

4. Judiciary

Key pointers

1. Given the potential economic and social multipliers of a well functioning legal system, reforming it should be given top priority by policy makers.
2. **Rule of Law (Dandaniti)** is the key to prosperity, and a bulwark against **Matsyanyaya (i.e. law of the fish/jungle)**.

Criminal Justice system

1. Criminal justice is the system of **practices** and **institutions** of Government directed at **detering crime** and **punishing wrong** doers.
2. **Challenges in our criminal justice system**
 1. **Judiciary**
 1. As per the **Daksh report**, there is **pendency of more than 3.1 crore cases**. Overburdened and **understaffed judiciary** plagued by slow appointments, etc.
 2. Justice system is also plagued by **high undertrial** rates. More than 67% of the prisoners are undertrials.
 2. **Police**
 1. **Politicisation of the police** force is another reason for under performance of criminal justice system in India.
 2. There is **serious human resource crunch** in **police** personnel. The number of police personnel per one lakh people in India is less than many developed and developing countries.
 3. **Wide discretion and colonial mentality among police** makes the system vulnerable to **corruption** and manipulation.
 4. **Lack of technically trained police** introduces inefficiency in the system in the form of botched-up investigations. Ex: **Arushi Talwar** Murder case.
 3. **Other agencies**
 1. The **CBI** has been described as a '**caged parrot**' by the Supreme Court.
 2. We also face shortage in number of **forensic laboratories**.

4. **Strengthening criminal justice system**

1. **Understaffing** in judiciary should be immediately rectified. **National courts of appeal** to lessen the burden on Supreme Court.
 2. Along with **plea bargaining** other **alternate dispute redress mechanisms** like **Lok Adalats**, Arbitration and Mediation should be promoted. This saves time, effort, cost and lessens the burden on higher judiciary.
 3. **Prioritise court process automation** and **ICT enablement** for electronic court and case management, including electronic management of court schedules, etc. Facilitate the availability and **usage of video-conferencing facilities** to assist in speedy access to justice and to minimize logistical issues.
 4. An **all-India judicial services examination** on a ranking basis can be considered to maintain high standards in the judiciary.
 5. The legal services authorities in the states should set up **undertrial committees** with the participation of **civil society** for bringing the accused and the victims together to work out compounding of offences.
 6. **Institutional reforms** in police functioning is needed which includes **proper investigation** of crimes, **proper training**, rationalisation of court systems, etc.
 7. **Politicisation** of police should be kept at minimal by implementing supreme's **court decision in Prakash Singh** case.
 8. The criminal investigation system needs **logistic and technological support**. Number of **forensic science** institutions with modern technologies such as DNA fingerprinting technology should be enhanced.
5. **Justice delayed is Justice denied**. The system should be **victim centric** to ensure that the victims get justice. The victim should get a chance to put forth his case and **quick completion of trials** is needed to ensure that they do not lose faith in the system.
- #### 6. **Legal reforms**
1. **Create a repository of all existing central and state laws**, rules and regulations.
 2. **Repeal redundant laws and introduce a new initiative** to remove restrictive clauses in existing laws. For the first time since independence, as many as **1,420 redundant laws have been**

repealed over the past four years. An identical process should be followed by all states.

3. **Create a law abiding society.** It is necessary to inculcate respect for the rule of law among citizens. Introduce incentive and sanction based models of motivation to ensure that citizens abide by the law. Ex: Check traffic violations, civic violations including littering in public.
4. **New laws should be drafted in simple, plain language.**
5. **Greater sensitivity on the part of government officials** to citizens needs can help reduce the number of litigations/disputes. This will require an attitudinal reorientation among government officials.

Major issues plaguing judiciary

1. The first major issue is the idea of the CJI as the “**master of the roster**”. The previous CJI was criticised by many for the manner in which cases were **allocated to judges arbitrarily**.
2. The second issue is of **how appointments and transfers** within the higher judiciary continue to be made., showing the **opacity in the collegium**.
3. The third issue that concerns is the “**sealed cover**” as a means of **receiving information about cases**, having used it in three highly documented litigations. This is completely against the idea of **open, transparent justice and misuse of secrecy** of information.
4. The fourth issue is about **post-retirement appointments**, it is clear that such appointments really compromise the independence of the judiciary.
5. The fifth issue is that of the **appeal made to the Supreme Court by itself against the order of the Delhi High Court** on the applicability of the Right to Information Act, 2005, to the judiciary.
6. **Vacancies in the lower judiciary** across states resulting in the piling up of pending cases, according to National Judicial Data Grid, around 3 crore case are still pending.

Judicial activism and overreach

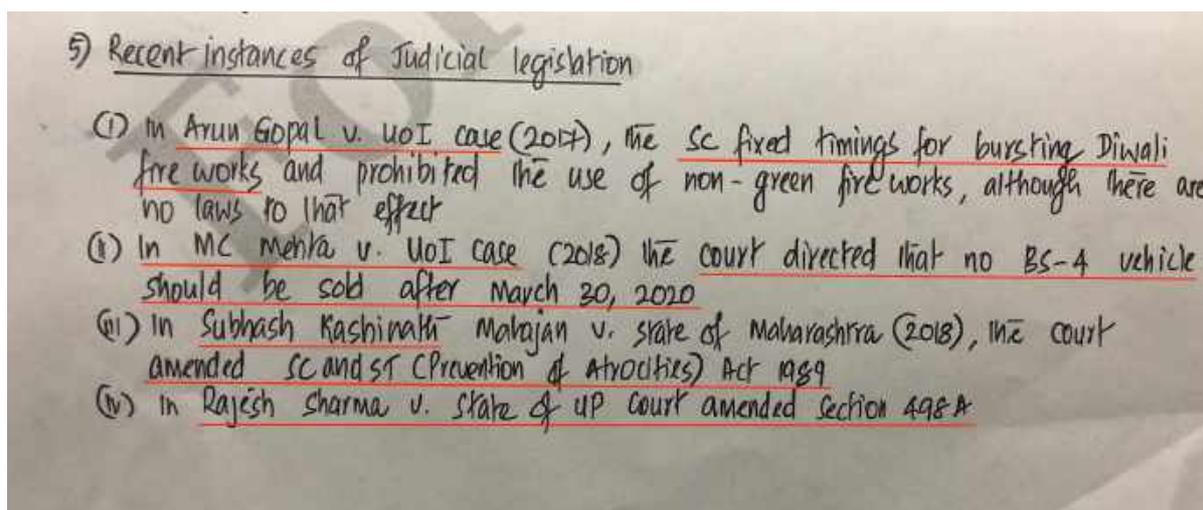
1. **Article 50 calls for separation of judiciary from the executive.** Judiciary, legislative and executive are the principle organs of our democracy. The role, powers and actions of these three are **demarcated in the constitution**. Problems arises when they **interfere** in each others areas knowingly or unknowingly.
2. **Difference between activism and overreach**
 1. **Judicial activism** connotes the **assertive role played by the judiciary** to force the other organs to discharge their constitutional functions effectively. Ex: **PIL**. Its more about the **positive role** played by the judiciary owing to the factors like a near **collapse of responsible government**, a **legislative vacuum** due to coalition governments and **public confidence** in judiciary.
 2. When judiciary takes the **powers of the executive or the legislature**, it is called as **judicial overreach**. Judicial activism cannot be used for filling up the lacunae in legislation or for providing rights or creating liabilities not provided by the legislation. "**Judicial activism should not become judicial authoritarianism**" - Soli Sorabjee.
3. **Positive implications of judiciary venturing into executive**
 1. **Human rights:** Judiciary by **incorporating due process of law**, institutionalisation of **PIL has strengthened fundamental rights**. SC sought early conclusion and **reformative steps for under-trials** stating that **prisoners also have human rights**.
 2. **Constitution:** By bringing **Article 356 under judicial review** in **SR bommai** case, SC has emerged as a protector of federalism. SC by devising the **doctrine of basic structure** during emergency has acted **as a guarantor of constitution**.
 3. **Law and order:** **Ban on cooling stickers on cars**. Vehicles with tinted glasses helped criminals escape after committing heinous crimes. Judiciary has given the **Vishakha guidelines** for safety of women.
 4. **Environment protection:** The SC took a tough stand on the delay in taking steps to prevent pollution from industries and failure in an effective **implementation of cleaning of River Ganga**. This resulted in creating a time line and a **target based** action. It also **banned sale of older Diesel cars** and also cars above 2000cc for certain period.

