in article 21. Free legal aid to the indigent has been declared to be “a State’s duty and not government charity”.

The Court has reiterated this view again in *Hussainara Khatoon v State of Bihar* by interpreting article 21 in the light of article 39A which provides for equal justice and free legal aid.

Again, in *Khatri v State of Bihar*, the Supreme Court again emphasised that the State Government cannot avoid their constitutional obligation to provide free legal service to poor accused by pleading financial or administrative inability. The Court laid down that the obligation to provide free legal aid to a poor accused arises not only when the trial begins but also when he is for the first time produced before the Magistrate. That is the stage at which an accused needs competent legal advice and representation.

In *Suk Das v Union Territory of Arunachal Pradesh*, the Court held that the right to free legal aid is available to the accused even if he had made no request for it. The Court observed that it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. In these circumstances, it would be made a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service.

Later, in 1976 by the way of 42nd Amendment act, article 39A was inserted in the constitution of India casting an obligation upon the state to provide the free legal aid.

To implement this directive **Legal Services Authority Act was enacted in 1987**. Legal Services Authorities Act was enacted to constitute legal services authorities **for providing free and competent legal services to the weaker sections** of the society to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities and **to organize Lok Adalats to ensure that the operation of the legal system promoted justice on a basis of equal opportunity**.

Legal Aid as Statutory Right: Section 304 of the Code of Criminal Procedure, 1973 provides that where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

National Legal Services Authority

National Legal Services Authority is the apex authority for providing legal services under the Legal Services Authorities Act, 1987.

Composition:

- The Chief Justice of India who shall be the Patron-in-Chief;
- A serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman;
- Such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that Government in consultation with the Chief Justice of India.

Functions:

- To lay down policies and principles for making legal services available under the provisions of the Act;
- To frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;
- To utilize the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;
- To take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;
- To organize legal aid camps, especially in rural area, slums or labour colonies with the dual propose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats,

- To encourage the settlement of disputes by way of negotiations, arbitration and conciliation;
- To undertake and promote research in the field of legal services with special reference to the need for such services among the poor;
- To do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IV-A of the Constitution;
- To monitor and evaluate implementation of the legal aid programmes at periodic intervals
- To provide grants-in-aid for specific schemes to various voluntary social service Institutions
- To take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society.
- To make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level,
- Monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and voluntary social services institutions and other legal services organizations
- To give general directions for the proper implementation of the legal services programmes

Entitlement to Free Legal Aid

Inadequate representation of case before the court due to lack of legal assistance is a very big reason for injustice and delayed justice. Providing free legal aid to those people who can't afford the legal assistance in the eyes of the law as mentioned under section 12 of the Act is a positive step towards imparting of justice on equitable basis.

People entitled to free legal services:

- A member of a Scheduled Caste or Scheduled Tribe
- A victim of trafficking in human beings or beggar as referred in article 23 of the
- Constitution;
- A woman or a child;
- A person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)
- 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;

- An industrial workman; or in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 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;
- In receipt of annual income less than rupees nine thousand or such 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 rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

Other 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.

Lok Adalats

One of the objects of the Legal Services Authorities Act is to settle the disputes speedily through Lok Adalat. Indian Courts are overburdened with work and it takes years to settle the disputes before the formal courts. As we know that justice delayed is justice denied so need was felt for the constitution of alternate dispute mechanism to settle the disputes speedily without following the technicality of formal procedure. The Lok Adalat is recognized as one of the alternate dispute resolution mechanism capable of settling the dispute speedily, cheaply and amicably. All the legal services authorities can organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

The scope of Lok Adalat is very wide to include most of the cases pending in the court and about to come before the court for settlement. **The Lok Adalat have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.** The Authority or Committee organizing the Lok Adalat may on receipt of an application from any one of the parties to matter referred above refer such matter to the Lok Adalat for determination. No matter is referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party. When any case is referred to a Lok Adalat, the Lok Adalat proceeds to dispose of the case or matter and arrive at a compromise or settlement between the parties.

The hon'ble supreme court in the case of P.T. Thomas v. Thomas Job (2005) elaborately explained the meaning and benefits of Lok Adalat as follows:

- The "Lok Adalat" is an old form of adjudicating system prevailed in ancient India
- Its validity has not been taken away even in the modern days too.
- The word 'Lok Adalat' means 'People Court'.
- This system is based on Gandhian Principles.
- It is one of the components of Alternative Dispute Resolution System.
- As the Indian Courts are overburdened with the backlog of cases and involve a lengthy, expensive and tedious procedure.
- The Court takes years together to settle even petty cases.
- Lok Adalat, therefore, provides alternative device for expeditious and inexpensive justice.
- In lok adalat proceedings there are no victors and losers and thus no enmity.
- Experiment of 'Lok Adalat' as an alternate mode of dispute settlement has come to be accepted in India, as a viable, economic, efficient and informal one.
- There is no court fee and if court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat according to the rules.

Permanent Lok Adalat

There are many reasons for overburdening of Indian Courts. One reason is lack of personal interest of party in settlement of public utility services disputes, which reach to the Indian Courts in large number. Government officials involved in public utility services disputes hardly give any attention to settlement of disputes quickly. So the need was felt for the establishment of the permanent alternate dispute resolution mechanism especially for the settlement of public utility services disputes. This led to the establishment of Permanent Lok Adalat.

The main aim of Permanent Lok Adalat is to settle the public utility disputes quickly and finally. So it has one additional power of deciding the dispute on merit if parties fail to arrive at the settlement or compromise. This way it avoids the chances of delay in settlement of disputes.

"Public Utility Service" means and includes:

- Transport service for the carriage of passengers or goods by air, road or water; or postal, telegraph or telephone service; or
- Supply of power, light or water to the public by any establishment; or
- System of public conservancy or sanitation; or service in hospital or dispensary; or Insurance service
- Includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this chapter

Composition:

- A person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than that of a district judge, shall be the Chairman of the Permanent Lok Adalat;
- Two other persons having adequate experience in public utility service.
- Any party to a dispute may, before the dispute is brought before any court, can make an application to the Permanent Lok Adalat for the settlement of dispute.
- It does not have jurisdiction in respect of any matter relating to an offence not compoundable under any law.
- It also has no jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees.
- The Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

Provisions like appointment of members from the legal and non-legal background make the board of adjudicators more efficient for understanding the disputes of parties and settling their disputes quickly and amicably. It has conciliatory as well as adjudicatory power but there are enough provisions under the Act to put the check of the arbitrary exercise of power.

To save the time in settlement of disputes it need not to follow the formal procedure but it is bound to follow the principle of natural justice. If the arbitrary act or misconduct is proved on the part of the board of settlement, then they can be removed from the board and the award passed by such persons will not enjoy the status of finality.

Therefore, it can be said that the establishment of the Permanent Lok Adalat is a very useful mechanism for settlement of the public utility services disputes amicably and quickly.

Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement is final and binding. It shall not be called in question in any original suit, application or execution proceeding. It is deemed to be a decree of a civil court. It is always by a majority of the persons constituting the Permanent Lok Adalat. The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court

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**

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.

