



POLITY

ROLE OF JUDICIARY

1. **Guardian of the Constitution:** Ensures laws and actions adhere to the Constitution through judicial review.
 - *Kesavananda Bharati v. State of Kerala (1973)*: Established the Basic Structure Doctrine.
2. **Protection of Rights:** Safeguards fundamental rights of individuals.
 - *Justice K.S. Puttaswamy v. Union of India (2017)*: Recognized the Right to Privacy as a fundamental right under Article 21.
3. **Dispute Resolution:** Resolves conflicts between individuals, states, and the union.
 - *State of Karnataka v. State of Andhra Pradesh (Krishna Water Dispute)*: Resolved inter-state water disputes.
4. **Accountability of the Executive:** Acts as a check on executive actions.
 - *Maneka Gandhi v. Union of India (1978)*: Strengthened the doctrine of due process and limited arbitrary executive action.
5. **Judicial Independence:** Operates independently of other government organs.
 - *S.P. Gupta v. Union of India (1981)*: Highlighted judicial independence during the Judges Transfer case.
6. **Legal Reform:** Adapts laws to changing societal values through judicial activism.
 - *Vishaka v. State of Rajasthan (1997)*: Established guidelines against sexual harassment at the workplace.
7. **Social Justice:** Protects marginalized communities and advances social causes.
 - *Olga Tellis v. Bombay Municipal Corporation (1985)*: Recognized the Right to Livelihood as a fundamental right.

CONSTITUTIONAL PROVISIONS RELATED TO JUDICIARY

1. **Article 124:** Establishes the Supreme Court of India and specifies the appointment, tenure, and removal of its judges.
2. **Article 125:** Ensures salaries and allowances of judges cannot be reduced during their term.
3. **Article 141:** Declares Supreme Court decisions binding on all lower courts.

4. **Article 50:** Directs the state to ensure the separation of the judiciary from the executive.
5. **Article 217:** Specifies the appointment of High Court judges.
6. **Article 124(4):** Provides the procedure for impeachment of Supreme Court judges.
7. **Article 32:** Empowers citizens to directly approach the Supreme Court for enforcement of fundamental rights.
8. **Article 128:** Permits retired judges to act temporarily in the Supreme Court.

KEY ARTICLES FOR JUDICIARY

1. **Article 142:** Empowers the Supreme Court to pass decrees or orders to do "complete justice."
 - Example: *Union Carbide Corporation v. Union of India* (Bhopal Gas Tragedy Compensation Case).
2. **Article 143:** Allows the President to refer questions of public importance or law to the Supreme Court for advisory opinion.
 - Example: *In Re Berubari Union Case* (1960) and the *Ayodhya Dispute* (2019) Presidential reference.

ADVISORY JURISDICTION (ARTICLE 143)

1. **Scope:**
 - The President can seek advice on questions of law or facts of public importance.
 - Covers pre-constitutional treaties, agreements, or disputes.
2. **Rejection by the Supreme Court:**
 - **When Advice is Not Appropriate:** The Supreme Court may reject a Presidential reference if it considers the question unsuitable for judicial determination.
 - Example: **In the Cauvery Water Dispute Reference (1992)**, the Supreme Court refused to give an opinion, stating the matter was unsuitable for advisory jurisdiction as it involved political and technical complexities rather than pure questions of law.
3. **Binding Nature:**
 - The President is **not bound** to act on the advisory opinion.
 - Example: *In Re Kerala Education Bill Case* (1958): The Supreme Court advised, but the final decision rested with the executive.

Issues and Solutions of Collegium System

Issues with the Collegium System of Appointment

1. **Violation of Constitutional Provisions:**

- *Issue:* Article 74 requires the President to act on the aid and advice of the Council of Ministers, which the Collegium bypasses.
- *Example:* The 214th Law Commission stated that the Collegium undermines the constitutional framework of executive accountability.

2. **Constitutionality:**

- *Issue:* The Constituent Assembly rejected the proposal to vest the Chief Justice with veto powers, yet the Second Judges Case (1993) did so by granting judicial primacy.
- *Example:* This case tilted the balance of power towards the judiciary, a departure from the Assembly's intent.

3. **Undemocratic and Non-Transparent:**

- *Issue:* The Collegium system lacks transparency and is perceived as opaque.
- *Example:* In 2020, the Supreme Court Advocates-on-Record Association (SCAORA) demanded greater transparency in judicial appointments.

4. **Lack of Checks and Balances:**

- *Issue:* The concentration of power among a small group of judges creates accountability concerns.
- *Example:* Critics argue that judicial appointments are often influenced by personal relationships and group dynamics.

5. **Nepotism and Patronage ("Uncle Judge Syndrome"):**

- *Issue:* Allegations of favoritism, nepotism, and corruption mar the Collegium system.
- *Example:* The 230th Law Commission Report highlighted these issues, calling for systemic reforms.

6. **Merit vs. Seniority Debate:**

- *Issue:* Appointments often prioritize seniority over merit, sidelining qualified candidates.
- *Example:* Justice K.M. Joseph's delayed appointment to the Supreme Court in 2019 raised questions about the system's fairness.

7. **Disturbance of the Balance of Power:**

- *Issue:* The Second Judges Case (1993) shifted the balance of power from the executive to the judiciary, undermining the constitutional separation of powers.
- *Example:* The judiciary's unilateral control over appointments has been criticized as overreach.

Solutions

1. **Finalization of the Memorandum of Procedure (MoP):**

- *Solution:* The Supreme Court emphasized revising the process of judicial appointments in the Justice Karnan Case (2017). The MoP should ensure a structured, transparent, and accountable process.

2. Judicial Primacy, Not Exclusivity:

- *Solution:* Reform the Collegium to ensure judicial independence while incorporating executive input to maintain checks and balances.
- *Example:* A restructured body akin to the UK's **Judicial Appointments Commission**, which includes judicial and non-judicial members, can ensure inclusivity and diversity.

3. Transparency Measures:

- *Solution:* Collegium deliberations and decisions should be made public to ensure accountability.
- *Example:* Disclosing reasons for recommendations or rejections would increase trust and reduce allegations of nepotism.

4. Strengthen Institutional Mechanisms:

- *Solution:* Establish an independent body like the **National Judicial Appointments Commission (NJAC)** to balance judicial primacy with executive accountability.
- *Example:* While NJAC was struck down, a revised version incorporating safeguards for judicial independence could address concerns.

5. Merit-Based Appointments:

- *Solution:* Criteria like professional competence, integrity, and performance should guide appointments, not merely seniority.
- *Example:* The Canadian model considers diverse metrics like judicial philosophy and community engagement.

6. Federal Representation:

- *Solution:* Ensure that appointments reflect India's federal character by including judges from diverse states and regions.
- *Example:* Countries like South Africa mandate diversity in judicial appointments to ensure inclusivity.

7. Independent Oversight Body:

- *Solution:* Form an oversight committee to review appointments, comprising retired judges, legal experts, and civil society representatives.
- *Example:* The USA's **Senate Judiciary Committee** reviews judicial appointments for transparency and accountability.

8. Periodic Review and Training:

- *Solution:* Implement periodic reviews of judicial performance and mandatory training for judges.

- *Example:* Singapore's judiciary undergoes continuous legal education and reviews for efficiency.

Examples of Best Practices

1. United Kingdom:

- The Judicial Appointments Commission (JAC) ensures transparency and inclusivity in judicial appointments, with an independent, merit-based process.

2. Canada:

- Judicial appointments are overseen by independent advisory committees that prioritize merit and diversity.

3. South Africa:

- Judicial Service Commission (JSC) balances judicial and executive roles while ensuring diversity in judicial appointments.

4. USA:

- Senate confirmation hearings provide a robust mechanism to ensure judicial accountability while preserving independence.