5. **Uniformity in policy creation:** SC has intervened in many issues to serve the larger interest of society across the country. Ex: **fighting diseases like Dengue**, issues of policies of Health, drinking water, etc. **stopping of polluting industries of Agra**, **beautification of Taj Mahal**, etc.
 6. **Judiciary cancelled coal block allocation** due to various issues of corruption in allocation methodology.
4. **Few examples of judicial overreach**
1. **SC directing the centre to conduct NEET** also does not go down well with the doctrine of separation of powers.
 2. Supreme court **banning of liquor on highways**.
 3. **Reserving premium seats at five times the normal prices in Delhi Metro** for car users affected by odd-even system.
 4. **SC banning diesel cabs in Delhi** led to widespread protests.
 5. The court has ordered the **exclusion of tourists in the core area of tiger reserves**.
 6. The court had tried to **monitor the investigating agencies** who are perceived to have failed or neglected to investigate and prosecute ministers and officials of government. Ex: **2G case**.
5. **Cons of overreach**
1. Usurping the powers of executive and legislature is clear **violation of constitutional separation of powers**.
 2. This also **increases burden on judiciary** which already has a huge pendency of cases.
 3. If judges are free to make laws of their choices, it could also lead to **uncertainty in the law** as **every judge will start drafting his own laws** according to his whims and fancies.
 4. Since **judiciary is a non-elective body**, it **does not enjoy popular will to make laws**. It also undermines the mandate of the people.
 5. Judiciary has started **interfering in the governance issues** as well. **Judiciary has intervened in the functioning of the government agencies**. This reduces their efficiency. Ex: **Vineet Narain** case where judiciary exercised control over the CBI throughout the entire case.
 6. Further, recent pronouncements by judiciary such as **banning diesel vehicles**, determining standard **calorific value of food**, etc.,

have questioned its **technical competence** and are seen to be beyond its scope.

6. Steps to curtail overreach

1. The court said that **judges should not peddle individual perceptions** and notions of justice. Such notions might do more harm than good to the society. A judge's solemn pledge has to **remain embedded to constitution** and to its laws.
2. While using the power one has to bear in mind that **discipline** and **restriction** are the two basic **golden virtues** within which a judge functions as per the Supreme court.
3. **Drafting guidelines for SLP** that allows litigants to **challenge any order issued** by other court or tribunal.
4. **Establishing a division bench in courts** to decide **PIL/SLP for inspecting them** before admission.
5. **Accountability** mechanism for court whereby **people can move to court** against the court for **frivolous judgments** that hampered economic growth.
6. There is a very **fine line between judicial activism and overreach**. It would be in the best interest of our country **if judges understand this** and restrain themselves from crossing this line too often. The judiciary cannot rule the nation by legislating as well as executing through its judgements.



Judiciary Under RTI

1. Presently, only information related to **administrative functioning of the Supreme Court** can be **availed under the RTI Act**. The Delhi High Court recently held that RTI Act **could not be resorted to** in case the information sought for is related to **judicial function** of the Supreme Court.
2. The **Supreme Court rules allow for seeking information**, however, they are independent of RTI Act and as such are **applied in a limited manner**. There is no appeal mechanism, no time frame for furnishing information and no penalties for delays or wrongful refusal of information.
3. **Importance of judiciary under RTI**
 1. **RTI Act itself declares** that it **covers all constitutional and statutory bodies**, so it is natural for higher judiciary to come under it. It can earn it **public trust**.
 2. **Appointments** through proceedings of the **collegium are absolutely opaque** and inaccessible for public. RTI umbrella over judiciary will bring in transparency and will **curb nepotism in appointments**.
 3. **Expenditure** by judiciary will also come under the ambit of information and **hence check the allegations** or cases of misappropriation of **funds**.
 4. With the manner of functioning under scrutiny, **reasons would have to be provided for pendency of cases**, which may expedite case disposal.
 5. The **law of contempt has been often misused** to punish outspoken criticism and exposure of judicial misconducts. Even an **FIR cannot be registered** against the judges under the Prevention of Corruption Act. **RTI will ensure accountability** and will act as a key tool in eliminating misconduct by judges.
 6. If higher judiciary fall under RTI, it can set an **example for political parties**, private sector, and others also to follow the path which is a great need.
4. **Problems**
 1. The **frivolous RTI** applications may impose **unnecessary burden on the judiciary**.
 2. It may **lead to delay in judicial appointments** and transfers as an over cautious approach can be adopted to avoid conflicts.

3. Further, the **information related to judges not being recommended** will hamper their functioning in their respective high courts. It may lead to unnecessary loss of confidence in him.
4. It may **compromise secrecy and security** involved in certain critical cases.
5. There is apprehension that it might **undermine the independence of judiciary** and the decisions as judges would be apprehensive of public pressure.
5. In a **democracy, no institution is above public scrutiny**. There is a need to improve accountability and transparency in judiciary without undermining its independence.