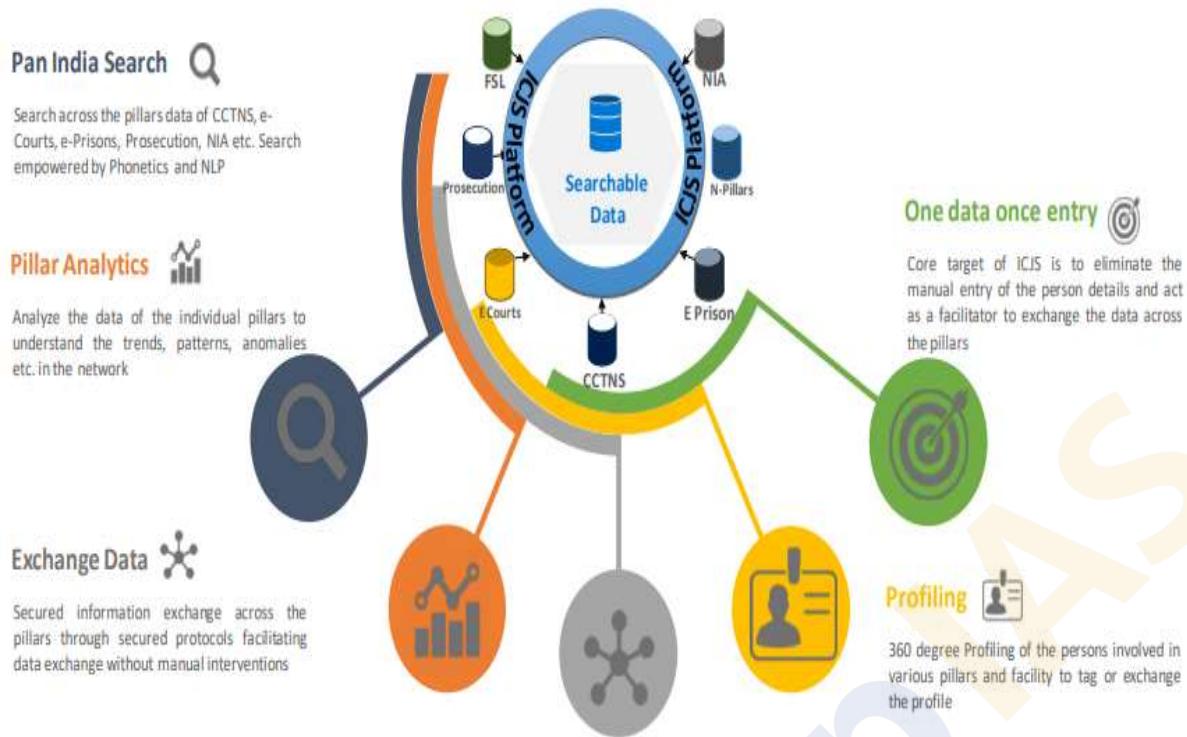
- To develop, install & implement decision support systems in courts.
- To automate the processes to provide transparency in accessibility of information to its stakeholders.
- To enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, 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 pending/ 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.



. 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.

Live Streaming of Supreme Courts Proceedings:

- 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.**

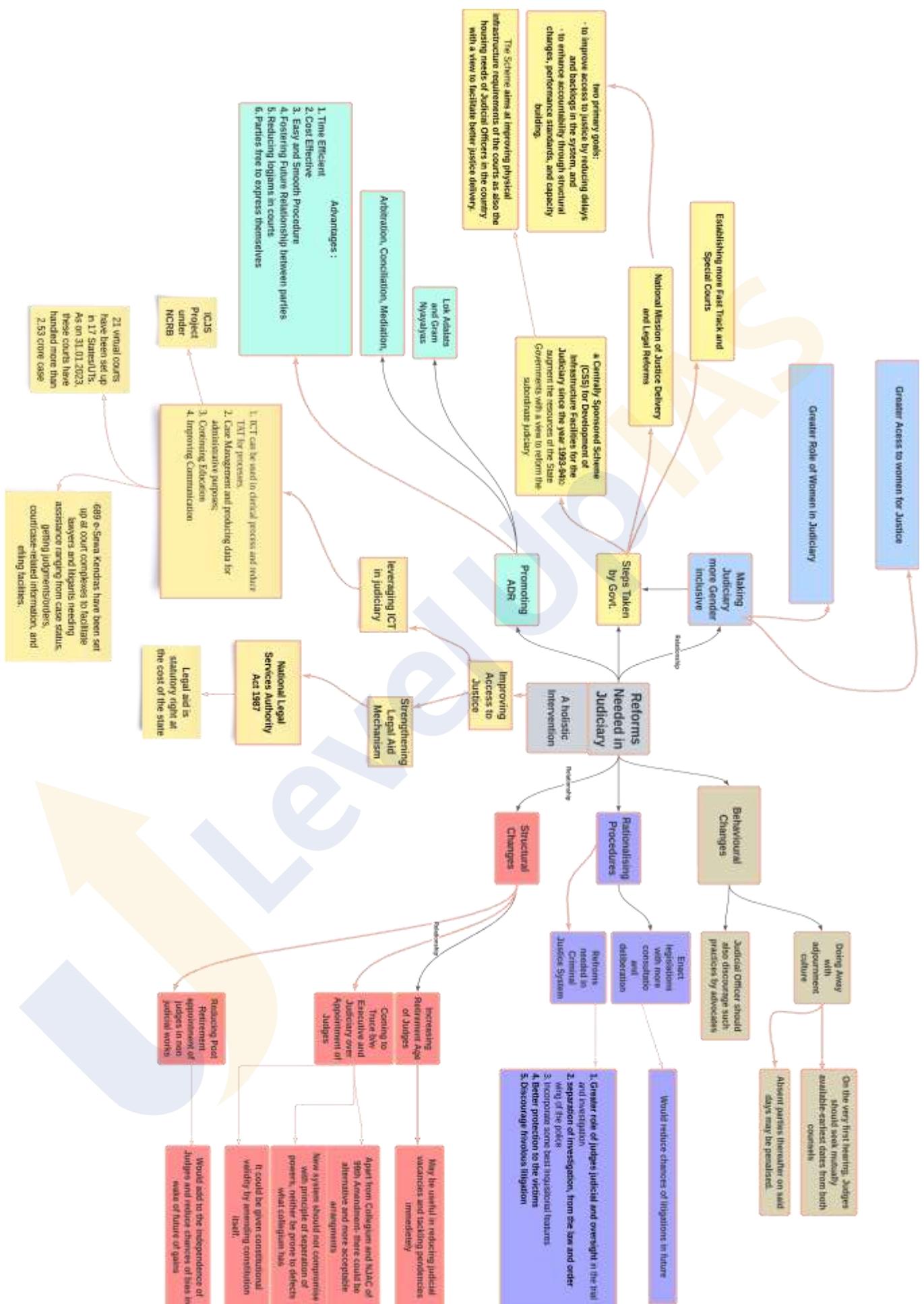
What is the Rule of Law Index and what is its importance?

Today, **Rule of Law** is an important tenet for fair and functioning societies; underpinning development, accountable government and respect for fundamental rights. It is a perpetual challenge of building and renewing structures, institutions and norms that sustain a rule of law culture.

The Rule of Law Index(ROLI) is developed and published by **World Justice Project (WJP)**. It is based on the four principles of “Accountable Government”, “Good Laws”, “Good Process” and “Access to Justice”

ROLI quantitatively measures rule of law-in-practice by way of survey/polling of general public and sector experts.

Find out recent performance of India?



Key Areas of reforms:

- ★ **Case backlog reduction:** Addressing the substantial backlog of pending cases is a significant priority. Measures such as increasing the number of judges, optimizing case management systems, encouraging alternative dispute resolution mechanisms, and promoting fast-track courts can help expedite the disposal of cases.
- ★ **Judicial infrastructure:** Enhancing the physical infrastructure of courts, including the construction of new court buildings, upgrading existing facilities, and providing adequate resources, is crucial for improving the efficiency of the judicial system.
- ★ **Judicial appointments:** Establishing a transparent and accountable system for judicial appointments, including the appointment of judges to higher courts, can help ensure the selection of qualified and competent individuals based on merit and integrity.
- ★ **Technology integration:** Embracing technology to streamline court processes, facilitate online filing of cases, digitalize records, and introduce e-courtrooms can significantly improve access to justice and reduce delays.
- ★ **Legal aid and access to justice:** Strengthening legal aid services and mechanisms to ensure that disadvantaged and marginalized sections of society have equal access to justice, including awareness programs, simplifying legal procedures, and supporting legal aid clinics.
- ★ **Judicial ethics and accountability:** Promoting judicial ethics, enforcing a code of conduct for judges, and establishing mechanisms for judicial accountability, including the investigation and discipline of errant judges, can enhance public trust and confidence in the judiciary.
- ★ **Court management and case administration:** Implementing efficient case management systems, training judges and court staff on case administration, and adopting best practices in court management can contribute to better judicial efficiency.
- ★ **Alternative dispute resolution (ADR):** Encouraging the use of ADR methods, such as mediation and arbitration, as viable alternatives to litigation can help reduce the burden on courts and expedite dispute resolution.
- ★ **Legal reforms:** Continuously reviewing and updating laws to ensure they are in line with changing societal needs, promoting access to justice, and addressing emerging challenges can contribute to a more effective and relevant legal framework.