Judicial Accountability in India

Judicial accountability ensures that judges adhere to ethical standards, act impartially, and are held responsible for misconduct or inefficiency. It is essential to balance accountability with judicial independence to uphold constitutional principles and maintain public trust.

Key Mechanisms of Judicial Accountability

1. Impeachment Process:

- Article 124(4) and Article 217 provide for the removal of judges for "proven misbehavior or incapacity."
- *Example:* The impeachment of *Justice Soumitra Sen (2011)* for financial misconduct exposed delays in the process.

2. Judicial Standards and Accountability Bill (2010):

- Proposed establishing a judicial oversight commission to handle complaints against judges. However, the bill remains unpassed.

3. Code of Conduct for Judges:

- Judges follow the *Restatement of Values of Judicial Life* (1997), but it lacks statutory backing, making enforcement challenging.

4. Public Interest Litigation (PIL):

- The judiciary has addressed allegations of misconduct via PILs (e.g., *Judges Asset Declaration Case*), but these interventions are rare.

5. Declaration of Assets:

- Judges are not legally bound to disclose assets, raising concerns about transparency and public accountability.

6. Law Commission Reports:

- Successive reports (e.g., 214th and 230th) have recommended reforms to address judicial corruption, improve the appointment process, and establish enforceable standards of accountability.

Issues Pertaining to Judicial Accountability

1. Inadequate Legislative Mechanisms:

- There are no comprehensive laws to address judicial corruption or inefficiency.
- *Example:* The impeachment of *Justice V. Ramaswami (1993)* failed due to political opposition.

2. Opaque Collegium System:

- The process of "judges appointing judges" lacks transparency and is often criticized for nepotism and favoritism.

3. Judicial Pendency and Delays:

- Over 4.5 crore cases are pending across courts in India, undermining public trust in the judiciary.
- *Example:* Over 80,000 cases are pending in the Supreme Court alone.

4. Conflict with Judicial Independence:

- External investigations by agencies like the CBI may undermine judicial autonomy.
- *Example:* *Justice C.S. Karnan Case (2017)* highlighted the risks of executive interference.

5. Exclusion from RTI:

- The judiciary is exempt from RTI, limiting transparency in judicial appointments and asset disclosures.

Judicial Independence

Definition:

Judicial independence ensures that the judiciary functions free from interference or influence from the executive, legislature, or other external pressures.

Provisions Ensuring Independence

1. Security of Tenure:

- Judges can only be removed through impeachment under Article 124, ensuring protection against arbitrary dismissal.

2. Salary and Allowances:

- Article 125 guarantees non-reduction of judges' emoluments during their tenure, preserving financial independence.

3. **Judicial Review:**

- Article 13 and Article 32 empower the judiciary to review executive and legislative actions.

4. **Separation of Powers:**

- Article 50 mandates the separation of the judiciary from the executive.

5. **Collegium System:**

- Ensures judicial primacy in the appointment of judges, although criticized for its lack of transparency.

Judicial Accountability vs. Judicial Independence

Arguments in Favor of Accountability

1. **Enhances Public Trust:**

- Mechanisms like asset disclosure and oversight bodies improve transparency and credibility.

2. **Addresses Corruption:**

- A robust framework can deter unethical behavior and ensure judicial ethics are upheld.

3. **Expedited Justice Delivery:**

- Accountability for delays can lead to better case management and reduced pendency.

Arguments Against Accountability

1. **Threatens Independence:**

- Overreach by the executive or legislature in the name of accountability can compromise judicial autonomy.

2. **Scope for Misuse:**

- External accountability mechanisms can be politically motivated to influence judgments.

Committees and Recommendations for Judicial Accountability

1. **Malimath Committee (2000):**

- Recommended reforms to strengthen the criminal justice system, including judicial accountability and faster case resolution.

2. **Second Administrative Reforms Commission (ARC) (2007-09):**

- Suggested case management systems, judicial training, and alternate dispute resolution mechanisms to reduce pendency and enhance efficiency.

3. **Law Commission Reports:**

- **67th Report (1977):** Called for increasing the number of courts and promoting alternate dispute resolution.
- **230th Report (2009):** Focused on addressing judicial delays and suggested fast-track courts, improving infrastructure, and enhancing judicial capacity.

4. Justice J.S. Verma Committee (2013):

- Recommended improving judicial accountability and transparency in handling cases, especially those involving gender justice.

5. Justice M.N. Venkatachaliah Committee (2002):

- Proposed the establishment of a National Judicial Commission to oversee judicial appointments and ensure accountability.

6. Justice S.P. Bharucha Committee (2001):

- Advocated creating a clearer framework for judicial selection and accountability through an independent body.

7. National Judicial Appointments Commission (NJAC) Act (2014):

- Aimed to reform the Collegium system by including executive and civil society representatives, but it was struck down in 2015 for compromising judicial independence.

Suggestions for Ensuring Judicial Accountability

Immediate Reforms

1. Enact the Judicial Standards and Accountability Bill:

- Create a statutory framework for ethical guidelines and enforceable standards.

2. Independent Oversight Body:

- Establish a *Judicial Ombudsman* or Lokpal with retired judges and legal experts to investigate complaints.
- *Example:* South Africa's *Judicial Service Commission* oversees judicial conduct without compromising independence.

3. Transparency in Collegium System:

- Publish reasons for appointments, rejections, and transfers to ensure fairness and reduce favoritism.

4. Mandatory Asset Disclosure:

- Make it legally binding for judges to disclose assets to enhance public confidence.

5. Simplify Impeachment:

- Revamp the impeachment process to make it less politicized and more efficient.

Long-Term Reforms

1. **National Judicial Commission:**

- Reintroduce the NJAC with safeguards to balance judicial independence and accountability.

2. **Judicial Performance Reviews:**

- Implement periodic reviews based on quantitative (case disposal) and qualitative metrics.
- *Example:* The USA conducts performance evaluations for judges through independent commissions.

3. **Increase Bench Strength:**

- Raise the judge-to-population ratio to reduce pendency and enhance judicial efficiency.

4. **Use of Technology:**

- Introduce AI-based case management systems to streamline case allocation and track judicial performance.
- *Example:* Singapore uses technology-driven solutions for efficient case disposal.

5. **Judicial Training Programs:**

- Regular training in ethics, technology, and case management to improve efficiency.

6. **Strengthen Fast-Track Courts:**

- Establish more fast-track courts for priority cases like women's safety, economic offenses, and senior citizen issues.

7. **Litigation Management by Governments:**

- Reduce government litigation, which constitutes nearly 46% of cases. Departments should adopt alternative dispute resolution mechanisms.

Examples of International Best Practices

1. **United Kingdom:**

- The *Judicial Appointments Commission (JAC)* ensures a transparent, merit-based selection process balancing accountability and independence.

2. **Canada:**

- The *Canadian Judicial Council* investigates complaints against judges while preserving independence.

3. **South Africa:**

- The *Judicial Service Commission* oversees judicial appointments and accountability with diverse representation.

4. **USA:**

- Senate hearings for judicial appointments ensure transparency, and independent commissions periodically review judges' performance.

Judicial Pendency in India: Causes, Impacts, and Solutions

Judicial pendency refers to the backlog of unresolved cases in the judicial system, causing delays in justice delivery. With over 4.5 crore pending cases across all courts in India, judicial pendency is a critical issue undermining public trust in the judiciary.

Reasons for Judicial Pendency

1. Institutional Issues

1. Low Judge-to-Population Ratio:

- India has only 18 judges per million people, far below the Law Commission's recommendation of 50 judges per million.
- *Example:* The USA has about 107 judges per million people, enabling faster case resolution.