Contempt of the court

1. Contempt of court consists of **words spoken or written** which tend to bring the administration of justice into contempt. **Article 129 and 215** of the constitution of India empower the supreme court and high court respectively to **punish people for their contempt** and the judiciary was provided with this power under Contempt of court act, 1971. India's **courts have routinely invoked its contempt powers** to often punish expressions of dissent on purported grounds of such speech **scandalising** the judiciary's **authority**.
2. **Need for such powers**
 1. **Prevent scandalisation** or lowering the authority of any court. It is needed to maintain the **dignity** of the higher courts. Strengthen **court's image as legal authority** and that no one is above the law.
 2. To prevent **public opinion** and **media criticism** from hampering the decision making based on justice.
 3. To **prevent the legislative and the executive** to undermine the independence of the courts, by distorting facts.
 4. It ensures that one **could not defy court orders** according to one's own free will.
3. **Criticism**
 1. Currently, it is the **courts themselves which decide** whether an act is a contempt of court.
 2. Contempt of Court proceedings have the **effect of muzzling free**

speech guaranteed under Article 19 of the Indian Constitution. Public pressure is needed to incentivise the courts to work fast and reducing the pending court cases.

3. Various acts like contempt of courts Act 1971, are seen to be misused by the judiciary to shut the mouth of the public who tries to criticise the judicial system. Ex: Contempt of court case against Arundathi Roy.
 4. Pandit Thakur Das Bhargava in the Constituent Assembly said that power of contempt should only be restricted to disobedience of an order or direction of a court, which were already punishable infractions.
 5. Even judiciary is not free from corruption and nepotism. Criticism of courts will probably help to maintain a check on corruption in judiciary.
4. **Way out**
1. We should restrict the contempt of court only to severe case, by amending the Contempt of Court Act, 1971.
 2. An independent authority having members from legislative, judiciary and civil society should be constituted to determine which cases constitute contempt.

Public interest litigation (PIL)

1. The concept of public interest litigation (PIL) rests on the principle that any member of the public can initiate legal proceedings on behalf of an aggrieved person, especially a person who is unable to move to court on his or her own. The key role in enunciating the principle of PIL was played by Justice J. Bhagwat.
2. **Present status**
 1. Spectrum of issues raised in PIL have expanded tremendously such as from the protection of environment, right to education, relocation of industries, good governance, general accountability of the Government etc. In recent years, anyone could file a PIL for almost anything.
 2. This is contradictory to the main objective of the PIL, which is meant to provide the remedial jurisprudence for those who can't approach the court on account of poverty or some other disability.

3. Positive contributions of PIL

1. PIL has become a vehicle to bring **social revolution** through constitutional means. It has brought courts **closer to the disadvantaged sections** of society such as **prisoners**, destitute, child or bonded labourers, **women**, and scheduled castes.
2. It has made **judicial process little more democratic**.
3. **Vigilante citizens** can now find an **inexpensive remedy** and can focus on larger public issues in the field of human rights, environment, against government over-reach, etc.
4. In **Hussainara Khatoon vs State of Bihar case**, regarded as the first PIL in India, courts focussed on the situation of **under-trials in Bihar** who had been in detention in excess of the maximum sentence for their offences.
5. Through PIL, judiciary also initiated **legislative reforms** and filled in legislative gaps in important areas. Ex: **Vishakha guidelines** on sexual harassment at workplace.
6. In **MC Mehta case**, SC lashed out at civic authorities for allowing untreated sewage to make its way into River Ganga. It has also helped in expanding the jurisprudence of **fundamental and human rights** in India. Ex: **Expanding scope of Article 21** to include **right to clean air**, livelihood, etc.
7. PIL also become an instrument to **promote rule of law**, demand fairness and **transparency**, fight **corruption** in administration, and enhance the **overall accountability** of the government agencies. Ex: **Cancellation of 2G licenses**.
8. The Indian judiciary has helped in ensuring the **reservation of seats for OBCs** in employment and in educational institutions.

4. Challenges

1. An unanticipated **increase in the workload** of the **superior courts** due to increasing litigations year on year. This has led to inefficient use of limited judicial resources. **Lack of judicial infrastructure** to determine factual matters and sometimes erring in judgements.
2. Judiciary has **increasingly encroached the space of legislature and executive**. This will weaken our democratic structure of division of powers. Ex: **Ban on diesel vehicles**. Judgement passed without considering **technical advice** in the 2G Spectrum case the TRAI

- had recommended sale without auctioning to increase tele density.
3. Supreme Court (SC) voiced its concerns on PIL becoming a front for **settling corporate rivalry or personal vendetta**. The concern were expressed while hearing PIL challenging the allocation of 4G spectrum to Reliance Jio.
 4. It is **being misused** by **people by seeking publicity** in the garb of public interest. PIL has become Personal Interest Litigation.
 5. Using **PIL as a tool of harassment** because **frivolous cases** can be filed without heavy court fee. Ex: Calling Indian team to come back from Australia.
 6. **Political pressure groups** use PIL to achieve their aims.
5. One way to achieve a balance could be to confine PIL primarily to those cases where **access to justice is undermined** by some kind of **disability**. The other useful device could be to offer **economic disincentives** to those who are found to employ PIL for ulterior purposes.

National court of appeal (NCA)

1. **Almost 60000 appeals are pending** in the supreme court. Thus, SC has decided to examine the plea calling for setting up of **national court of appeal** which will **hear appeals against HC** judgements pertaining to civil and criminal matters.
2. **The proposal is significant**
 1. **Initial role:** Supreme court's **major responsibility** is to be a arbitrator in **constitutional cases (Article 145(3))** rather than in civil/criminal cases. The number of decisions by constitutional benches has drastically come down. Ex: **Naz foundation** case and **Shreya Singhal** case were decided by **2-judge** bench. Even **Justice Bhagwati** in of the judgement remarked that SC was never intended to be a **regular court of appeal**.
 2. **Burden:** NCA would ease the **burden** of top court in delivering important **constitutional judgements**.
 3. **Law commision of India:** The **Tenth Law Commission of India** under Justice K K Mathew recommended that the **SC should consist of two divisions**, namely (a) constitutional division, and (b) legal division, and that only matters of Constitutional law may

be assigned to the proposed Constitutional Division.

4. **Article-39A: Travelling to New Delhi** or **engaging expensive SC counsel** to pursue a case is beyond the means of most litigants and thus makes justice inaccessible. Thus NCA **would reduce the time and cost** borne by **litigants** in filing cases of appeals. This will **improve accessibility** to judiciary.
5. **International practice:** Many countries around the world have **Courts of Cassation that decide cases involving non-Constitutional disputes and appeals** from the lower level of courts.

3. Limitations

1. Setting up of NCA would **dilute the constitutional superiority of SC** as this may lead to sharing of powers under **Article 136** (SLP) with an inferior court.
2. The proposal **requires amendment of article 130** which in turn would alter the constitution of SC.
3. Already judiciary is facing **shortage of judges and staff**. Adding more courts without first filling the posts will not solve the problem.
4. **Legal experts** opined that focus should be on **courts of first instance** i.e. trial courts to reduce the need of approaching higher courts.