National Mission of Justice Delivery and Legal Reforms- Centrally Sponsored Scheme

Judicial reforms are an ongoing and collaborative process. In August 2011, the government established the National Mission for Justice Delivery and Legal Reforms with two primary goals:

- to improve access to justice by reducing delays and backlogs in the system, and
- to enhance accountability through structural changes, performance standards, and capacity building.

The Mission has been implementing a **coordinated approach to gradually eliminate backlogs and pending cases in the judicial system**. This approach includes initiatives such as improving court infrastructure through computerization, increasing the number of judges in lower courts, implementing policies and legislation to address areas prone to excessive litigation, streamlining court procedures to expedite case disposal, and focusing on the development of human resources.

Further, The Department of Justice has been implementing a **Centrally Sponsored Scheme (CSS) for Development of Infrastructure Facilities for the Judiciary since the year 1993-94** to augment the resources of the State Governments with a view to reform the subordinate judiciary. The Development of subordinate judiciary has been primary responsibility of the states.

The Scheme aims at improving physical infrastructure requirements of the courts as also the housing needs of Judicial Officers in the country with a view to facilitate better justice delivery. The scheme has been extended from time to time. The Government has extended the above CSS for a period of 5 years i.e. from 2021-22 to 2025-26 with financial outlay of Rs.9000 Cr (including central share of Rs.5307 Cr) and besides construction of court halls and residential units, has also now introduced some new features like provision of Lawyers Halls, toilet complexes and digital computer rooms under the CSS.

- Infrastructure Development for the Subordinate Judiciary is a major programme under the National Mission of Justice Delivery and Legal Reforms. Presently, the fund sharing pattern of the Scheme is **90:10 (Centre: State) for the 8 North-Eastern and 3 Himalayan States and 60:40 for remaining States**. There is **100% assistance for Union Territories**. This scheme **only covers subordinate judiciary**, Central Assistance for **High Court buildings is not covered under the CSS**.

ICT under National Mission:

- Further under the e-Courts Mission Mode Project, information and communication technology (ICT) has been leveraged for IT enablement of district and subordinate courts. The number of computerised district & subordinate courts has increased to 18,735 so far. **WAN connectivity has been provided to 99.4% of court complexes.**
- Video conferencing facility has been enabled between 3,240 court complexes and 1,272 corresponding jails.
- 689 e-Sewa Kendras have been set up at court complexes to facilitate lawyers and litigants needing assistance ranging from case status, getting judgments/orders, court/case-related information, and efiling facilities.
- 21 virtual courts have been set up in 17 States/UTs. As on 31.01.2023, these **courts have handled more than 2.53 crore cases** and realized more than Rs. 359 crores in fines.
- E-courts Phase III is about to begin which intends to incorporate latest technology such Artificial Intelligence (AI) and Block chain to make justice delivery more robust, easy and accessible to all the stakeholders.

Tele-Law Initiative

- The Government launched the Tele-Law programme in 2017, which provided an effective and reliable e-interface platform connecting the needy and disadvantaged sections seeking legal advice and consultation with panel lawyers via video conferencing, telephone and chat facilities available at the Common Service Centres (CSCs) situated in Gram Panchayat and through Tele-Law mobile App.

Filling up vacancies:

Government has been regularly filling up the vacancies in higher judiciary. From 01.05.2014 to 07.03.2023, 54 Judges were appointed in Supreme Court. 887 new Judges were appointed and 646 Additional Judges were made permanent in the High Courts. Sanctioned strength of Judges of High Courts has been increased from 906 in May, 2014 to 1114 currently.

Procedural Changes:

The Process should not be a Hurdle - The court process should not be a hurdle for the people. A vision of equal, expeditious and inexpensive justice for India's millions, a passion for the effective delivery of social justice for the victims and a mission of constitutional fulfilment through a dynamic rule of law geared to democratic values.

Revenue courts are specifically dealing with matters related to land revenue where the sufferers are poor farmers. So, to regulate them, the state should

provide these with proper resources and infrastructure so that they can work effectively and efficiently.

Retirement Ages:

High Court judges retire at the age of 62. This was fixed long ago when lifespans and working ages were shorter. Today, it is different. Men and women work productively into their 60s. **Given the huge backlog**, there is no reason why we should lose judges of quality and experience when they turn 62. The retirement age should be **made 65 or even 67**.

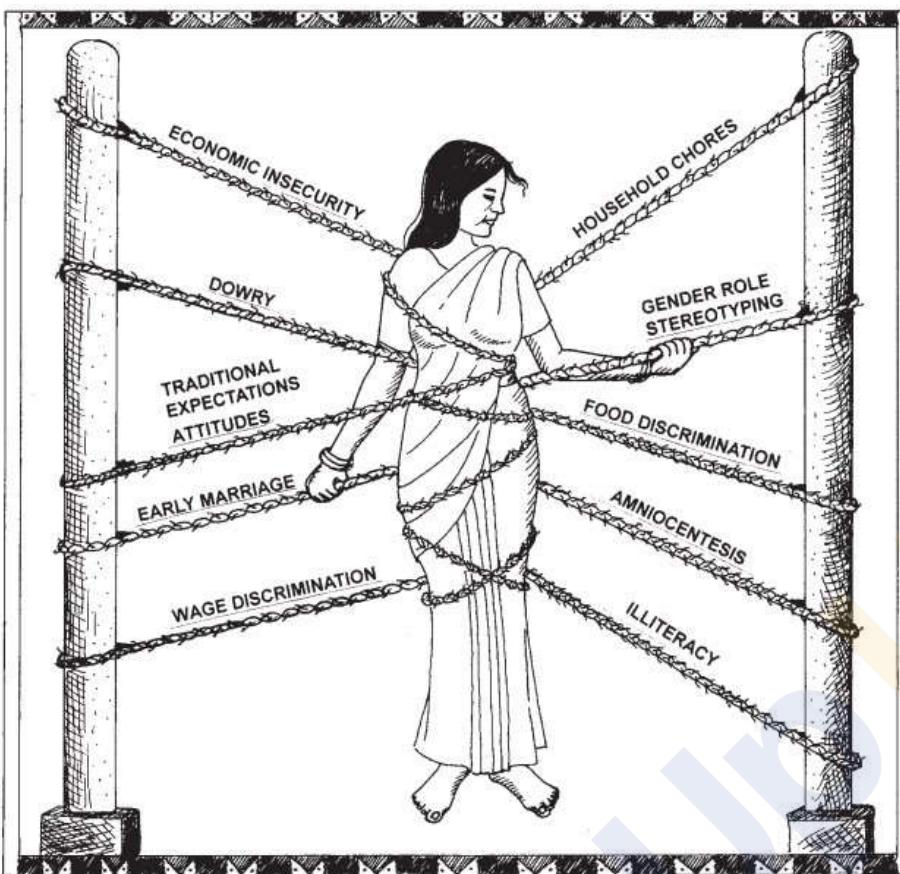
Secondly, the **retirement age should be the same for the Supreme Court and the High Court**. Today, Supreme Court Judges retire at 65 and that is why High Court Judges want to go to the Supreme Court even if at the fag end of their careers, **serving as junior judges of not much consequence**.

Access to Justice:

Efforts have been made to institutionalize **pro bono culture and pro bono lawyering the country**. A technological framework has been put in place where advocates volunteering to give their time and services for pro bono work can register as **Pro Bono Advocates on NyayaBandhu** (Android &iOS and Apps). NyayaBandhu Services also available on UMANG Platform. Pro Bono Panel of advocates have been initiated in 21 High Courts at the State level. Pro Bono Clubs have been started in 69 select Laws Schools to instill Pro Bono culture in budding lawyers.

Access to Justice and Women:

Women have always been glorified as goddesses to be adored and revered for all the virtues they possess. They have been clothed with divinity and felicitated as goodness and sacrifice personified. There has been a gradual degradation of status of women due to various socioeconomic reasons resulting in grave violations of their rights as human beings at all levels not only outside the household but more so in their own house.