2. Judicial Vacancies:

- Vacancies across all levels of the judiciary exacerbate pendency.
- *Example:* As of August 2023, the Supreme Court had 32 judges against a sanctioned strength of 34, while over 25% of High Court posts were vacant.

3. Heavy Workload:

- The Supreme Court alone has 80,344 pending cases, with 78% being civil matters and 22% criminal.

4. Shortage of Court Managers:

- The post of court manager, created to optimize judicial time and case movement, remains underutilized.

5. Judicial Vacations:

- Courts remain closed for extended periods.
- *Example:* The Supreme Court works only 193 days annually, as highlighted by the Law Commission.

2. Procedural and Legal Issues

1. Filing of Frivolous Cases:

- The broad jurisdiction of courts leads to frivolous litigation.
- *Example:* PILs demanding removal of "secularism" from the Preamble are time-consuming distractions.

2. Government Litigation:

- 46% of court cases involve the state or central government, adding to the judicial burden.

3. Complex Procedural Laws:

- Overcomplicated procedural frameworks in civil and criminal cases cause unnecessary delays.

4. Inefficient Evidence Collection:

- Poor training in evidence collection and lack of scientific techniques by police lead to long delays.

3. Infrastructure Deficiency

1. Lack of Adequate Facilities:

- Insufficient courtrooms, staff, and technology hamper efficiency.
- *Example:* Many district courts lack basic amenities like functional restrooms and digitized records.

2. Technological Gaps:

- While e-Courts have been introduced, their reach and efficiency remain inconsistent.

4. Broader Systemic Issues

1. Undertrial Population:

- As per the NCRB Prison Statistics 2020, undertrials constitute 76% of the prison population, reflecting judicial delays.

2. Delayed Recruitment and Training:

- Irregular recruitment of judges and insufficient training for newly appointed judges contribute to inefficiency.

Impact of Judicial Pendency

1. Delays in Justice Delivery:

High Courts: Average Resolution Time: Approximately 6 to 7 years.

Supreme Court:

- **Civil Cases:** May take an average of 15 years to reach a conclusion.
- **Criminal Cases:** Can take around 8 years for resolution.

District and Subordinate Courts:

- **Civil Cases:** At the current rate of case handling, civil cases may never get cleared.
- **Criminal Cases:** It could take more than 30 years to clear the backlog.

2. Compromised Quality of Justice:

- Judges under heavy workloads may lack the time to analyze cases thoroughly.

3. Eroded Public Trust:

- Persistent delays weaken confidence in the judicial system.

4. Financial Burden on Litigants:

- Prolonged legal battles impose significant financial strain on parties.

5. Rise in Undertrials:

- Long detentions without trial violate the right to speedy justice.
- According to the National Crime Records Bureau's Prison Statistics India 2022 report, undertrials make up 75.8% of the total prison population, amounting to 434,302 individuals out of 573,220 incarcerated persons.

Current Steps to Address Judicial Pendency

Technological Interventions

1. E-Courts Mission Mode Project:

- Digitization of court records and introduction of virtual hearings to expedite case management.

2. Interoperable Criminal Justice System (ICJS):

- Facilitates data exchange among police, judiciary, and forensic labs for faster case resolution.

3. Artificial Intelligence Tools:

- **SUPACE**: Assists judges in legal research and compiling relevant case laws.
- **SUVAS**: AI-based translation software for regional language support.

4. Virtual Courts:

- Increased use of video conferencing for hearings, especially post-COVID-19.

Structural and Procedural Reforms

1. Lok Adalats:

- Frequent Lok Adalat weeks to settle disputes outside traditional courts.
- *Example*: President Droupadi Murmu emphasized their role in reducing pendency.

2. Fast-Track Courts:

- Establishment of specialized courts for priority cases like sexual offenses and economic crimes.

3. Case Management Systems:

- Recommendations by the Second ARC to track case timelines and improve efficiency.

Measures Needed to Further Reduce Judicial Pendency

Institutional Reforms

1. Increase Judge Strength:

- Implement the Law Commission's recommendation of 50 judges per million people.

2. Fill Judicial Vacancies Promptly:

- Streamline the appointment process for High Court and district judges to reduce delays.

3. Extend Court Working Days:

- Reduce vacations as recommended by the Malimath Committee and Law Commission.
- *Example:* The Supreme Court could work for 206 days annually instead of 193.

4. Introduce All India Judicial Service (AIJS):

- Ensure standardized recruitment of judges across states.
- *Recommendation:* 120th Law Commission Report.

Technological and Infrastructure Improvements

1. Expand E-Courts:

- Scale up the e-Courts project and ensure consistent implementation across all states.

2. Strengthen Infrastructure:

- Increase funding for new courtrooms, staff, and technology.
- *Example:* The 13th Finance Commission allocated funds for judicial infrastructure.

3. Encourage Virtual Hearings:

- Leverage virtual courts and AI tools like SUPACE to improve efficiency.

Alternative Dispute Resolution (ADR) Mechanisms

1. Promote ADR Awareness:

- Encourage mediation, arbitration, and conciliation to resolve disputes out of court.
- *Example:* The Justice Malimath Committee advocated for strengthening ADR mechanisms.

2. Incentivize Out-of-Court Settlements:

- Reduce court fees for disputes settled through ADR.

Reducing Government Litigation

1. Simplify Government Appeals:

- Implement mechanisms to review government cases before filing appeals.

- *Example:* NITI Aayog has suggested curbing frivolous litigation by government bodies.

Enhancing Judicial Accountability

1. Set Case Disposal Targets:

- Mandate annual targets for judicial officers to prioritize old and undertrial cases.

2. Performance-Based Reviews:

- Introduce periodic evaluations of judges based on disposal rates and case handling efficiency.

Committees and Recommendations

1. Malimath Committee (2000):

- Suggested reducing vacations and increasing court working days.

2. 230th Law Commission Report (2009):

- Emphasized fast-track courts and infrastructure upgrades.

3. Second ARC (2007-09):

- Advocated for case management systems and ADR promotion.

4. Justice Venkatachaliah Commission (2002):

- Proposed increasing judicial strength and setting up an independent judicial appointment body.

Vacancies in High Courts

Delays in High Court judicial appointments exacerbate case backlogs, erode public trust, and hinder the judiciary's ability to uphold constitutional values. Nearly 40% of judicial positions in High Courts remain vacant, significantly affecting the justice delivery system.

Process of Appointment of High Court Judges

1. Recommendation by the Collegium:

- The High Court Collegium (Chief Justice of the High Court and two senior-most judges) recommends names to the Supreme Court Collegium.

2. Supreme Court Collegium Review:

- The Supreme Court Collegium reviews and forwards recommendations to the Central Government.

3. Executive Approval:

- The Central Government conducts background checks and sends the names to the President for approval.

4. Appointment:

- The President appoints the judges after consultation with the Chief Justice of India and the Governor of the concerned state (Article 217).

Issues with Delayed Appointments in High Courts

1. Short Tenures of Elevated Judicial Officers:

- Delays in elevation leave judges with limited time to serve effectively.
- *Example:* Judges nearing retirement often miss elevation opportunities due to prolonged appointment processes.

2. Undermining Article 224(1):

- Article 224(1) mandates the appointment of additional judges to handle backlogs. Delayed appointments defeat this purpose, frustrating litigants and compounding delays.

3. High Vacancies and Backlog:

- Nearly 40% of High Court judicial posts remain unfilled.
- *Example:* In 2023, High Courts like Allahabad and Bombay operated with less than 60% of their sanctioned strength, worsening pendency.

4. Politicization of Appointments:

- Lack of consensus between the judiciary and executive on Collegium recommendations delays approvals.
- *Example:* Controversial delays in appointments have occurred due to political interference.