4. Way forward

1. Experts say that the focus should be more on improving the functioning of **lower judiciary**. Need to improve the judicial decision making at **subordinate level** by recruiting better judges etc.
2. Other measures need to be taken to address the issue like reducing **appellate burden** (rationalisation of SLP, **subordinate judiciary** reforms, improving **judicial strength, quality infrastructure** etc).

Government Litigations

1. Government litigation reportedly constitutes **nearly half of all litigation** in the Indian judiciary.
2. **Challenges**
 1. They pose huge constraint on the **public exchequer**.

2. They have contributed to **judicial backlog**, thus affecting justice delivery in India.
3. **Supreme court**, since the 1970 has **criticised governments** for being **callous** and mechanical in pursuing litigation.
4. The Law Commission of India also studied this problem in its 126th report in 1988, and expressed the need of having a **litigation policy**.

3. Features of national litigation policy, 2010

1. It aims to transform government into an **efficient and responsible litigant**.
2. It has **rejected the complete dependency** of government institutions on the **courts**. It recognises the need for **arbitration** as an **alternate dispute mechanism (ADR)** but in a responsible way. It lays down certain guidelines for arbitration.
3. It aims to reduce average **pendency time from 15 years to 3 years**.
4. **Accountability** was seen as touch stone of the policy and **critical appreciation on the conduct of cases**.
5. **Empowered committees** were to be set up to monitor the implementation of the policy and accountability.

4. Failure of the policy

1. It is replete with **rhetoric** and no **measurable outcomes** are present.
2. It fails to provide a **yardstick** for determining responsibility and **efficiency**.
3. It creates **empowered committees** to regulate the implementation of the policy. But there is an **ambiguity** about their role and powers.
4. It also **lacks any form of impact assessment** to evaluate actual impact on reducing government litigation.

5. Measures to reduce Government litigations

1. For **petty cases** like **traffic violation**, **theft** and other petty crimes **ADR mechanism** can be used to solve problems without bringing them in the purview of judiciary.
2. **Government quasi-judicial bodies** should be made to settle **intra-government** or inter-department cases.
3. There are a number of **vague or contradictory laws**, because of

which whatever action is taken by Government, it is **dragged into the court** by one or the other. Such **obsolete laws** need to be removed and clarity need to be brought.

4. **Strict action against corruption cases** should be taken at the **government level** so that there is least involvement of judiciary.
5. **Checks and balances for advocates**. Ensuring cases are not unnecessarily extended and making sure advocates are paid on time.
6. One way of reducing the load on courts is to **reduce the quantum of cases** that come to the courts by **strengthening the internal monitoring process**, e.g. whether appeal should be made or not, dropping petty cases, etc.

Basic structure

1. **The basic structure doctrine** is an Indian judicial principle that the Constitution of India has certain basic features **that cannot be altered by parliament**. The basic features of the Constitution have **not been explicitly defined** by the Judiciary and are **determined by the Court** in each case that comes before it.
2. **Evolution**
 1. In **Shankari Prasad case (1950)**, SC said that the parliament can **amend any part of the constitution**.
 2. In **Golaknath case (1967)**, SC said that FR cannot be amended at all.
 3. In **Keshavananda Bharti** case, SC over-ruled the judgement in Golaknath case and declared that FRs can be amended. However, Parliament cannot amend the 'basic structure' of the constitution. Therefore only those FRs which form the basic structure cannot be amended.
 4. In **Minerva Mills (1980)** case, SC said that **judicial review is the basic structure** of the constitution and hence can't be taken away. Hence, giving a stamp to the basic structure.
3. **Importance**
 1. Basic structure doctrine protects and promotes the **core philosophy** and principles that had guided our constitutional makers.

2. It makes SC vigilant in case any of the basic structure of the constitution is compromised by the state.
 3. It keeps check on unbridled power of parliament and ensures its accountability to the people of India.
 4. It imposes reasonable restriction on Parliament and legislature of state. It is whether in case of FR or DPSP or any other change of a welfare state. Policies and rights are formed keeping them into consideration.
4. Basic structure doctrine has come as a breath of fresh air to our politico-legal jurisprudence.

Lok Adalat

1. Lok Adalat is a system of alternative dispute resolution (ADR), developed in India, where justice is dispensed without too much emphasis on legal technicalities. It is organised by the National Legal Service Authority (NALSA). These are usually presided over by retired judges, social activists, or other members of the legal profession and deal with cases which include family disputes, matrimonial cases, motor accident claims, etc.
2. The Lok Adalat hearings were held in courts at all levels, right from the Supreme Court to the High Courts to the taluk courts. When no compromise is reached, the matter goes back to the court. However, if a compromise is reached, an award is made and is binding on the parties. In Delhi, their scope expanded to include the State Consumer Dispute Redressal commission, the Debt Recovery Tribunals (DRT), the Central Administrative Tribunals (CAT), Revenue Department Courts, SDMs and district consumer forums.
3. **Provisions**
 1. Panchayats in India are the earliest known ADR mechanism. It has long been the part of Indian culture.
 2. In Indian constitution, ADR finds its basis in the Article 14 (Equality before Law) and Article 21 (Right to life and personal liberty).
 3. Right to constitutional remedies (Article 32) provides for the right of people to seek justice.

4. ADR can also be implicitly related to the DPSP for equal justice and free legal aid under article 39A.
5. Settlement of disputes outside the court is a part of the Civil Procedure Code (Section 89).

4. Advantages

1. These are less expensive.
2. Speedy justice is given to the people of all classes of society.
3. It is free from technicalities as in the case of conducting cases in law Courts. So, less formal and stressful than traditional court proceeding.
4. They reduce burden on the courts at various levels.
5. The focus in Lok Adalats is on compromise. Parties play important role in resolving their own disputes with consensus, often resulting in long lasting outcomes, greater satisfaction and improved relationship.
6. The disputing parties plead their case themselves in Lok Adalats. No advocate or pleader is allowed, even witnesses are not examined.

5. Limitations of Lok Adalat

1. Lok Adalat proceedings are held in the open court and any member of public may witness these proceedings. Thus, the element of confidentiality is lacking.
2. They are conducted in regular courts only. Therefore some amount of formality still remains attached with Lok Adalats.
3. There is no guarantee of resolution.
4. The arbitration decisions are final and cannot be repealed in any court.
5. Unfamiliarity with the procedure and lack of awareness.
6. They are informal in nature and presents more opportunity for abuse of power.

6. Measures to improve functioning

1. Establishing permanent and continuous Lok Adalats in all the districts, Government departments, PSUs in the country for the disposal of pending matters.
2. Accreditation of NGOs for legal literacy and legal awareness campaign. Legal literacy and legal aid programmes need to

expand through **awareness camps**, mass media like newspapers, television, etc.