Constitution and Protection to Women:

- Preamble: Preamble of the Constitution states that it intends to secure to all its citizens “equality of status and of opportunity”. Equality is the basis on which further progress in achieving rights of women is possible.
- Fundamental Rights: Article 14 of the Constitution provides that the State shall not deny to any person equality before law or the equal protection of the laws. Art. 15(1) restricts State from discriminating against any citizen on grounds only of sex among other things. The most important provision is Art. 15(3)I which enables the State to enact special laws to protect rights of women and give them special status. Even in cases of employment under State, there has to be equal opportunity as envisaged by Art. 16.
- Directive Principles: The Directive Principles of State Policy require the State to secure to men as well as women equal opportunities to acquire means of livelihood. It also directs the State to formulate policies for ensuring maternity benefits , etc.
- Fundamental Duty: To denounce practices which are derogatory to the dignity of women.
- 73rd and 74th Amendments to the Constitution provide reservation for women in Panchayats and Municipalities.

Women Specific Legislations: In order to provide safeguards to the women parliament has tried to enact several specific legislation concerning various aspects of women safety and **empowerment**:

- ★ **The Dowry Prohibition Act, 1961**
- ★ **The Protection of Women from Domestic Violence Act, 2005**
- ★ **The Immoral Traffic (Prevention) Act, 1956**
- ★ **The Indecent Representation of Women (Prohibition) Act, 1986**
- ★ **The Medical Termination of Pregnancy Act, 1971 (*Covered in Chapter on Fundamental Rights*)**
- ★ **National Commission for Women Act, 1990:**

The most important body in relation to protection of rights of women is the Commission for Protection of Women constituted under the Act of 1990. There is a National Commission at the Centre and State Commissions at the State level. These Commissions can take suo moto cognizance of offences against women. Complaints can be filed directly to the Commission which does the follow up of the matter with the appropriate authorities. The Commission has the power to investigate into such matters.

Powers of the Commission:

- Recommend to the concerned Government or Authority to initiate proceedings for prosecution or action
- Recommend to the concerned Government or Authority for the grant of such immediate relief to the victim or the members of the family
- Recommend to the concerned Government or Authority for the grant of such immediate relief to the victim or the members of his family as the Commission may consider necessary

★ **Maternity Benefit Act, 1961:**

The Maternity Benefit Act was originally passed by Parliament on December 12, 1961, to regulate the employment of women in “certain establishments” for the period before and after childbirth and “to provide for maternity benefit and certain other benefits.” Originally it applied to every establishment “being a factory, mine or plantation” and later in 1973, it was extended to “any such establishment belonging to Government” and “every establishment where persons are employed for the exhibition of equestrian, acrobatic and other performances.

What did the amendment in 2017 do?

Making It Easy For Mothers

The Maternity Benefit (Amendment) Act, 2017 amends the Maternity Benefit Act, 1961 to provide the following

26 weeks

maternity leave for the first two children

12 weeks maternity leave for children beyond the first two

12 weeks leave for mothers adopting a child below the age of three months



The Act makes it mandatory for employers in establishment with 30 women or 50 employees, whichever is less, to provide creche facilities either in office or in any place within 500-meters.

Working mothers will be permitted to make four visits

during working hours to the creche

The employer may permit a woman to work from home if it is possible to do so

Every establishment will have to make these benefits available from the time of appointment

- The amendment also inserted Section 5(4) which said that adoptive or surrogate mothers legally adopting a child below three months will be entitled to a maternity benefit period of 12 weeks from the date the child is handed over to the mother.
- Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities.” It is also mandated that the employer allows four visits a day to the creche by the woman as well as rest intervals for her.

★ Protection of Women from Sexual Harassment at Workplace Act, 2013:

Key provisions of the POSH Act 2013 include:

- Every employer is required to **display a notice** in the organisation providing details of the protection given to female employees against sexual harassment.
- Employers **must constitute an Internal Complaints Committee in their organisation to address complaints of sexual harassment.**
- **A woman must head the ICC; at least half of its members should be women.**
- Employers must take steps to prevent sexual harassment and ensure that the victims are not victimised or discriminated against.
- Employers must provide **necessary support and assistance to the complainant** and make arrangements for her work in case she has to be transferred.

Legal Aid In India:

The origin of the concept of legal aid can be traced to the historic Magna Carta of 1215. The 40th paragraph of the Magna Carta provides, “**To no one will we sell, to no one will we deny or delay right or justice**”.

The international concern for human rights found expression, after First World War in Covenant of the League of Nations and further in the Universal Declaration of Human Rights. The Conventions which followed specifically incorporated the concept of legal aid.

Article 8 of the Universal Declaration of Human Rights 1948 provides that, “everyone has the right or an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law.

In India, the need to have an active and widespread legal aid system that enables the law to reach the people, rather than requiring people to reach the law, was felt for long. Since 1952, the Government of India started addressing to the question of legal aid for the poor and indigent in various Law Conferences and by appointing Commissions and expert Committees to examine the feasibility of providing free legal aid to the needy.

In 1958, the Law Commission of India in its 14th Report on “Reform of Judicial Administration”, prepared under the leadership of leading jurist MC Setalvad, emphasized the need for setting up of legal aid agencies all over the country to redress the economic inequalities and provide assistance to indigent litigants

Acting on the recommendations of the Law Commission, the Government of India in **1960 prepared a national scheme of legal aid providing for legal aid in all courts including tribunals.**

In 1973, the Government of India formed an expert committee under the Chairmanship of Justice VR Krishna Iyer to see as to how the States should go about devising and elaborating the legal aid scheme. The Committee recommended establishment of legal aid committees in each District, at State level and at the Centre. It was also suggested that an autonomous corporation be set up, law clinics be established in Universities and lawyers be urged to help.

Courts Judgement:

In *MH Hoskot v State of Maharashtra*, the Supreme Court laid down that right to free legal aid at the cost of the State to an accused, who cannot afford legal services for reasons of poverty or indigence is part of fair, just and reasonable

procedure implicit in article 21. Free legal aid to the indigent has been declared to be “a State’s duty and not government charity”.

The Court has reiterated this view again in *Hussainara Khatoon v State of Bihar* by interpreting article 21 in the light of article 39A which provides for equal justice and free legal aid.

Again, in *Khatri v State of Bihar*, the Supreme Court again emphasised that the State Government **cannot avoid their constitutional obligation to provide free legal service to poor accused by pleading financial or administrative inability**. The Court laid down that the obligation to provide free legal aid to a poor accused arises not only when the trial begins but also when he is for the first time produced before the Magistrate. That is the stage at which an accused needs competent legal advice and representation.

In *Suk Das v Union Territory of Arunachal Pradesh*, the Court held that the right to free legal aid is available to the accused even if he had made no request for it. The Court observed that it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. In these circumstances, it would be made a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service.

Later, in 1976 by the way of 42nd Amendment act, article 39A was inserted in the constitution of India casting an obligation upon the state to provide the free legal aid.

To implement this directive **Legal Services Authority Act was enacted in 1987**. Legal Services Authorities Act was enacted to constitute legal services authorities **for providing free and competent legal services to the weaker sections** of the society to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities and **to organize Lok Adalats to ensure that the operation of the legal system promoted justice on a basis of equal opportunity**.

Legal Aid as Statutory Right: Section 304 of the Code of Criminal Procedure, 1973 provides that where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

National Legal Services Authority

National Legal Services Authority is the apex authority for providing legal services under the Legal Services Authorities Act, 1987.

Composition:

- The Chief Justice of India who shall be the Patron-in-Chief;
- A serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman;
- Such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that Government in consultation with the Chief Justice of India.

Functions:

- To lay down policies and principles for making legal services available under the provisions of the Act;
- To frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;
- To utilize the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;
- To take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;
- To organize legal aid camps, especially in rural area, slums or labour colonies with the dual propose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats,
- To encourage the settlement of disputes by way of negotiations, arbitration and conciliation;
- To undertake and promote research in the field of legal services with special reference to the need for such services among the poor;
- To do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IV-A of the Constitution;
- To monitor and evaluate implementation of the legal aid programmes at periodic intervals
- To provide grants-in-aid for specific schemes to various voluntary social service Institutions
- To take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society.

- To make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level,
- Monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and voluntary social services institutions and other legal services organizations
- To give general directions for the proper implementation of the legal services programmes

Entitlement to Free Legal Aid

Inadequate representation of case before the court due to lack of legal assistance is a very big reason for injustice and delayed justice. Providing free legal aid to those people who can't afford the legal assistance in the eyes of the law as mentioned under section 12 of the Act is a positive step towards imparting of justice on equitable basis.