5. Delayed Recommendations by Collegium:

- In some cases, Collegium recommendations are not sent promptly, further stalling the process.
- *Example:* In 2019, the Allahabad High Court faced a severe judge shortage due to delays in Collegium recommendations.

6. Prolonged Executive Approvals:

- Even after Collegium recommendations, the executive often delays approvals, leaving positions vacant for extended periods.

Impact of Delayed Appointments

1. Increased Case Backlogs:

- Vacancies directly contribute to over 59 lakh pending cases in High Courts.

2. Erosion of Public Trust:

- Persistent delays diminish confidence in the judiciary's ability to deliver timely justice.

3. Judicial Burnout:

- Overburdened judges face challenges in maintaining the quality of judgments.

4. Violation of "Justice Delayed is Justice Denied":

- Litigants in civil and criminal cases often face years of delays, impacting lives and livelihoods.

Solutions to Address Judicial Vacancies

1. Finalization of the Memorandum of Procedure (MoP):

- Expedite the approval of the 2016 draft MoP to streamline the appointment process.

2. Definite Timelines for Appointments:

- Introduce fixed timelines for Collegium recommendations, executive processing, and Presidential approval.
- *Example:* The Supreme Court emphasized adherence to deadlines in 2018 to avoid delays.

3. Reform the Collegium System:

- Increase transparency and accountability in the Collegium process.
- *Recommendation:* The Law Commission (2016) advocated for time-bound recommendations and prompt reconsideration of rejected names.

4. Enhanced Executive Role:

- Revive the National Judicial Appointments Commission (NJAC) with safeguards to balance judicial independence and executive participation.

5. Judicial Recruitment Office:

- Establish a centralized office to monitor vacancies, track appointments, and ensure timely recruitment.
- *Example:* The UK's **Judicial Appointments Commission** ensures efficient judicial recruitment.

6. Use of Technology:

- Digitize appointment processes to reduce bureaucratic delays and increase efficiency.

7. Better Incentives for Judges:

- Improve salaries, working conditions, and post-retirement benefits to attract talent to judicial positions.

8. Increase Retirement Age:

- Extend the retirement age of High Court judges to 70 years to retain experienced judges and reduce vacancies.
- *Example:* Venkaiah Naidu advocated this as a pragmatic solution to address delays.

Way Forward

1. Transparent and Accountable Appointment Process:

- A revised NJAC or similar model could address the Collegium's lack of transparency.
- *Recommendation*: Law Commission Report (230, 2009).

2. Improved Judicial Infrastructure:

- Investments in modern courtrooms, digitization, and case management systems are essential to complement timely appointments.
- *Recommendation*: 13th Finance Commission.

3. Promote Alternative Dispute Resolution (ADR):

- Encourage ADR mechanisms for non-complex cases to reduce court burdens.
- *Example*: Law Commission's 2009 report emphasized ADR's potential.

4. Regular Judicial Training and Capacity Building:

- Continuous training in case management and legal updates can improve judicial efficiency.
- *Recommendation*: Second Administrative Reforms Commission (ARC).

5. Public Awareness Campaigns:

- Educate citizens about ADR options to reduce reliance on formal litigation and court delays.

Examples of Best Practices

1. United Kingdom:

- The Judicial Appointments Commission ensures transparent, merit-based recruitment with minimal delays.

2. Canada:

- The Canadian Judicial Council monitors judicial performance and facilitates timely appointments.

3. Singapore:

- Combines efficient recruitment practices with technology-driven case management to avoid backlogs.

Conclusion

Delays in High Court judicial appointments hinder justice delivery and erode public trust in the legal system. Addressing these delays requires systemic reforms, clear timelines, and effective collaboration between the judiciary and the executive. As Justice R.M. Lodha aptly noted, "A responsive and effective judiciary is the cornerstone of democracy." Timely appointments and improved infrastructure are essential to uphold this principle and ensure justice for all.

PYQs:

Q1. Explain the reasons for the growth of public interest litigation in India. As a result of it, has the Indian Supreme Court emerged as the world's most powerful judiciary? [200 Words] [12.5 Marks] 2024

Answer

Public Interest Litigation (PIL) refers to legal actions initiated in courts to protect the public interest or the rights of marginalized groups. Grounded in constitutional provisions like Articles 14, 21, and 32, PILs have become a vital tool for safeguarding fundamental rights and promoting social justice.

Reasons for the Growth of Public Interest Litigation

1. Access to Justice:

- PILs empower disadvantaged groups to seek justice.
- *Example: PUCL v. Union of India (2001)*, which recognized the right to food as part of the right to life.

2. Judicial Activism:

- The judiciary's proactive role has expanded its scope.
- *Example: Vishaka v. State of Rajasthan (1997)* established guidelines against workplace sexual harassment.

3. NGO Advocacy:

- NGOs actively file PILs to address environmental and social issues.
- *Example: The Taj Trapezium Case* brought attention to environmental preservation around the Taj Mahal.

4. Constitutional Mandate:

- The judiciary acts to protect fundamental rights.
- *Example: Minerva Mills v. Union of India (1980)* strengthened the doctrine of the basic structure.

5. Broadened Locus Standi:

- The relaxation of the locus standi principle allows anyone to file a PIL for public interest.
- *Example: M.C. Mehta cases* on environmental issues.

Issues with Public Interest Litigation

1. Frivolous and Misused PILs:

- Many PILs are filed for personal or political motives, burdening the judiciary.
- *Example: PILs seeking removal of "secularism" from the Preamble* detract from serious matters.

2. Judicial Overreach:

- Excessive activism in PILs sometimes interferes with executive and legislative functions.
- *Example:* In the *Bandhua Mukti Morcha case (1984)*, criticism arose regarding the judiciary's intervention in labor laws.

3. Delay in Genuine Cases:

- Frivolous PILs divert attention from urgent cases, increasing pendency.

4. Lack of Regulation:

- Absence of a clear framework to filter genuine PILs leads to inefficiencies.

Solutions

1. Stringent Scrutiny of PILs:

- Courts should scrutinize the intent and content of PILs to avoid frivolous litigation.
- *Example:* The Supreme Court now imposes penalties for frivolous PILs to discourage misuse.

2. Guidelines for PIL Filing:

- Establish stricter criteria for admissibility, as suggested in the *Asok Pande case (2018)*.

3. Judicial Resource Allocation:

- Focus judicial resources on genuine public interest cases to address critical issues more effectively.

4. NGO Collaboration:

- Encourage collaboration with credible NGOs for filing PILs on significant matters.

Emergence of the Supreme Court as a Powerful Judiciary

1. Policy Influence:

- The Court has shaped public policy through landmark PIL judgments.
- *Example:* *M.C. Mehta v. Union of India (1986)* led to the creation of environmental laws.

2. Judicial Review:

- The Court ensures governmental accountability through judicial review.
- *Example:* *Kesavananda Bharati v. State of Kerala (1973)* asserted the basic structure doctrine.

3. Global Recognition:

- Landmark cases like *Navtej Singh Johar v. Union of India (2018)*, decriminalizing homosexuality, underscore its role in social justice.

4. Social Impact:

- PILs have addressed issues of gender equality (*Shayara Bano v. Union of India (2017)*) and environmental conservation, enhancing its global standing.

Conclusion

The rise of PILs has transformed the Indian Supreme Court into a globally recognized judicial authority, actively addressing social issues and shaping public policy. However, to preserve its effectiveness, the judiciary must regulate PILs to prevent misuse while continuing to uphold constitutional values.

Q2. Who is entitled to receive free legal aid? Assess the role of the National Legal Services Authority (NALSA) in rendering free legal aid in India. [150 Words] [10 Marks] 2023

Answer

Article 39-A of the Indian Constitution mandates free legal aid to ensure justice for all, regardless of financial or social status. The **Legal Services Authorities Act, 1987**, institutionalized this through the establishment of the **National Legal Services Authority (NALSA)**.