3. **Sensitisation of judicial officers** in regard of legal services scheme.
4. The concerned Legal services Authority should **disseminate information to the public** about the holding of various **Lok Adalat** by it and success achieved thereby in providing speedy, equitable and inexpensive justice.
5. There is need for **improvement in quality of legal aid** provided by lawyers and advocates. The **remunerations** offered from legal services authorities to lawyers should be revised and thus encouraged to render effective legal assistance to needy persons.
6. The **Lok Adalat movement can be successful** only if the people participate on **voluntary basis** in the functioning of Lok Adalat. This can be achieved by restraining themselves from invoking the jurisdiction of traditional courts in trifling disputes.

Arbitration

1. Recently, the government has passed **New Delhi International Arbitration Centre (NDIAC) Act** and **Arbitration and Conciliation (Amendment) Act, 1996**.
2. Arbitration is the settlement of dispute between parties to a contract by a neutral third party (the arbitrator) without resorting to court action. It is one of the ways of alternative dispute resolution. Others being mediation, conciliation and Lok Adalats. **It is confidential, speedier and cheaper than court**. Arbitral awards are binding and enforceable through courts.
3. **Arbitration and Conciliation (Amendment) Act, 2019**
 1. An **independent body** called the **Arbitration Council of India (ACI)** will be set up for promotion of ADR mechanisms, **framing policies for grading arbitral institutions and accrediting arbitrators**, maintaining a depository of **arbitral judgments** made in India and abroad, and **maintenance of uniform professional standards** for all ADR matters.
 2. **Appointment** of arbitrators will now be done by the **Supreme Court designated arbitral institutions**, which was earlier used to be

done by parties themselves.

3. It seeks to remove time restriction for international commercial arbitrations and says tribunals must try to dispose of international arbitration matters within 12 months.
4. Written submissions to be completed within six months of the appointment of the arbitrators. Earlier there was no time limit.

4. Benefits

1. Time bound settlement of disputes and accountability of the arbitrator.
2. Promoting ease of doing business in India.
3. Bringing in quality experts.
4. Helping reduce burden on our courts.
5. Encouraging investors in India to resolve their disputes in India instead of the currently preferred arbitration centers in London, Singapore and Hong Kong.
6. Facilitating India becoming a hub for institutional arbitration.

Right to legal aid

1. Right to affordable legal aid is enshrined in the constitution as Directive Principles of State Policy (DPSP) under article 39A. Subsequently NALSA and SALSA were enacted to provide free legal aid to poor.
2. Significance
 1. Legal aid is one of the means to ensure that the opportunities for securing justice are not denied to any person by reason of poverty, illiteracy, etc. Without it Article-21 may be violated.
 2. Without free legal aid Judiciary will be agent of rich and powerful.
 3. Exploitation of detainees and under-trials by police. They require legal aid to prove their innocence if they detained.
 4. Corruption will increase with erosion of civic responsibility without legal aid.
3. In addition to various judicial bodies like Supreme court, High court and subordinate courts, there exist various alternate dispute mechanisms (ADR).
4. Various mechanisms

1. NALSA established **Lok Adalat, Gram Nyayalayas** to settle dispute in an expedite manner.
2. **Arbitration and conciliation act 1996** provides for negotiation, reconciliation & mediation to resolve disputes.
3. **Civil procedure code (CPC)** give an individual ample opportunity by not charging the fee and person to be represented by pleader in case one is unable to do.
4. **Panchayats** too can play a role in dispersing justice.
5. Further various **tribunals, ombudsman** and fast track courts established to fasten the judgement process.
5. **CJI** has recently asserted that development of **ADR is essential to raise goal of justice**. This will give much impetus to ADR mechanisms.

Criminal defamation

1. **Section 499 and 500 of IPC** deals with the criminal defamation laws. **Supreme court in 2016 upheld the validity** of criminal defamation and cited that it is necessary to protect right to dignity of citizens under Article-21.
2. **Arguments against criminal defamation**
 1. Powerful entities such as **large corporations** use it as a means to **coerce the media and civil society** into adopting **self censorship**.
Ex: Dozens of law suits in Tamil Nadu against writers. **Political interests** have adopted defamation laws to **settle scores**.
 2. There is an adequate **civil remedy against defamation** which can be solved through civil filling of cases rather than criminalising it.
 3. Considering anecdotal evidence, **every dissent** may be taken as **unpalatable criticism**.
 4. **The right to reputation** cannot be extended to **collectives** such as **government**, which has the resources to set right damage to their reputations.
 5. **Two years imprisonment along** with **penalty** acts as a major deterrent for exposing wrong doers. It is invariably a **shield for public servants**, political leaders, etc.
 6. The **United Kingdom**, from whom India borrowed this pernicious provision of the defamation law, **abolished criminal** libel five

years ago. In 2011, the Human Rights Committee of the **International Covenant on Civil and Political Rights** called upon states to abolish criminal defamation.

3. Arguments for defamation

1. It is said that, India being a land of **diversity**, unity and **integrity** of nation is very important. Any misuse the fundamental right to speech, may **destabilise** the society.
2. The government argued that that the law is part of the state's compelling interest to protect the **dignity and reputation of citizens**. It is required to balance right to reputation and right to speech.
3. Indians with **lower per capita incomes** will not have sufficient liquidity with them to pay fines and penalties. So, criminal defamation is necessary
4. **Protection for legitimate criticism** on a question of public interest is available in the **civil law of defamation** and under exceptions of section 499 IPC.
5. **Mere misuse** or abuse of law can never be a reason to render a provision unconstitutional rather **lower judiciary** must be **sensitised to prevent misuse**.

4. Supreme court judgement

1. Court said that the **reputation** of an individual was an equally important right and stood on the **same pedestal as free speech**. Thus it termed the restriction as **reasonable restriction** under constitution.
2. Also, India is a **signatory** of **international covenant on civil and political rights** which states that right to freedom of expression is subjected to right of reputation of others.
3. The court said it **would be a stretch** to say that upholding **criminal defamation** in modern times would amount to imposition of **silence**.
4. **Editors** have to take the **responsibility** of everything they publish as it has **far-reaching consequences** in an individual and country's life.
5. Court held that deliberate **injury to the reputation** of an individual is **not a mere private wrong**, worth only a civil case for damages. Instead, it is a **crime committed against society at large** and the

State has a duty to redress the hurt caused to its citizen's dignity.

6. Protection of **reputation** of institutions like **Parliament** and **judiciary** has been constitutionally provided under **Article 105** and Article 129 of the constitution which shows that constitution makers valued **reputation** as a matter of right.