People entitled to free legal services:

- A member of a Scheduled Caste or Scheduled Tribe
- A victim of trafficking in human beings or beggar as referred in article 23 of the Constitution;
- A woman or a child;
- A person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)
- 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;
- An industrial workman; or in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 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;
- **In receipt of annual income less than rupees nine thousand or such 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 rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.**

To further enhance the effectiveness of legal aid and ensure its impact is realized, several concrete measures can be taken:

- **Increased Awareness and Outreach**
- **Strengthening Legal Aid Infrastructure:** Adequate infrastructure is essential for effective legal aid delivery. This includes establishing **well-equipped legal aid offices, increasing the number of legal aid centers, and ensuring availability of trained legal aid lawyers** in remote and rural areas. Investment in technology can also play a role in improving access to legal aid services, such as through online platforms or helplines.
- **Capacity Building of Legal Aid Providers:** Training and capacity building programs should be provided to **legal aid lawyers, para-legal volunteers, and support staff**. This would enhance their skills in providing legal aid services and improve the quality of assistance rendered. Specialized training can be provided in areas such as gender-based violence, child rights, and other relevant legal issues.
- **Collaboration with NGOs and Civil Society Organizations:**
- **Simplification of Legal Procedures and Documentation:**
- **Monitoring and Evaluation:** Regular monitoring and evaluation of legal aid services are crucial to identify gaps, measure effectiveness, and ensure accountability. This can involve collecting feedback from beneficiaries, tracking case outcomes, and conducting periodic evaluations of legal aid programs.

Other 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.

Lok Adalats

One of the objects of the Legal Services Authorities Act is to settle the disputes speedily through Lok Adalat. Indian Courts are overburdened with work and it

takes years to settle the disputes before the formal courts. As we know that justice delayed is justice denied so need was felt for the constitution of alternate dispute mechanism to settle the disputes speedily without following the technicality of formal procedure. The Lok Adalat is recognized as one of the alternate dispute resolution mechanism capable of settling the dispute speedily, cheaply and amicably. All the legal services authorities can organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

The scope of Lok Adalat is very wide to include most of the cases pending in the court and about to come before the court for settlement. **The Lok Adalat have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.** The Authority or Committee organizing the Lok Adalat **may on receipt of an application from any one of the parties to matter referred above refer such matter to the Lok Adalat for determination.** No matter is referred to the Lok Adalat except after giving **a reasonable opportunity of being heard to the other party.** When any case is referred to a Lok Adalat, the Lok Adalat proceeds to dispose of the case or matter and **arrive at a compromise or settlement between the parties.**

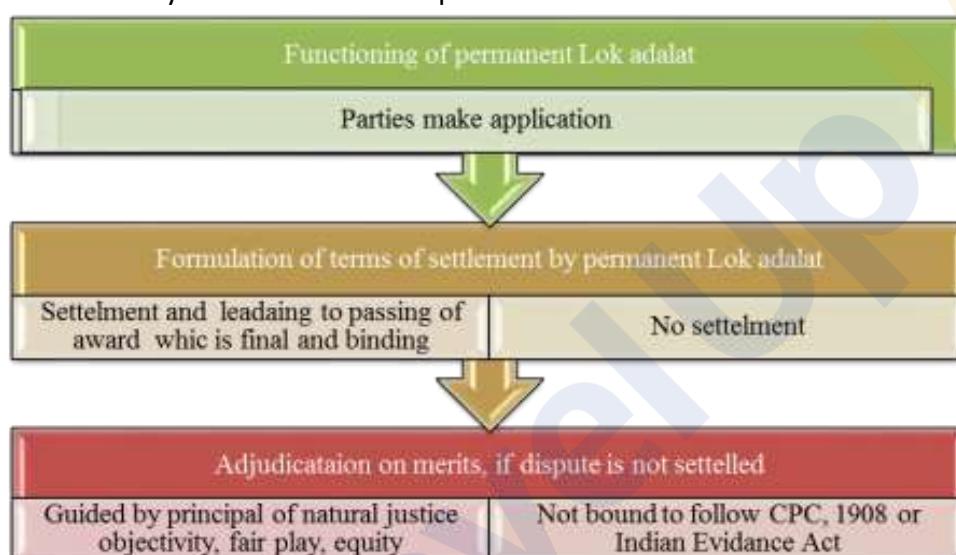
The hon'ble supreme court in the case of P.T. Thomas v. Thomas Job (2005) elaborately explained the meaning and benefits of Lok Adalat as follows:

- The "Lok Adalat" is an **old form of adjudicating system prevailed in ancient India**
- Its validity has not been taken away even in the modern days too.
- The word 'Lok Adalat' means 'People Court'.
- **This system is based on Gandhian Principles.**
- It is one of the components of Alternative Dispute Resolution System.
- As the Indian Courts are overburdened with the backlog of cases and involve a lengthy, expensive and tedious procedure.
- The Court takes years together to settle even petty cases.
- Lok Adalat, therefore, **provides alternative device for expeditious and inexpensive justice.**
- In lok adalat proceedings **there are no victors and losers and thus no enmity.**
- Experiment of 'Lok Adalat' as an alternate mode of dispute settlement has come to be accepted in India, as a viable, economic, efficient and informal one.
- There is no court fee and if court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat according to the rules.

Permanent Lok Adalat

There are many reasons for overburdening of Indian Courts. One reason is lack of personal interest of party in settlement of public utility services disputes, which reach to the Indian Courts in large number. Government officials involved in public utility services disputes hardly give any attention to settlement of disputes quickly. So the need was felt for the establishment of the permanent alternate dispute resolution mechanism especially for the settlement of public utility services disputes. This led to the establishment of Permanent Lok Adalat.

The main aim of Permanent Lok Adalat is to settle the public utility disputes quickly and finally. So it has one additional power of deciding the dispute on merit if parties fail to arrive at the settlement or compromise. This way it avoids the chances of delay in settlement of disputes.



“Public Utility Service” means and includes:

- Transport service for the carriage of passengers or goods by air, road or water; or postal, telegraph or telephone service; or
- Supply of power, light or water to the public by any establishment; or
- System of public conservancy or sanitation; or service in hospital or dispensary; or Insurance service
- Includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this chapter

Composition:

- A person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than that of a district judge, shall be the Chairman of the Permanent Lok Adalat;
- Two other persons having adequate experience in public utility service.

- Any party to a dispute may, before the **dispute is brought before any court**, can make an application to the Permanent Lok Adalat for the settlement of dispute.
- It **does not have jurisdiction** in respect of any matter relating to an offence **not compoundable under any law**.
- It also has no jurisdiction in the matter where the value of the property in **dispute exceeds ten lakh rupees**.
- The Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

Provisions like appointment of members from the legal and non-legal background make the board of adjudicators more efficient for understanding the disputes of parties and settling their disputes quickly and amicably. It has conciliatory as well as adjudicatory power but there are enough provisions under the Act to put the check of the arbitrary exercise of power.

To save the time in settlement of disputes it need not to follow the formal procedure but it is bound to follow the principle of natural justice. If the arbitrary act or misconduct is proved on the part of the board of settlement, then they can be removed from the board and the award passed by such persons will not enjoy the status of finality.

Therefore, it can be said that the establishment of the Permanent Lok Adalat is a very useful mechanism for settlement of the public utility services disputes amicably and quickly.

Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement is final and binding. It shall not be called in question in any original suit, application or execution proceeding. It is deemed to be a decree of a civil court. It is always by a majority of the persons constituting the Permanent Lok Adalat. The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Gram Nyayalaya:

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 fulfil 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**.