Criteria for Free Legal Services

1. Marginalized Communities:

- Scheduled Castes, Scheduled Tribes, women, and children are entitled to free legal aid.
- *Example:* Assistance for domestic violence victims during COVID-19.

2. Victims of Trafficking and Forced Labor:

- Specialized helplines provide support to trafficking victims.

3. Persons with Disabilities:

- Outreach programs target those with mental illness or disabilities.

4. Income-Based Eligibility:

- Individuals earning less than ₹5 lakh annually qualify for legal aid in the Supreme Court.
- *Example: Hussainara Khatoon Case* emphasized access to justice for economically weaker sections.

5. Disaster Victims:

- Legal assistance is provided to victims of natural disasters, such as during Kerala floods.

Role of NALSA

1. Accessibility and Dispute Resolution:

- Established **Lok Adalats**, resolving millions of cases.
- *Example:* Mega Lok Adalats settled over 70,000 cases in a single event in 2021.

2. Targeted Support:

- Provided legal aid to marginalized groups, including transgender individuals (*NALSA v. Union of India, 2014*).

3. Educational Outreach:

- Programs like "Legal Literacy Clubs" in schools spread awareness of legal rights.

4. Promoting ADR:

- Encouraged mediation and conciliation for faster case resolution.

Challenges

1. Resource Constraints:

- Legal aid funding was only ₹1.05 per capita in 2019, affecting service delivery.

2. Limited Outreach:

- Only 15 million people have benefited since 1995, reflecting significant gaps in accessibility.

3. Shortage of Personnel:

- 573 out of 629 secretary positions in District Legal Services Authorities remain unfilled.

4. Awareness Deficit:

- Many citizens are unaware of their entitlement to legal aid.
- *Example:* Justice P.N. Bhagwati highlighted this in the *Hussainara Khatoon Case*.

5. Social Stigma:

- LGBTQ+ individuals and domestic violence victims hesitate to seek help due to societal pressures.

6. Underutilization of ADR:

- Legal aid services address only 1% of pending cases, as per Justice U.U. Lalit.

Solutions

1. Enhanced ADR Mechanisms:

- Promote mediation and conciliation for faster and cost-effective resolutions.
- *Example:* Lok Adalats have already proven effective.

2. Increased Funding:

- Allocate more resources for better outreach and infrastructure.

3. Strengthening Awareness Campaigns:

- Partner with NGOs and civil society to educate citizens on legal aid rights.

4. Filling Vacancies:

- Ensure timely recruitment of personnel in District Legal Services Authorities.

5. Collaboration with Civil Society:

- Leverage partnerships for targeted outreach in rural and underserved areas.

Conclusion

By strengthening infrastructure, promoting ADR, and increasing awareness, **NALSA** can better fulfill its constitutional mandate of ensuring justice for all. A collaborative effort between government agencies and civil society will reinforce India's legal framework and uphold the principle of equal justice.

Q3. The most significant achievement of modern law in India is the constitutionalization of environmental problems by the Supreme Court.” Discuss this statement with the help of relevant case laws. [150 Words] [10 Marks] 2022

Answer

The Supreme Court of India has significantly constitutionalized environmental issues by interpreting **Article 21 (Right to Life)** to include the right to a clean and healthy environment. Through judicial activism and landmark judgments, it has established environmental protection as a fundamental right, shaping modern Indian environmental law.

Constitutionalization of Environmental Issues

- 1. Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh (1985):**
 - The *Dehradun Quarrying Case* marked the beginning of judicial intervention, stopping destructive limestone mining to protect fragile ecosystems.
- 2. M.C. Mehta v. Union of India (1987):**
 - The *Ganga Pollution Case* led to the closure of heavily polluting industries, holding them accountable for environmental harm.
- 3. Vellore Citizens' Welfare Forum v. Union of India (1996):**
 - Introduced the *precautionary principle* and *polluter pays principle*, making industries financially responsible for pollution.
- 4. T.N. Godavarman Thirumalpad v. Union of India (1995):**
 - Known as the *Forest Conservation Case*, the Court monitored forest management and enforced conservation laws.
- 5. Subhash Kumar v. State of Bihar (1991):**
 - Recognized the right to clean air and water as integral to the fundamental right to life under Article 21.
- 6. Delhi Air Pollution (2021):**

- The Supreme Court directed stringent actions against industrial pollution and stubble burning in Delhi-NCR, emphasizing the right to clean air.

Role of National Green Tribunal (NGT)

1. Efficient Environmental Litigation:

- The NGT provides a specialized forum for resolving environmental disputes.
- *Example:* In 2023, the NGT fined industries in Tamil Nadu for groundwater contamination, applying the *polluter pays principle*.

2. Proactive Decisions:

- *Sterlite Copper Plant Case (2018):* The NGT allowed reopening of the plant, balancing environmental protection with economic interests.

3. Focus on Sustainable Development:

- The NGT regularly enforces environmental regulations, such as the banning of single-use plastics and sand mining violations.

Issues in Environmental Litigation

1. Judicial Overreach:

- Courts and tribunals are sometimes criticized for encroaching upon the executive's domain.
- *Example:* Supreme Court's intervention in coal block allocations raised concerns about the separation of powers.

2. Lack of Implementation:

- Despite judicial orders, enforcement remains weak due to bureaucratic inefficiencies.
- *Example:* The ban on stubble burning in Punjab and Haryana has seen limited compliance.

3. Delays in Adjudication:

- Environmental cases often face delays due to procedural inefficiencies in courts and the NGT.

4. Limited Access to Justice:

- Marginalized communities face barriers in accessing environmental litigation due to high costs and lack of awareness.

Solutions

1. Strengthening NGT:

- Increase resources, expand jurisdiction, and ensure quicker enforcement of orders.

2. Strict Compliance Mechanisms:

- Monitor and penalize non-compliance with judicial directives.

- *Example:* Enforcing penalties for non-compliance in air quality improvement measures in Delhi.

3. Public Participation:

- Promote awareness and involve local communities in environmental decision-making.
- *Example:* Community-led afforestation projects monitored by the NGT.

4. Expedited Case Handling:

- Fast-track environmental cases in both the Supreme Court and NGT.

5. Collaborative Governance:

- Enhance coordination between the judiciary, executive, and legislature for effective environmental governance.

Conclusion

The Supreme Court's proactive role has transformed environmental litigation in India, embedding ecological preservation within constitutional rights. By integrating principles like sustainable development and judicially mandated accountability, the Court has reinforced its position as a global leader in environmental jurisprudence. Strengthening institutions like the NGT and addressing litigation inefficiencies will ensure that India continues to balance development with environmental sustainability.

Q4. Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of a large number of public interest petitions praying for issuing guidelines to executive authorities. [250 Words] [15 Marks] 2020

Answer

The doctrine of separation of powers, enshrined in the Indian Constitution, ensures that the legislature enacts laws, the executive implements them, and the judiciary interprets them. However, the judiciary's proactive interventions, especially through **Public Interest Litigations (PILs)**, have often blurred these lines to address governance lapses and uphold constitutional rights.

PIL as an Instrument of Judicial Legislation

PILs have enabled the judiciary to take an active role in social justice and governance. Prominent cases include:

1. Environmental Protection:

- *M.C. Mehta v. Union of India (1987):* The Court ordered the closure of polluting industries along the Ganga River, emphasizing accountability for environmental harm.
- *Dehradun Quarrying Case (1985):* The Court halted limestone mining, setting a precedent for judicial activism in ecological preservation.

2. Social Justice:

- *Vishaka v. State of Rajasthan (1997)*: Established workplace sexual harassment guidelines in the absence of legislation.
- *Shayara Bano v. Union of India (2017)*: Declared triple talaq unconstitutional, upholding gender equality.