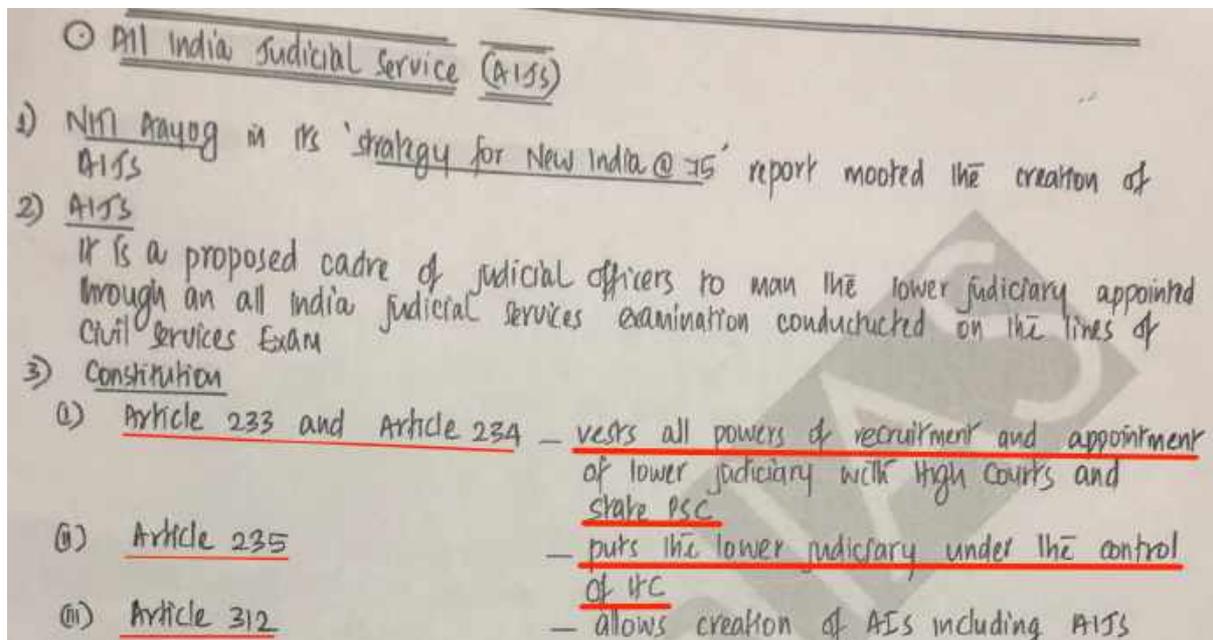
Undertrials

1. **Undertrial prisoners** are persons who have **not been convicted of the charge** for which they have been detained, and are presumed innocent in law. They constitute more than **two-thirds** (67.6 per cent) of our prison population.
2. **Challenges**
 1. According to NCRB records **over 55% of undertrials** are **Muslims, Dalits** and **tribals**. **It is highly prejudiced against minorities** and vulnerable section given they are over represented among undertrials in Indian prisons.
 2. The main reason they are still in judicial custody appears to be **poverty**, as most of them are too poor to afford **bail bonds** or provide sureties. Also there is lack of adequate free legal aid by the Government.
 3. **Huge delays** in judiciary has compounded the problem of undertrials. There are some cases which have not been taken up for more than **20 years**.
 4. The **unreformed mindsets** and lack of sensitivity to social issues among public officials contribute to the entrenched **prejudices**.
 5. Absence of functional and **effective undertrial review committees**.
3. **Solution to problem**
 1. The legal services authorities in various States must play a principal role in **inculcating awareness** among prisoners about their **rights**, especially provisions that entitle them to freedom.
 2. It is also in the interest of the government that **prisons are not overcrowded** and **overburdened**, considering the cost of prison space, resources and maintenance.
 3. The government proposed setting up of **gram nyayalays** to ensure

that opportunities for justice were not denied to any citizen by reason of social, economic or other disabilities. The **implementation** need to be sped up.

4. The **real solution** lies in **expediting the trial process**.
5. The fact that cases are not decided for long spells that are close to the likely period of imprisonment is a poor commentary on a system beset by delay. The sooner this is addressed, the better it is for the administration of criminal justice.

All India Judicial Services



1. Problems in lower judiciary

1. **Huge pendency of cases**.
2. Lack of **objectivity** and **inefficiency** of state PSCs, which are responsible for recruitment.
3. Instances of **corruption**, **nepotism** and **influence peddling** have frequently **marred recruitment**.
4. Students from the **leading law schools do not sit in the entrance examination** due to lack of credibility.
5. **Adjudication** is a specialisation and requires **state of the art training**, which is missing now.
6. The problems in lower judiciary deny us an opportunity to have **better judges** at the **high courts** and **Supreme courts**.

2. Merits of All India judicial service

1. For one, recruitment by the Union Public Service Commission would ensure utmost **objectivity** and **transparency** in selection.
2. It would **attract better law students** from across the country, at once improving the quality of judges.
3. After two years of **intensive training** at the **National Judicial Academy**, which already exists, the recruits could be assigned **state cadres** and posted across the country.
4. A **rich pool** of talent will be available to draw from for the **appointment** of high court and supreme court judges.
5. **India has a unified judiciary**. Central and state laws are enforced and interpreted by the **same set of courts**. This makes the constitution of an All India Judicial Service a very **natural phenomenon**.

3. Demerits

1. **Local language** is used in lower courts **even for writing orders**. Because of this a person from other state may find it difficult to hold the proceedings in other states.
 2. Being a **centralised recruitment**, it risks preventing the **less privileged from entering judicial services**.
 3. **Friction** may creep in between existing **state service officers and AIS** judicial officers who would invariably overlook their working.
 4. **Certain state laws vary** from one state to another, especially **taxation** etc.
4. A well **designed probation** period can ease these problems.

Maneka Gandhi Case

- *Maneka Gandhi v. Union of India (1978)* case started off as one which concerned the fundamental right of an Indian citizen to travel abroad, but eventually, expanded the meaning of the “right to life” under the Constitution of India

- Background:

- The national emergency had just been lifted and Janata Party came to power for the first time
- A large number of citizens had lost their faith in the judiciary, due to its ruling in the *ADM Jabalpur case*

- In *A K Gopalan v. State of Madras (1950)*, the Supreme Court had held that:

- The fundamental right to life and personal liberty as guaranteed under Article 21, could be taken away by a “procedure established by law”

- But in *Maneka Gandhi v. Union of India (1978)* rulings:

- Introduced the concept of “due process of law” – fundamental right guaranteed by Article 21 can be taken away only by a procedure established by law that is “fair, just and reasonable” and cannot be “fanciful, oppressive or arbitrary”

- Why *Maneka Gandhi* case was a watershed event in India's constitutional history?