Salient Features of the Act:

- According to section 3 the **state government may establish one or more Gram Nyayalayas for every Gram Panchayat or a group of contiguous Panchayats** after consultation with the High Court.
- The Gram Nyayalaya established under the Act is **in addition to any other court established by any law.**
- The Presiding Officer of Gram Nyayalaya is a **Nya Adhikari**, appointed for every Gram Nyayalaya. **Only a person who is eligible to be appointed as a judicial magistrate of first class can be a Nya Adhikari.**
- Though, the headquarter of every Gram Nyayalaya is to be at the headquarter of the Panchayat at intermediate level, a Nya Adhikari can hold mobile courts.
- Gram Nyayalaya shall exercise **both civil and criminal jurisdiction**. As per section 12 the Gram Nyayalaya may take cognizance of an offence or a complaint or on a police report and try all offences specified in Part I of the First Schedule. E.g.
 - offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
 - theft, where the value of the property stolen does not exceed rupees twenty thousand;
- The Gram Nyayalaya has the power to effect **Plea Bargaining on an application filed by an accused before it.**

Other ADR forms:

- ★ **Arbitration:** Disputes are presented to an arbitral tribunal, which issues a **binding decision known as an award**. Arbitration is less formal than a trial, with relaxed rules of evidence. Generally, there is limited scope for judicial intervention or appeal in the arbitration process.
- ★ **Conciliation:** A **non-binding process facilitated by an impartial third party called a conciliator**. The conciliator **assists the parties in reaching a mutually satisfactory settlement**. Recommendations made by the conciliator can be accepted or rejected by the parties. **If both parties accept a settlement document prepared by the conciliator, it becomes final and binding.**
- ★ **Mediation:** In mediation, an impartial mediator helps the parties communicate and strive for a mutually acceptable resolution. The mediator does not make decisions but facilitates the settlement process. Mediation puts control of the outcome in the hands of the parties. Mediators require specific training and experience to be eligible.
- ★ **Negotiation:** This non-binding procedure involves direct discussions between the parties to reach a negotiated settlement without third-party intervention. Negotiation is the most common form of ADR and can be employed in various contexts, including business, government, legal proceedings, and personal situations.

Advantages of Alternative Dispute Resolution

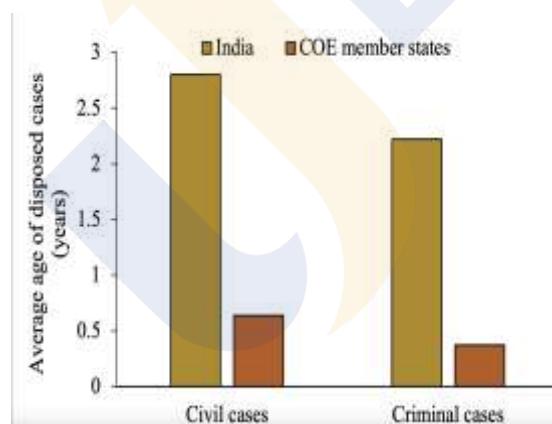
- ★ **Less Time Consuming:** people resolve their dispute in short period as compared to courts
- ★ **Cost effective method:** it saves lot of money if one undergoes in litigation process.
- ★ It is **free from technicalities of courts;** here informal ways are applied in resolving dispute.
- ★ People are **free to express themselves** without any fear of court of law. They can reveal the true facts without disclosing it to any court.
- ★ Efficient way: there are always chances of restoring relationship back as parties discuss their issues together on the same platform.
- ★ It prevents **further conflict and maintains good relationship between the parties.**
- ★ It **preserves the best interest of the parties.**

Ramping up judicial System: an Insights by Economic Survey 2019

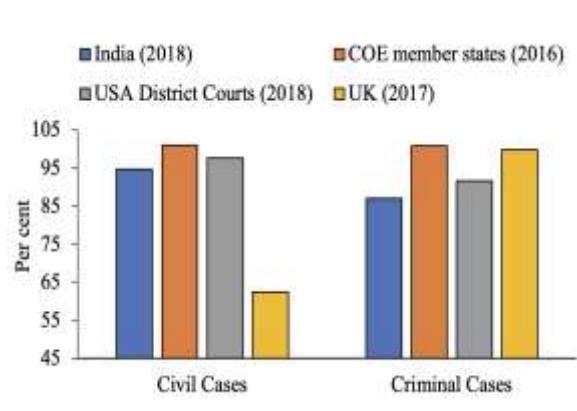
Both the economic prosperity and rule of law are arguably linked to each other and the same has been emphasised by the ancient Indian thinkers as well. In a chapter to Economic Survey of 2019, it was highlighted that **rule of law (Dandaniti)** is the bulwark of prosperity and end of **Matsyaniti (law of fish/jungle)**. It shall be the duty of any state to secure the rule of law and it is in this context that preamble to the constitution of India has ascertained the role of state in securing to its citizens, Justice- Social, Economic and Political.

Key Terms:

Disposal time is measured as the time span between the date of filing and the date when the decision is passed.



The Case Clearance Rate (CCR) is the ratio of the number of cases disposed of in a given year to the number of cases instituted in that year, expressed as a percentage.



How to Clear the Logjam?

Need a two pronged strategy:

1. to achieve a 100 per cent clearance rate must be achieved so that there is zero accumulation to the existing pendency.
2. the backlog of cases already present in the system must be removed.

★ Targeted Approach to clear the logjams:

Not only the backlog of criminal cases is about 2.5 fold higher than civil cases, criminal case type also has lower CCR (even lower than the national CCR of 88.7 per cent).

This means that the situation for criminal cases is distinctly worsening. The problem is especially acute for criminal original suits such as summons, warrants etc. These contribute 64 per cent of the total pendency as of May 31, 2019 with a clearance rate of 85.3 per cent. This implies that the additional judges need to specialize in these case types so as to speed up the disposal of such cases.

★ Making Indian courts more productive:

Besides increasing the number of judges we further need to rationalise the working of courts in India. Over the years, many suggestions have been put forward by researchers and official committees for enhancing productivity in the judiciary. Some of the suggestions are discussed below:

- I. **Increase number of working days:** On avg. supreme court works for 190 days in year, high courts 232 for High Courts and 244 days for subordinate courts.
- II. **Establishment of Indian Courts and Tribunal Services:** Most judicial reforms tend to focus only on the quality and quantity of judges, but a major problem lies with the quality of the administration of the courts system, particularly backend functions and processes. This is critical to reducing the process delays. A report by the National Institute of Public Finance and Policy put it, “For effective functioning, courts require competent administration to ensure that processes are followed, documents are submitted and stored, facilities are maintained and human

resources are managed. Court administration must support the judges in performing their core judicial function efficiently.

In this context, it has been proposed to create a specialized service called Indian Courts and Tribunal Services (ICTS) that focuses on the administrative aspects of the legal system. The major roles to be played by ICTS would be (i) provide administrative support functions needed by the judiciary (ii) identify process inefficiencies and advise the judiciary on legal reforms (iii) implement the process re-engineering.

Similar, court management services exist in other countries: Her Majesty's Court and Tribunals Services (UK), Administrative Office of US Courts (US), Court Administration Service (Canada).

III. Use of Technology: (*Discussed in detail as above*)

. What is quasi-judicial body? Explain with the help of concrete examples





Explain the phenomenon of tribulation of justice in India. Has it been impacting the freedom of judicial institutions? In view of the above, discuss the constitutional validity and competency of the tribunals in India?





The horizon of legal aid has been widened at best. Still, the impact is totally missing. Suggest some concrete measures to make it more effective.







Judiciary

1. Discuss the desirability of greater representation to women in the higher judiciary to ensure diversity, equity and inclusiveness.

In the 7 decades of its history the apex court of India has not seen a chief justice and state of representation of women among other judges has been meagre as well. At present there are only **three female judges in the supreme court out of 34** while in the High Courts the percentage of women judges is a mere 11.5%.



Do You Know?

Justice Anna Chandy (1905–1996), also known as Anna Chandi, was the first female judge (1937) and then High Court judge (1959) in India.

Justice Fatima Biwi was first women judge of Supreme Court and was appointed in 1989.

