

## General Studies-2; Topic: Structure, organization and functioning of the Judiciary

### Internal Rift in the Judiciary

#### 1) Introduction

- The darkest day in the history of the judiciary in independent India was when the four senior-most judges of the Supreme Court held a press conference and raised a banner of revolt against the Chief Justice of India (CJI).

#### 2) Reason for the Revolt

- The 4 judges alleged that the CJI has been assigning cases selectively to benches of his preference, which have far-reaching consequences to the nation
- The case relating to the death of former special CBI judge B.H. Loya is one such instance.
- They said "Democracy is in peril, and unless the institution is preserved, democracy will not survive."
- The senior judges were not in the 5-judge constitution bench for key cases.
- The outbreak of the current conflict could be the controversial Prasad Education Trust case, in which the petitioners alleged that some individuals were plotting to influence the Supreme Court.

#### 3) Impact

- The image, credibility and reputation of the judiciary has been dishonoured
- The confidence of the people in the judiciary is shaken.
- It has given an impression that the judiciary cannot sort out its own differences.
- This has set a bad precedent — convention is that judges will never approach the media for redressal of their grievances
- History tells us that institutions that become over-reliant upon single individuals inevitably decay.

#### 4) Divided opinion

- Many former judges, eminent jurists, and senior counsel have found the conduct of the four judges to be highly disagreeable.
- The method used by them to find relief from the public is wrong.
- The conduct of the judges does not help resolve the issues.
- However few have justified the action by asserting that the judges had no other choice as their repeated pleas to the CJI did not bring about the desired result.
- It is more important to address the issues raised by the judges rather than find fault with them for going public.

#### 5) CJI's Responsibility

- The CJI is the first among equals and he is the captain who has to carry the whole team with him, while enjoying their goodwill and support.
- The CJI is the master of the roster, but that does not mean that he can act arbitrarily in exercising his powers.
- He has to exercise his powers reasonably, without giving scope for any justifiable criticism.
- CJI must not refuse any reasonable suggestions from his colleagues.
- The CJI is first among equals, not superior to his colleagues.

### 6) Concerns / Challenges

- The obsession with seniority is not just restricted to the judiciary, it is rampant across the government sector—more in the armed forces, less but significant in the bureaucracy.
- The appointments to the Supreme Court stands apart among major democracies with lack of accountability
- The delay in disposal of cases is a concern to people and now judges going public with their allegations have further dented people's faith.
- The judges have transcended the judicial protocol that sitting judges should not interact with the media.

### 7) International Practice

- In US Supreme court the Chief justice has no choice in the question of which judges to hear the case because all the 9 judges sit together to hear cases.
- In UK 12 judges often sit in the panels of five (or more) so chief justice choice is constrained.

### 8) Way Forward

- This crisis is an opportunity for deep and long-lasting reforms.
- All the judges of the Supreme Court should sort out their differences internally and amicably
- Ease the pressure of administrative duties and appoint a CEO for the Court — a career administrator who would explore business-like solutions for the efficient running of the institution.
- A memorandum can be evolved by the full court to act as a guide to the chief justice in listing cases and constituting benches
- The government must disclose its position on the Memorandum of Procedure for judicial appointments and communicate this clearly to the Supreme Court.
- It is a moment for collective introspection for the Supreme Court.
- Meaningful reform that brings accountability and transparency to the office of the chief justice, without compromising on judicial independence.