- Although the makers of the Constitution rejected the American due process clause, the case introduced the concept
- Supreme Court vested in itself the power of substantive review under Article 21, wherein it could strike down a valid law that was not fair, just, or reasonable – thus it transformed itself from being merely a supervisor to being a watchdog of the Constitution
- The case signified the court's change of approach to a dynamic constitutional interpretation, wherein the Constitution was henceforth treated as an organic document whose interpretation must evolve with time
- The case empowered courts to expand the rights under the ambit of Article 21, due to which various rights were later added, including:
 - Rights of prisoners: Protection from handcuffing without adequate reasons, Right to treatment with dignity and humanity etc.
 - Environmental rights: Right to a humane and healthy environment, Right to sustainable development etc.
 - Right To Education
 - Right to Livelihood

- The Maneka Gandhi case was a watershed in the Constitutional history of India, and continues to impact judgments even now
 - The impact of its ruling to interpret Article 21 broadly with other fundamental rights helped the right to privacy being held as a fundamental right, in the recent Justice K S Puttaswamy (Retd) vs Union of India case
- By stating that an arbitrary law is no law, it clipped the wings of the legislature
- It also resulted in breathing life into Article 21, which has gradually become a repository of human rights and fundamental freedoms in India

Judiciary in addressing the concern for the right to freedom of religion

1. Right to freedom of religion is mentioned in **Article 25, 26, 27 and 28** of the constitution of the India. It comes under the fundamental rights in part three. Supreme court, being the guarantor and protector of fundamental rights, has the duty to address the concern for freedom of religion.
2. **Supreme court's role**
 1. SC in **Hadiya case** said that freedom to choose **one's religion or life partner** is central to Indian pluralism.
 2. SC in **Indian Young Lawyer's association** allowed **women of age between 10 and 50** in **Sabari Mala** temple.
 3. Inter religious marriages annulled by various **non-constitutional** bodies like **Khap panchayat** have been criticised by judiciary and **upholds the Hindu marriage act for inter caste marriage**.
 4. SC declared the practise of the **triple talaq as null and void** to save women from discrimination.
 5. SC allowed women to **enter Haji Ali and Shani-Shingnapur**.
 6. SC upheld **right to convert only on the basis of individual freedom** to give consent in Stanislaus vs State of MP case.
 7. SC held that the **Parsi women who married outside their community** should be allowed to participate in **fire rituals inside the temple**.
 8. SC also **banned the practise of female genital mutilation** prevalent in **Dawoodi-Bohra community**.

Tribunalisation

1. **Article 323-A and 323-B of the constitution** provides for the creation of **tribunals by the executive**. **Tribunalisation** refers to the increasing creation of **alternative forums to decide cases**, which could take away judicial powers. There has been much **concern** over the validity, character and competence of several of the tribunals in India.

2. **Reasons for establishing tribunals**

1. They provide **speedy, cheap** and **process simplification** in dispute resolution arising out of the various welfare legislations.
2. They **reduce the burden on judiciary**.
3. **Exigencies of modern administration** requires the adjudication of disputes after considering the **policy intentions** and the **public interest**.
4. Besides, tribunals were also seen as **bodies manned by experts** who could professionally and fairly deal with the issues. The **Railway Claims Tribunal, Revenue Courts** of various states, etc., can be cited as examples of such tribunals.

3. **Concerns**

1. **Tribunals do not rely on uniform precedence** and hence may lead to **arbitrary and inconsistent decisions**.
2. Tribunals are **entirely dependent on their nodal ministries** for their day-to-day functioning. These ministries can compromise the functioning of the tribunal by providing inadequate resources with the aim of **arm-twisting** the tribunal into passing favourable orders.
3. There is a degree of **variance in the appointment process, qualification** of members, **age of retirement, resources** and infrastructure of different tribunals. This is due to tribunals operating under different ministries.
4. **Proclivity to appoint retired Judges and Bureaucrats**. It has the potential to compromise the integrity of the judiciary as such positions act as a lure for post-retirement plans for government servants.
5. Some of the tribunals have also **usurped the jurisdictions of the court**. SC has struck down the **National Tax Tribunals (NTT)** as it has usurped the powers of the **civil court**.
6. There are issues with provisions allowing for **direct appeals to the Supreme Court** (SC) thereby by-passing the jurisdiction of the

High Courts.

7. In many of the tribunals, **administrative members** dominate.
8. **Short tenure of 3-5 years** precludes the cultivation of **domain expertise**, which can impact the efficacy of tribunals.
9. There is an inherent difficulty for many litigants in **accessing justice** as benches of some **tribunals are located only in New Delhi**.
10. **Some tribunals** are also facing serious problems of **inadequate workforce**.
11. These quasi-judicial bodies also decide upon **substantial questions of law** and thus **breaches separation of powers**. Madras High Court struck down key provisions relating to the **Intellectual Property Appellate Board (IPAB)** established under the Trade Marks Act, 1999, as unconstitutional.

4. **Way forward**

1. The Supreme Court in **NCLT (2010) judgement** suggested that the **tribunals** should enjoy the same **constitutional protection as them**.
2. Further, the decision of the Supreme Court in **Madras Bar Association vs Union of India** clarifies the **extent of tribunalisation that is permissible under our constitution**.
3. Tribunals must **not only be independent** but also **seem to be independent**. They should not be seen as departments of ministries or as part of the executive branch of government.
4. **Government has merged various tribunals** with some other tribunals to avoid **overlapping functions** being discharged by them.
5. **Tribunals part of the judiciary** and are working better than the **independent tribunals**.

5. **Enforcement issues in Tribunals**

1. Increasingly, **States are becoming resistant** in complying with the finality of such awards. **States have passed laws** in their legislatures **canceling water sharing agreements** or **nullifying the tribunal orders**. SC is still to rule on the legality of such legislations.
2. **Enforcing the award and ensuring compliance** depends on the centre's **political will** which is found to be lacking in most

cases. **Coalition politics**, where regional parties have a major say in the Central Government makes such **interventions by the centre difficult**.

6. Weaknesses in law

1. There is **no time limit for the centre to notify the tribunal's award**. Thus **centre can practically veto** it for an indefinite period.
2. The **decisions of the tribunal are questioned for errors and omissions**. Parties seek explanation of the tribunal on points referred, and even on points not originally referred.
3. There is a provision to **extend indefinitely time for a clarificatory or supplementary order**.
4. **River boards should be setup**. This would encourage resolution of disputes within the board and in the event the matter does go before a tribunal then the tribunal would have before it the records and deliberations before the board.

7. Weaknesses in procedure

1. **Tribunals should focus mainly on the technical issues**. Technical and legal issues should be dealt with separately. Issues need to be spelt out on practical considerations and optimal solutions found.
2. They **should deviate from the strict procedures and format of judicial hearings**. More participatory and conciliatory approach as adopted in board rooms rather than in court rooms should be followed.
3. The **success of the Krishna Water Disputes Tribunal (1969-1978)** has been ascribed to adoption of **participatory** rather than adversarial procedures.
4. Tribunals should **include people from multiple disciplines** from all relevant fields and presided over by a judge. This would also bring about the attitudinal change.

8. Challenge in SC

1. Although **awards can't be challenged** in the SC as per the Constitution, they are still taken to the court in the name of interpretation and implementation.
2. **Interim awards** are taken to the court. Also activists have raised the issues of **environmental damage, rehabilitation** and alternate livelihood in front of the court. These are matters which are

outside the purview of water Tribunals.