Why it is desirable:

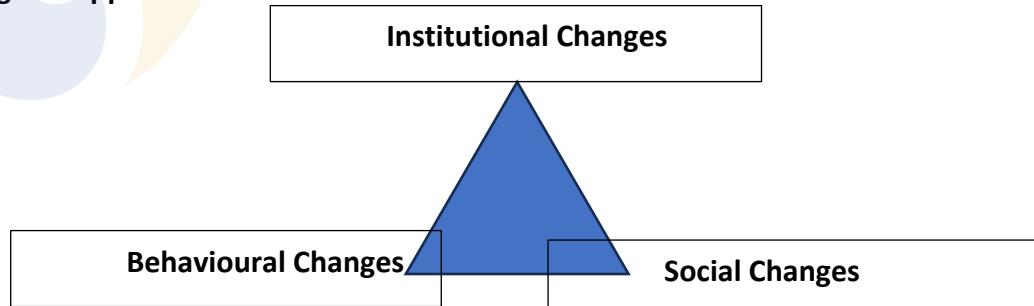
- Diverse perspective:
- Breaking the shackles of gender-role stereotypes
- Serve as a beacon for other women to pick law in general and judiciary as career choices

What are roadblocks:

- **Hidden Glass Ceiling:** About 30 percent are women judicial officers in subordinate courts but in higher judiciary the proportion is less.
- **Lack of women representation in collegium itself:**
- **Lack of women in bar leading to dearth of judges on bench:** Advocates: Of the 1.7 million advocates, only 15% are women. Bar Council: Only around 2% of the State Bar Council's elected officials are women. The Bar Council of India has no female members.
- **Reluctance by the government to appoint women judges:** Recently, the Supreme Court Collegium recommended 192 candidates for the High Courts, out of these, 37, that is 19%, were women. But Unfortunately, so far only 17 of the 37 women recommended were appointed.

How to make conducive infrastructure (Way Forward)

- A triangular Approach:



- Ramping up **physical infrastructure** of courts with focus on gender inclusivity.
 - Transparency in judicial appointments.
 - Making inclusion of a woman mandatory in collegium.(NJAC- one eminent jurist was ought to be a woman/SC/ST)
 - Temporary reservations can also be considered.
2. Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of large number of public interest petitions praying for issuing guidelines to executive authorities.
3. Judiciary has acquainted the role of both the legislature and executive in recent years. Examine with suitable examples.

Constitution of India provides for and recognises the doctrine of separation of power by various of its articles which will include A. 50, 121 and 211. Apex Code itself has, however or Bing that the Constitution does not recognises a water type compartment of the separation of power. Rather it envisages and his scheme and the structure which rest upon a delicate balance and checks among each of the organs.

Though traditionally legislations are the part and parcel of Parliament or other legislative authority, but in the case of legislative vacuum, Supreme Court also derives a certain power to pass on judgments which will have the binding effect as similar to the law.

Power of the supreme court is recognised under article 141 which says that laws declared by the supreme court shall be binding upon all the courts throughout the territory of India and if this is coupled with article 142 and 144 it makes obligatory on all civil authorities to work in aid of supreme court and vests powers in supreme court to pass such orders it deem fit to ensure complete justice. All these provisions clubbed together gives way to judicial legislations.

Judicial legislation are laws held to be **created by the pronouncements of a judge** who departs from a strict interpretation of law according to the manifest intention of the legislature.

However, in the recent times, Judicial legislation has come under scrutiny as it is seen as an encroachment on power of legislature and executive by judiciary, therefore disturbing the delicate balance between three organs of government in ways such as –

- Directive by Supreme Court to play National Anthem in cinema halls.
- Ban on Bharat Stage IV vehicles.
- Ban on alcohol on roads by Supreme Court.
- Arun Gopal case – Fixed timings for fireworks on Diwali.

These matters conventionally formed the part of public policy lying under the domain of executive.

Why there is need for judge-made laws?

Even though enacting legislation is the constitutional prerogative of the legislature. There may be circumstances where the existing laws made by the legislature prove to be inadequate in the process of administration of justice. It is said that even if Parliament and State Legislatures

in India make laws for 24 hours a day and 365 days a year, the quantum of law cannot be sufficient to the changing needs of the modern society.

In **Rattan Chand Hira Chand v. Askar Nawaz Jung, (1991)** the court has observed that,

"The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna."

The country has seen various occasion where legal vacuum has disturbed the flow of administration of justice and it was the judiciary which has to come to rescue:

- In the post emergency era, Maneka Gandhi's judgment brought human rights jurisprudence by widening the scope of various constitutional provisions. For example, Articles 14 and 21 has been expanded manifold by judicial creativity.

Some Landmark Judgements in PILs:

Rudal Shah v State of Bihar: (State's Liability- duty to compensate for violation of fundamental rights): Rudul Sah was arrested on charges of murdering his wife in 1953, later he was acquitted by an Additional Sessions Judge, in 1968, who directed his release from jail, pending further orders. But he was not released from jail even after 14 years of his acquittal order until his plight was highlighted in the media in 1982. This led to the filing of the public interest litigation (PIL) on his behalf.

The Bhopal tragedy:

After the Bhopal tragedy in 1984, the legal framework was inadequate to conduct a fair trial of Union Carbide. To overcome this challenge the Union of India enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 making the Union of India representative of the victims by the virtue of the doctrine of 'parens patriae'. This was then challenged in the Supreme Court. The Court ordered Union Carbide to pay US \$470 million against all the destruction that the leak of methyl isocyanate (MIC) gas from the industrial premise. Justice Pathak in his reasoned order said that it was the duty of the court to secure immediate relief to the victims, he applied **the polluters pay principle** and decided the quantum of compensation to be US \$470 million.

Imposition limitations on President Rule: In famous SR Bomai V UOI case the apex court had led to certain guidelines which governs imposition of president rule.

The Vishakha Case:

The much needed sexual harassment at work place guidelines³⁴ A PIL was filed by a **women's rights group known as "Vishaka"**, the petition has been brought as a class action by certain social activists and NGOs in reaction to an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. **The Court recognising the International Conventions and norms such as the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, interpreted gender equality of women, in relation to work and held that sexual harassment of women at the workplace is against their dignity and violative of Articles 14, 15(1)³⁶, 19(1)(g)³⁷ and 21 of the Constitution of India. This resulted in the Supreme Court's **elaborate guidelines to keep a check on sexual harassment**

at workplaces. The Court stated that the guidelines are to be treated as a declaration of law in accordance with **Article 141 of the Constitution until Parliament legislates on the subject.** These guidelines served their purpose for 15 long years until the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The collegium system: The Second Judges case and the Third Judges case:

In the Second Judges case⁴⁹ (1993) the Supreme Court introduced the collegium system, holding that “consultation” really meant “concurrence”. It added that it was not the Chief Justice of India’s (CJI) individual opinion, but an institutional opinion formed in consultation with the two senior most Judges in the Supreme Court. In the Third Judges case (1998), the Supreme Court on President’s reference expanded the collegium to a five-member body, comprising the CJI and four of his senior most colleagues. Through these cases, the collegium system of appointment of Judges was introduced by the Supreme Court which was not based on any provision in the Constitution. While Article 124 prescribes the procedure for appointment of the Supreme Court Judges, it does not prescribe a collegium system. Yet, it is the collegium which decides the appointment of Judges. **This is also a classic example of Judge-made law.**

Preventing smoking at public places (*Murli S. Deora v. Union of India, (2001)*)

Since the objects of both the Acts dealing with the tobacco products and advertisements discussed the health effects of smoking in public places but failed to place a ban. In an attempt to protect the health of non-smokers, the Supreme Court prohibited smoking at public places and held that it is an indirect violation of the right to life of non-smokers as passive smokers who were helpless victims of air pollution caused by smoking.

Thin line of Judicial Activism and Overreach: Judicial Restraint must apply at a definite point
Indian Constitution does not strictly accept the concept of separation of power, as laid down in *Ram Sahib Ram Jawaya Kapur v. State of Punjab*. It has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated.

- the judiciary to indulge in lawmaking is to overstep its limitations.
- Moreover, allowing an **unelected body like the judiciary** to share the burden of lawmaking is always **criticised as it is extraneous to that of the people's will.**

In *Bachan Singh v. State of Punjab* a five-Judge Bench headed by Y.V. Chandrachud, C.J. held that **“We must leave unto the legislature, the things that are the legislature's.** ‘The highest judicial duty is to recognise the limits on judicial power and to permit the democratic process to deal with matters falling outside of those limits.’”

But, in many PILs, the courts freely decree rules of conduct for government and public authorities which are akin to legislation. Such exercises have a little judicial function in them. Its justification is that the other branches of Government have failed or are indifferent to the solution of the problem. Sometimes failing to circumspect and understand the thin line between law and governance. Hence, allegations are made now and then on the judiciary in general and the Supreme Court in particular that it has entered into the domain of the legislature and “taken over” the administration of the country. But analysing various

judgments of the Supreme Court, underlying reasons for expanding judicial review and its legitimacy can be understood. The Judge-made law can be validated when there is serious lacuna or vacuum which has to be filled and left unattended by the legislature, as even "Judges cannot afford to be timorous souls. They cannot remain impotent, incapable and sterile in the face of injustice".