3. Right to Livelihood and Housing:

- *Olga Tellis v. Bombay Municipal Corporation (1985)*: Linked the right to livelihood with the right to life under Article 21.
- *Chameli Singh v. State of Uttar Pradesh (1996)*: Recognized the right to shelter as a fundamental right.

4. Human Rights and Privacy:

- *Puttaswamy v. Union of India (2017)*: Affirmed privacy as a fundamental right.
- *Bandhua Mukti Morcha v. Union of India (1984)*: Addressed bonded labor and the right to dignity.

Judicial Activism in Recent Cases

1. Environment and Pollution Control:

- *Delhi Air Pollution Case (2021)*: Directed the implementation of the Graded Response Action Plan (GRAP) to combat air pollution.
- *Sterlite Copper Plant Case (2018)*: The NGT and Supreme Court reviewed the balance between industrial activity and environmental sustainability.

2. COVID-19 Pandemic:

- *Oxygen Supply Crisis (2021)*: The judiciary ensured equitable oxygen distribution during the pandemic when executive systems faltered.
- *Migrant Workers (2020)*: Directed the government to provide transportation, food, and shelter to stranded migrant workers during the lockdown.

3. Pegasus Spyware Case (2022):

- The Supreme Court ordered an inquiry into government surveillance allegations, safeguarding privacy and democratic accountability.

4. Labor Rights:

- *Factory Workers' Safety PILs (2021)*: Addressed safety violations in industrial workplaces.

5. Transgender Rights:

- *NALSA v. Union of India (2014)*: Recognized transgender individuals' rights as part of the fundamental right to equality.

Justification for Judicial Proactiveness

1. Legislative and Executive Inaction:

- **Delays or Failures:**

- The judiciary steps in when governance fails to act on pressing issues.
- *Example:* During the COVID-19 oxygen crisis, the judiciary issued directives to the executive to ensure healthcare access.

- **Lack of Laws:**

- The absence of adequate legislation often compels courts to issue guidelines.
- *Example:* *Vishaka Guidelines* addressed sexual harassment in the absence of a statutory framework.

2. Increased Awareness and Access to Justice:

- **Empowerment of Marginalized Groups:**

- PILs provide a voice to those who lack representation.
- *Example:* *PUCL v. Union of India (2001)* recognized the right to food as fundamental.

- **NGO and Citizen Advocacy:**

- Civil society participation has bolstered PIL filings, addressing wide-ranging issues like pollution, labor rights, and housing.
- *Example:* NGOs played a significant role in the *Taj Trapezium Case (1996)*, highlighting industrial pollution.

3. Public Expectations and Accountability:

- Courts are seen as guardians of constitutional rights when executive accountability is questioned.
- *Example:* The Pegasus case addressed public concerns over privacy and surveillance.

4. Dynamic Governance Needs:

- The judiciary adapts to evolving socio-economic realities to protect rights.
- *Example:* The *Navtej Singh Johar v. Union of India (2018)* judgment decriminalized homosexuality, reflecting changing societal values.

Issues in Judicial Legislation

1. Judicial Overreach:

- Courts are sometimes seen as overstepping their mandate, encroaching on the executive's domain.
- *Example:* The firecracker ban raised concerns over bypassing legislative policymaking.

2. Frivolous PILs:

- Increasing misuse of PILs for personal or political motives burdens the judiciary.

- *Example:* The Juhi Chawla 5G lawsuit was dismissed as frivolous and fined for wasting judicial time.

3. Enforcement Challenges:

- Even when courts issue orders, the lack of effective implementation undermines their impact.
- *Example:* Limited compliance with orders to curb stubble burning in Punjab and Haryana.

4. Strain on Judicial Resources:

- The growing number of PILs adds to judicial pendency and diverts resources from other critical cases.

Solutions

1. Balanced Judicial Activism:

- Courts should intervene only when governance fails, avoiding unnecessary overreach.

2. Stricter Scrutiny of PILs:

- Establish clear criteria for admitting PILs to filter frivolous cases.
- *Example:* Guidelines in *Asok Pande v. Supreme Court of India (2018)* emphasize proper scrutiny.

3. Strengthening Executive Accountability:

- Improve governance to reduce reliance on judicial interventions.
- *Example:* Enhancing pollution control mechanisms to prevent judicial action like in the *Delhi Air Pollution Case*.

4. Monitoring Implementation:

- Set up mechanisms to ensure compliance with judicial directives.
- *Example:* Regular monitoring of stubble-burning penalties.

5. Public Awareness Campaigns:

- Educate citizens about responsible PIL use and alternate mechanisms like Lok Adalats.

6. Strengthening Governance Institutions:

- Empower the executive and legislature to address gaps effectively, minimizing judicial interventions.

Conclusion

Judicial legislation via PILs has filled critical governance gaps and upheld constitutional rights, particularly for marginalized groups. However, the judiciary must exercise restraint to maintain the doctrine of separation of powers. By balancing activism with caution, the

courts can continue to act as vital protectors of justice while fostering accountability in other branches of government.

Q5. Discuss the desirability of greater representation to women in the higher judiciary to ensure diversity, equity and inclusiveness. [150 Words] [10 Marks] 2021

Answer

Increasing women's representation in the higher judiciary is crucial to ensuring diversity, equity, and inclusiveness in India's justice system. The current underrepresentation of women limits the judiciary's ability to address gender-sensitive issues and deliver equitable justice.

Current State of Women in Indian Judiciary

1. Supreme Court:

- Out of 34 judges, only 4 are women (2023), marking progress but still inadequate.

2. High Courts:

- Women make up approximately 12% of judges in High Courts, with some states having negligible representation.
- *Example:* Gujarat and Bihar High Courts have historically low numbers of female judges.

3. District Courts:

- Women constitute around 35% of judges, reflecting better representation at lower levels than higher judiciary.

Importance of Greater Representation

1. Enhancing Judicial Diversity:

- Diverse perspectives enrich judicial interpretation and decision-making.
- *Example:* The *Vishaka Guidelines (1997)* against workplace harassment showcased the importance of addressing gender-sensitive issues.

2. Upholding Gender Equity and Representation:

- Increased representation ensures the judiciary reflects societal gender composition and democratic values.
- *Example:* Justice B.V. Nagarathna is poised to become the first female Chief Justice of India in 2027, symbolizing progress.

3. Improving Access to Justice for Women:

- Gender-balanced judiciary ensures sensitivity in cases involving women.
- *Example:* The *Sabarimala Temple Case (2018)* reaffirmed women's constitutional rights and was a landmark for gender equality.

4. Strengthening Public Trust:

- Representation fosters trust among women seeking justice.

- *Example:* Increased confidence in cases involving sexual harassment and domestic violence.

5. Tackling Gender-Specific Issues:

- Female judges bring lived experiences, enhancing empathy in cases like reproductive rights and workplace equality.

Challenges to Women's Representation

1. Institutional Barriers and Social Bias:

- Cultural biases, gender stereotyping, and unequal opportunities hinder women's rise in judiciary.
- *Example:* Women advocates face discrimination and limited mentorship in male-dominated legal practices.

2. Promotion Pathways:

- Lack of transparent promotion criteria limits women's progression to higher judiciary.

3. Limited Appointments:

- Despite calls for diversity, appointments remain skewed in favor of men.
- *Example:* Collegium recommendations often lack a gender-sensitive approach.

4. Inadequate Infrastructure:

- Courts often lack support systems like childcare facilities, affecting women's ability to balance career and family responsibilities.

5. Societal Perceptions:

- Women in leadership roles face skepticism about their ability to handle high-profile cases, further delaying their elevation.