9. **Cut down of tribunal autonomy**

1. This year, in addition to tax proposals, the Finance Bill 2017 contained **several amendments** that made **structural changes to 26 tribunals**. It laid the foundations for of the **merger of several tribunals**.
2. There used to be 26 tribunals but now they are down to 19. The **Competition Appellate Tribunal (CAT)** will be merged with the **National Company Law Tribunal**. The Telecom Dispute Appellate Tribunal (TDSAT) will also do the work of the Cyber Law Appellate Tribunal.

10. **Issues**

1. There is **no clear rationale behind this replacement**, and seems to be rather arbitrary.
 2. It is unclear if the **National Company Law Appellate Tribunal (NCLT)**, which will replace the Competition Appellate Tribunal, will have the **expertise** to deal with matters related to anti-competitive practices.
 3. The **amendments permit the central government to decide** the terms of service including **appointments**, term of office, **salaries** and allowances, and removal of tribunal members through rules. Rules are made by Government and thus escape **parliament scrutiny**. This also affects the **independence** of tribunal.
 4. There may be instances where the **government is a party to a dispute** before a tribunal like the Central Administrative Tribunal (CAT). There would be a **clear conflict of interest**.
 5. **Supreme court in 2014** examined the issue of **national tax tribunal (NTT)** and held that appellate tribunals have similar **powers** and functions as that of High Courts and **appointments** must be made independent of executive.
 6. **Adjudicatory bodies** under different laws cannot be abolished by a **money bill**.
11. **Indiscriminate passage of various laws** under the form of **money bill** will reduce **parliament authority**. Effort should be to ensure maximum discussion in both houses of the Parliament.

Collegium and National Judicial Appointment commission (NJAC)

1. The **justice system is caught in a tussle** between the committee of Supreme Court justices and the Government over who has the final say on appointing judges. The two decade old system of a **collegium is an Indian innovation** created in the name of **judicial independence**. However, according to some critics, it has produced an opaque legal justice system.
2. **What does the constitution actually prescribe**
 1. **Article 124 deals with the appointment of Supreme Court judges.** It says the appointment should be made by the **President** after consultation with such **judges of the High Courts** and the **Supreme Court** as the President may deem necessary. The CJI is to be consulted in all appointments, except his or her own.
3. **Arguments against the collegium system**
 1. It is seen as a **closed door** affair without a formal and transparent system. So, selection process is prone to **biases** and issues of **corruption** and **nepotism** can arise.
 2. This **system overlooks** several talented **junior judges** and advocates.
 3. The collegium is also criticised for not keeping in line with due appointments. **Vacancies** are at all time high in Judiciary.
 4. Sometimes, collegium gets stymied, when **old rivalries** between its members see each other's favourites getting vetoed.
4. **Why NJAC was struck down**
 1. The **composition of the NJAC**, especially the inclusion in it of the Union **Law Minister and two eminent persons** impinged on the doctrine of separation of powers.
 2. The NJAC act gave **any two members a veto over all decisions**, raising the question whether the executive representatives could overrule the judicial members.
 3. The court also felt that this new institutional mechanism to appoint judges **impinged on the independence** of the judiciary, a basic feature of the constitution.
 4. The **clauses** provided in the amendment were also **inadequate** to preserve the primacy of the judiciary.
5. **Memorandum of procedure (MoP)**

1. For the first time, it has been asked to include **merit and integrity as a prime criteria** for appointment of judges to the higher judiciary. A **notice for vacancies of judges** should be put up on the website of the high courts at the beginning of the year for appointments.
2. Evaluation of judgments delivered and **performance appraisal** should be a yardstick of merit for **promotion** as chief justice of a high court.
3. The MoP states that up to **three judges** in the supreme court need to be appointed from among the **eminent members of the bar** and distinguished jurists with proven track record in their respective fields.
4. A **permanent secretariat** to be set up in the Supreme Court for maintaining **records of high court judges**, scheduling meetings of the Collegium, receiving recommendations as well as complaints in matters related to appointments.
5. **National security** and **public interest** have been included as the **new ground of objection** to appoint a candidate as a judge.
6. It proposes that for appointment of judges in the Supreme Court, the prime criteria should be **seniority as chief justice/ judge of the high court**.
6. Though the MoP aims to address the lacunae of the collegium system, the consensus between the government and judiciary seems quite far. This is largely due to the sense of **mistrust between the government and judiciary**.
7. **How the present collegium system can be improved**
 1. **Accepting applications** for appointments as High Court judges should be followed. This is followed in the **UK** and can be adopted in India too. There **must be full and complete disclosure** of relationships and affiliations of applicants to sitting and retired judges.
 2. There should be a clear cut **appointment policy** clearly covering **eligibility** criteria, age of **retirement**, **seniority** and merit etc that involve minimum human judgment and offer least discretion to the appointers.
 3. Collegium should spell out why a candidate was chosen, **whether seniority or merit**.

4. The **constitution of collegium should be diversified** to ensure and secure presence judges from all sections like, **minority, women, tribes and backwards** this will help to dilute the prevailing nepotism in the system. Even some space can be given to the participation of **civil society**.
5. The **appointment of older judges with shorter tenures** threatens the court with institutional incoherence and ineffectiveness. The **Law Commission** observed that **young judges** would bring a freshness and vigour to constitutional courts.
6. A **permanent secretariat** to document its affairs and to put the minutes of the meetings in RTI domain should be established.
8. The opacity in the appointment of judges has allowed for covert manipulation. It has also meant that often the **best legal minds are left out of the judicial system**. A transparent, fair, and open system of appointment is central to ensuring that people have faith in the legal system, which is essential for functional democracy, doing business, and ensuring development.

Coordination between judiciary and Government

1. A recent **NCRB** report shows that nearly **67% of all inmates** in **Indian prisons** are undertrials. Judiciary is faced with mounting pendency of cases, and executive and Judiciary are at loggerheads over the issue of judicial appointments. In this context, coordination between Executive and Judiciary will help speed up the trials.
2. **Coordination**
 1. Coordination in matters of **judicial appointments** will lead to filling up of vacancies and faster disposal of cases. Logjam is being cleared with options such as the Memorandum of Procedure.
 2. Currently, **less than 1% of the budget** is spent on judiciary. Funding needs to be directed towards **digitisation** of records, and giving an impetus to **e-courts**.
 3. **Government is the biggest litigator**. Thus, it needs to curb frivolous litigation in order to reduce the burden on judiciary. National Litigation Policy is being implemented to this effect. This will reduce pendency and speed up the trials.

4. Legislative framework for **Alternative Dispute Resolution mechanisms** will lead to speeding up of trials.
5. **Reforms in the police framework** and strengthening of BPRD will lead to a responsive and efficient police force.
6. Coordination between Rajya Sabha, government and the judiciary in order to introduce an **All India Judicial Service** can lead to merit-based appointments of judges, which will increase the efficiency of the judiciary while providing an impetus to legal education in the country.