4. Whether judicial activism has undermined or strengthened the parliamentary democracy in India, Discuss.

5. What is public interest litigation? What are the major facets of this form of litigation? Also discuss the limitations of this type of litigation.

Public Interest Litigation means litigation filed for safeguarding the interest of the public at large. It may be taken to mean a legal action initiated in a court of law for the enforcement of the Public interest or general interest in which the public or a class or community has pecuniary interest or have some interest because it will affect their legal right or liabilities.

Public interest litigation (PIL) petitions are cases filed in a court that highlight a public cause and seek to redress for those affected.

PIL has not been defined in any Indian statute. However, Courts have interpreted and defined PIL. The Hon'ble Supreme Court of India has, defined in one of its cases as PIL' **means a legal action started in a court of law for the enforcement of public/general interest where the public or a particular class of the public some interest (including pecuniary interest) that affects their legal rights or liabilities.**

The concept of "Locus Standi" has been relaxed in the case of PILs so as to enable the Courts to look into grievances that are filed on behalf of those who are poor, illiterate, deprived or disabled and are unable to approach the courts themselves.

However, only a person acting in good faith and who has sufficient interest in the proceeding will have the locus standi to file a PIL. A person who approaches the Hon'ble Court for personal gain, private profit, political or any oblique consideration will not be entertained.

It develops new jurisprudence of **the accountability of the state for constitutional and legal violations, adversely affecting the interest of weaker elements in the society.**

PIL is essentially writ petition Which can be filed either in the High Court or in the Supreme Court by the virtue of Article 226 or 32, respectively. Supreme Court has ruled that to exercise its jurisdiction under Article 32, it is not necessary that the affected person should approach the court. The court can itself take the cognizance of the matter and proceed suo motu or on a petition of any public spirited individual or body.

One of the key reasons behind the emergence and popularity of PIL in India has been bureaucratic unresponsiveness to public needs. No effective measures have been devised for

the redressal of public grievances especially against administration hence leaving no other scope to reach to courts.

- Two eminent Indian Supreme Court judges, V.R. Krishna Iyer and P.N. Bhagwati, can be called as key person due to whom PIL petitions became the major route for redress of grievances for those who were otherwise kept out of the corridors of justice.
- The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in **1976 in Mumbai Kamgar Sabha case**, where justice Iyer enunciated the reasons for liberalization of the *rule of Locus Standi*
- Technically, the 1979 **Hussainara Khatoon vs State of Bihar** (relating to the plight of undertrials languishing in jails) was the first PIL petition.
- Over the next three decades plus, the PIL petition proved to be a path to justice in many landmark cases that took on State high-handedness or in cases where justice seemed a pipe dream. This included M.C. Mehta vs Union of India (discharge of untreated sewage from Kanpur's tanneries into the Ganges), Parmanand Katara vs Union of India (any doctor can treat medico-legal cases since saving human life is most important), Javed vs State of Haryana (coercive population control), and Vishaka vs State of Rajasthan (sexual harassment is a clear violation of fundamental rights).

Nature and Scope of PIL

- It is a strategic arm of the Legal Aid Movement.
- Intended to bring justice within the reach of poor masses.
- Public Interest Litigation is a different kind of litigation from traditional litigations. It is brought before the court not for the purpose of enforcing rights of one individual against other.
- Public Interest Litigation is a cooperative or collaborative effort of the state and the court to make social justice available to vulnerable sections of community.

PIL Vis-à-vis Environmental Jurisprudence

First phase of PIL movement was sporadic in nature but later the filing of PIL became more institutionalized. Several specialized NGOs and lawyers started bringing matters of public interest to the courts on a much regular basis.

There are a number of cases where the court tried to protect forest cover, ecology and environment and orders have been passed in that respect.

One of the earliest cases brought before the Supreme Court related to Oleum Gas leakage in Delhi in **M.C. Mehta and Anr. v. Union of India** (1987) and Ors. The court in this case has clearly laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding area owes an absolute and non-delegable duty to the community to ensure that no such harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken.

In Rural Litigation and Entitlement Kendra, Dehradun and Ors. v. State of U.P. and Ors., Supreme Court ordered closure of all lime-stone quarries in the Doon Valley taking notice of the fact that lime-stone quarries and excavation in the area had adversely affected water springs and environmental ecology.

Another leading case of M.C. Mehta v. Union of India and Ors. (1988) relates to pollution caused by the **trade effluents discharged by tanneries into Ganga River in Kanpur**.

In Vellore Citizens Welfare Forum v. Union of India and Ors.⁴⁷, this Court ruled that precautionary principle and the polluter pays principle are part of the environmental law of the country. This Court declared Articles 47, 48A and 51A (g) to be part of the constitutional mandate to protect and improve the environment.

The third phase—the current phase, which began with the 21st century—is a period in which anyone could file a PIL for almost anything. One could argue that it is time for judicial introspection and for reviewing what courts tried to achieve through PIL. As compared to the second phase, the judiciary has seemingly shown more restraint in issuing directions to the government. Although the judiciary is unlikely to roll back the expansive scope of PIL, it is possible that it might make more measured interventions in the future.

PIL and Its challenges:

- Publicity under the veil of public interest litigation.
- Thin line between judicial activism and overreach may be broken due to too frequent and unwarranted use.
- Judge made laws are not too deliberative and cannot substitute parliamentary wisdom.
- Even too many litigation coming still there are no takers for actual needy persons.

	Supreme Court	High Courts	Subordinate Courts	Tribunals
Established Under	<p>{A. 124(1)}- There shall be a supreme court of India- Consisting of CJ and Seven Other Judges (Now 33 other Judges)</p> <p>Supreme Court (Number of Judges) Amendment Act, 2019</p> <p>Max Strength- 34</p>	<p>{Article 214}- There shall be a high court for each state.</p>		<p>Part XIV A- Added by 42nd Amendment Act 1976</p> <p>{Article 323A} Administrative Tribunals</p> <p>{Article 323B}- Tribunals for Other Matters</p>
Appointment Of Judges	<p>By president under his warrant and seal after consultation from- such judges of supreme court and high court as president may deem fit</p> <ul style="list-style-type: none"> • 99th Amendment- consultation was replaced for NJAC- but in case of <u>Advocate on Record V. UOI (2016)</u> the NJAC was declared unconstitutional. 	<p>{Article 233}- For District Judge- By Governor in consultation with the concerned High Court</p> <p>{Article 234}- Persons below district judge- by the governor in consultation with HC and State Service Commission</p>	<ul style="list-style-type: none"> • Administrative Tribunals may be appointed by the parliament for Union or states. • Other tribunals may be appointed by the appropriate legislatures 	

	Supreme Court	High Courts	Subordinate Courts	Tribunals
Removal	<ul style="list-style-type: none"> • By an order of the president • After an address of each house of parliament • Passed with special majority • And such address is presented to president in same session 	<ul style="list-style-type: none"> • By an order of the president • After an address of each house of parliament • Passed with special majority • And such address is presented to president in same session 		As may be determined by the appropriate legislature
Qualification	<ul style="list-style-type: none"> • Five years as a judge of HC or • 10 Years as an advocate of a high court or • A distinguished jurist in the opinion of president 	<ul style="list-style-type: none"> • 10 years of judicial office • At least 10 years as an advocate of a high court 	<p>District Judge:</p> <ul style="list-style-type: none"> • Person who is not already in service of Govt. • Not less than 7 years as advocate or pleader and • Recommended by HC <p>Below District Judge:</p> <p>As per rules made by governor in consultation with HC and SPSC</p>	As prescribed by the

	Supreme Court	High Courts	Subordinate Courts	Tribunals
Tenure	65 Years of age	62 years of age Additional/Acting Judge- for a term of two years or attaining age of 62 years	no constitutional prescription of the age of retirement controlled by the relevant rules obtaining in the different States and Union Territories	As may be determined by the appropriate legislature
Resign	By writing to president	By Writing to President	By writing to governor	As may be determined by the appropriate legislature
Oath	By President- Given under 3 rd Schedule	By Governor- Given under 3 rd Schedule		