Solutions to Increase Representation

1. Gender-Sensitive Collegium Recommendations:

- Ensure greater inclusion of women in Collegium recommendations for High Court and Supreme Court appointments.

2. Mentorship Programs:

- Introduce initiatives to mentor and support female advocates in progressing toward judicial leadership roles.
- *Example:* Similar programs in the United Kingdom's judiciary have helped promote women.

3. Transparent Recruitment and Promotion Policies:

- Establish objective, merit-based criteria that prioritize diversity in appointments.

4. Infrastructure Development:

- Provide facilities like childcare centers in court complexes to support working mothers.

5. Increased Quotas in Judiciary:

- Introduce gender quotas in judicial appointments, as practiced in countries like Sweden and Norway, where women make up nearly half of the judiciary.

6. Awareness Campaigns:

- Educate the legal fraternity on the importance of gender diversity and equity.

7. Government-Led Initiatives:

- The government should promote targeted schemes to encourage women's entry and growth in the judiciary.
- *Example:* Scholarships and grants for women pursuing legal education.

Recent Examples of Women in Judicial Leadership

1. Justice Hima Kohli and Justice Bela Trivedi:

- Recent appointments to the Supreme Court highlight progress toward gender equity.

2. Justice Leila Seth:

- As the first woman Chief Justice of a High Court, she set a benchmark for women in leadership.

3. Delhi High Court's Progressive Judgments:

- Women judges have actively contributed to landmark rulings on gender equality and workplace rights.

Conclusion

Greater representation of women in the higher judiciary is indispensable for fostering a fair, equitable, and inclusive judicial system. Gender-balanced courts not only reflect societal diversity but also bring sensitivity and empathy to judicial processes, ensuring justice for all. Institutional reforms, gender-sensitive recruitment, and supportive infrastructure are critical to bridging the gender gap in India's judiciary. Continued efforts will pave the way for a more inclusive and representative judiciary that upholds democratic ideals and constitutional values.

Q6. From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of Federal Supremacy' and 'Harmonious Construction' have emerged. Explain. [150 Words] [10 Marks] 2019

Answer

The Indian Constitution provides a federal structure by dividing legislative powers between the Union and states through the **Seventh Schedule**, which comprises the Union, State, and Concurrent Lists. Despite this, conflicts over legislative domains arise, necessitating judicial intervention. Courts employ various principles, including **Federal Supremacy**,

Harmonious Construction, and doctrines like **Pith and Substance**, to resolve disputes and uphold the federal balance.

Principles and Doctrines in Resolving Legislative Conflicts

1. Principle of Harmonious Construction

This principle ensures that Union and State laws coexist without conflict, fostering cooperation and preserving legislative autonomy.

- **Case Example:** *Shri Krishna Rangnath Mudholkar v. Gujarat University (1963)*
The Court upheld the state's right to legislate on education (State List) while ensuring it complied with Union laws on higher education (Union List).
- **Water Disputes:**
Inter-state water disputes like the **Cauvery Water Dispute (2018)** were resolved by balancing state-specific needs under Article 262 with national interests.
- **COVID-19 Pandemic:**
The judiciary harmonized central disaster management guidelines with states' autonomy under the Public Health Act, ensuring a balanced approach.

2. Principle of Federal Supremacy

When legislative conflicts persist, the Union law prevails under **Article 254**, ensuring national coherence.

- **Case Example:** *State of West Bengal v. Union of India (1962)*
The Supreme Court upheld the Centre's power to acquire land under Union authority, emphasizing national importance.
- **CBI Jurisdiction:**
The Centre's authority under the Delhi Special Police Establishment Act (DSPE) often overrides state objections.
 - *Example:* In *Manohar Lal Sharma v. Union of India (2014)*, the Court upheld the Centre's power to extend CBI jurisdiction into state matters.
- **NIA Jurisdiction:**
The **National Investigation Agency (NIA) Act** ensures central control over terrorism-related cases, reinforcing federal supremacy.
 - *Example:* The Act was upheld for overriding state objections on jurisdiction over terrorism cases.

3. Doctrine of Pith and Substance

This doctrine is applied when laws enacted by one legislature encroach upon the domain of another. It determines the "true nature" of legislation to resolve conflicts.

- **Case Example:** *State of Bombay v. F.N. Balsara (1951)*
The Supreme Court upheld a state prohibition law even though it incidentally affected Union powers on trade and commerce.
- **Farm Laws (2020):**
Though agriculture is a State List subject, the Centre justified the laws under its inter-state trade powers in the Union List, invoking the pith and substance doctrine.

4. Doctrine of Colourable Legislation

This doctrine prevents legislatures from enacting laws that violate the constitutional division of powers under the guise of their authority.

- **Case Example:** *K.C. Gajapati Narayan Deo v. State of Orissa (1953)*
The Court invalidated state laws that attempted to bypass constitutional limitations.

5. Doctrine of Repugnancy

When a conflict arises between laws made by the Centre and states on matters in the Concurrent List, Union law prevails under **Article 254**.

- **Case Example:** *M. Karunanidhi v. Union of India (1979)*
The Supreme Court upheld the Centre's power when state laws contradict Union laws in the Concurrent List.
- **Environmental Laws:**
Union laws on pollution control override state laws to ensure uniform national standards.

Judiciary's Role in Resolving Federal Conflicts

1. Water Disputes:

- Resolved under Article 262, the judiciary has balanced inter-state water needs while enforcing national frameworks.
- *Example:* The **Cauvery Water Dispute** judgment allocated water between Karnataka and Tamil Nadu, maintaining federal harmony.

2. Concurrent List Disputes:

- Health and education fall under the Concurrent List, often leading to conflicts.
- *Example:* In *Chandrakumar v. Union of India (1997)*, the Court allowed coexistence of state and central administrative tribunals.

3. Jurisdictional Disputes under Article 131:

- States often invoke Article 131 for disputes with the Centre.
- *Example:* Kerala challenged the Citizenship (Amendment) Act (CAA) as violating federal principles.

4. Environmental Federalism:

- Union laws on the environment often override state laws to enforce uniform standards.
- *Example:* The Supreme Court directed compliance with Union air quality laws in the Delhi-NCR region.

Significance of the Principles

1. Federal Supremacy

- Maintains national coherence on critical issues like defense, environment, and inter-state trade.

- *Example:* Farm laws invoked inter-state trade powers to address agricultural reforms nationally.

2. Harmonious Construction

- Promotes cooperative federalism by enabling Union and State laws to coexist.
- *Example:* Health measures during COVID-19 balanced the Disaster Management Act (Union) and Public Health Acts (State).

3. Pith and Substance

- Prevents conflicts by focusing on the core subject of legislation, enabling laws to address broader issues effectively.
- *Example:* State laws on land use often intersect with Union laws on industrial development but are upheld for their primary intent.

Way Forward

1. Strengthening Institutional Mechanisms:

- **Inter-State Council (ISC):** Revive ISC for regular resolution of inter-state disputes like **Ravi-Beas and Cauvery issues**.
- **Zonal Councils:** Empower councils for regional cooperation in health, education, and infrastructure.

2. Revisiting the Seventh Schedule:

- **Concurrent List Review:** Define overlapping areas like health and education to ensure clarity.
- **Decentralization:** Delegate powers to states for regional matters like agriculture.

3. Strengthening Financial Federalism:

- **Equitable Resource Allocation:** Enhance state control over GST and Finance Commission allocations.
- **Revenue Autonomy:** Allow states more flexibility to generate revenue locally.

4. Judiciary's Role in Federal Disputes:

- **Specialized Benches under Article 131:** Fast-track cases on inter-state disputes like CBI jurisdiction and NIA intervention.
- **Harmonious Construction:** Balance central and state powers, as seen in **COVID-19 guidelines** and **Sabarimala Temple case**.
- **Enforcement of Judicial Orders:** Ensure compliance in issues like water sharing.

5. Improving Governance through Collaboration:

- **Joint Task Forces:** Collaborate on national issues like pollution control and disaster management.
- **Stakeholder Consultation:** Include states in formulating laws like farm policies to avoid conflicts.

6. Promoting Dialogue-Based Solutions:

- Regular Centre-state dialogues to foster trust in contentious areas like inter-state water disputes and NIA jurisdiction.

7. Leveraging Technology for Coordination:

- Use e-platforms for transparency in Centre-state financial and legislative matters.
- Example: Real-time data sharing on river disputes.

8. Judicial Review with Restraint:

- Avoid judicial overreach while upholding federal principles, as in *State of West Bengal v. Union of India (1962)*.

9. Emphasizing Cooperative Federalism:

- Recognize states' unique challenges and needs while promoting uniform national standards.
- Enhance public awareness of cooperative federalism through education and campaigns.

Conclusion

A strengthened judiciary, clear frameworks for cooperation, and inclusive governance mechanisms can reinforce cooperative federalism. By balancing autonomy and national interest, India can ensure its federal structure meets diverse and evolving needs while maintaining constitutional harmony.

Q7. Critically examine the Supreme Court's judgment on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India. [150 Words] [10 Marks] 2017

Answer

The Supreme Court struck down the **99th Constitutional Amendment** and **NJAC Act, 2014**, citing a violation of the **Basic Structure Doctrine**, particularly judicial independence. While it upheld judicial primacy, the decision highlighted flaws in the existing Collegium system.

Issues with NJAC

1. Compromising Judicial Independence:

- Inclusion of the executive and non-judicial members risked external pressures, threatening impartiality.

- *Example:* NJAC could have allowed political influence in appointments.
- 2. **Dilution of Judicial Primacy:**
 - Veto power for non-judicial members weakened the judiciary's role in appointments.
 - *Precedents:* **Second Judges Case (1993)** and **Third Judges Case (1998)** affirmed judicial primacy.
- 3. **Violation of Basic Structure:**
 - Judicial independence is a cornerstone of the Constitution's basic structure and non-negotiable under **Articles 124 and 217**.
- 4. **Potential Executive Overreach:**
 - Involvement of the executive could have led to appointments influenced by political considerations.

Criticisms of the NJAC Judgment

1. **Favoring an Extra-Constitutional Forum:**
 - The judgment upheld the Collegium system, which is not explicitly mentioned in the Constitution, over a Parliament-approved framework, raising concerns about democratic accountability.
2. **Ambiguity in Judicial Primacy:**
 - The Court did not clearly reconcile judicial primacy with the Constitution's provisions granting the President the authority to appoint judges after consultation.
3. **Misinterpretation of "Consultation":**
 - Interpreting "consultation" in Articles 124 and 217 as "concurrence" limited the executive's role, deviating from the intended checks and balances.
4. **Collegium Flaws Acknowledged but Unresolved:**
 - The Court recognized issues like opacity and lack of accountability in the Collegium system but failed to propose immediate solutions.

Need for NJAC

1. **Transparency and Accountability:**
 - Collegium lacks formal criteria for appointments, fostering opacity.
 - *Example:* Non-disclosure of reasons for selections undermines trust.
2. **Checks and Balances:**
 - Including the executive ensures broader oversight in judicial appointments.
3. **Merit-Based Selections:**
 - A structured body like NJAC could prevent arbitrary decisions.
4. **Public Confidence:**
 - A transparent system builds public trust in judicial integrity.

Way Forward

1. **Reforming Collegium System:**
 - Introduce formal criteria, document reasons, and publish decisions.
 - *Example:* Similar reforms have been effective in the UK's Judicial Appointments Commission.
2. **Balanced NJAC Framework:**

- Revive NJAC with safeguards to prevent political interference while preserving judicial independence.
- 3. **Independent Commission:**
 - Establish a transparent body with balanced representation from judiciary, executive, and civil society.
- 4. **Periodic Review:**
 - Conduct periodic evaluations to ensure fairness in appointments.
- 5. **Promoting Diversity and Merit:**
 - Ensure representation of marginalized groups and focus on merit-based selections.
- 6. **Judicial Training and Accountability:**
 - Strengthen judicial ethics and accountability mechanisms to enhance trust.

Conclusion

The Supreme Court's verdict on NJAC reaffirmed judicial independence but left the opaque Collegium system intact. Reforms combining judicial autonomy, transparency, and balanced oversight are essential to ensure efficient, fair, and trusted judicial appointments.

8. What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution? [200 Words] [12.5 Marks] 2016

Answer

The **I.R. Coelho v. State of Tamil Nadu (2007)** case reaffirmed the significance of **judicial review** as a fundamental feature of the Indian Constitution. The Supreme Court emphasized the doctrine of the **Basic Structure** and clarified that laws placed in the **Ninth Schedule** are not immune from judicial scrutiny if they violate constitutional principles.

Key Points from the Coelho Case

1. **Judicial Review Affirmed:**
 - The Court held that judicial review extends to laws placed in the Ninth Schedule after **April 24, 1973** (Kesavananda Bharati judgment date).
 - *Example:* Laws infringing upon fundamental rights, such as property rights or equality, can be challenged even if protected under the Ninth Schedule.
2. **Reinforcement of Basic Structure:**
 - Laws violating the Basic Structure, such as secularism, democracy, or judicial independence, can be invalidated.
 - *Example:* Land reform laws in the Ninth Schedule were examined for conformity with the Basic Structure.
3. **Protection of Fundamental Rights:**
 - Ensures that amendments or laws cannot undermine citizens' rights, even under the Ninth Schedule.
 - *Example:* Safeguards rights under **Article 14 (Equality)** and **Article 21 (Life and Liberty)**.
4. **Curtailing Legislative Overreach:**
 - The judiciary retains authority to prevent misuse of constitutional mechanisms like the Ninth Schedule to bypass judicial scrutiny.

5. Strengthening Constitutional Supremacy:

- The judgment reaffirmed that constitutional principles take precedence over legislative intentions.

6. Evolution of Judicial Review:

- The case demonstrated the judiciary's evolving role in upholding constitutional values amidst legislative challenges.

Importance of Judicial Review as a Basic Feature

1. Checks and Balances:

- Judicial review ensures equilibrium among the executive, legislature, and judiciary.
- *Example:* Striking down arbitrary executive decisions like in **Maneka Gandhi v. Union of India (1978)**.

2. Protection of Fundamental Rights:

- Guards against laws that infringe upon basic rights.
- *Example:* Striking down the NJAC for violating judicial independence.

3. Safeguarding the Basic Structure:

- Prevents amendments that dilute essential features of the Constitution.
- *Example:* **Kesavananda Bharati v. State of Kerala (1973)** established the Basic Structure doctrine.

4. Preservation of Democracy:

- Acts as a barrier against authoritarianism by limiting legislative and executive overreach.
- *Example:* The judiciary's role during the **Emergency (1975-77)** reaffirmed judicial review's necessity.

5. Constitutional Supremacy:

- Ensures laws comply with constitutional principles.
- *Example:* Invalidating unconstitutional reservations in **Indra Sawhney v. Union of India (1992)**.

6. Adapting to Modern Challenges:

- Judicial review helps address evolving socio-political and economic challenges.
- *Example:* Declaring privacy as a fundamental right in **Puttaswamy v. Union of India (2017)**.

Conclusion

The **Coelho judgment** solidified judicial review as an integral feature of the Indian Constitution, ensuring that no law, even those in the Ninth Schedule, can violate the **Basic Structure**. By protecting citizens' rights, maintaining checks and balances, and reinforcing constitutional supremacy, judicial review remains essential to preserving India's democratic and constitutional framework.