Judiciary

Key pointers

1. Given the potential economic and social multipliers of a well functioning legal system, reforming it should be given top priority bypolicy 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 deterring crime and punishing wrong doers.
2. **Challenges in our criminal justice system**
    1. **Judiciary**
        1. 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 Indiais 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 inthe 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 theSupreme 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 respectfor 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 organsof our democracy. The role, powers and actions of these three are demarcated in the constitution. Problems arise when they interfere ineach other's 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, institutionalization of PIL has strengthened fundamental rights. SC sought early conclusion and reformative steps for under-trails 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 delayin 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 issuesto 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 goes 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 is already have 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 popularwill 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 bebeyond 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 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 falls 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 recommendedwill 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 independenceof judiciary and the decisions as judges would be apprehensive ofpublic pressure.

5. In a democracy, no institution is above public scrutiny. There is a needto 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 hamperingthe 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 actis 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 andreducing 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 triesto 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 onhis 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'tapproach 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 bought 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-trails 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 onsexual 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 courtsdue 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 erringin 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 frontfor 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 JusticeBhagwati 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 timeand 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 ofSC 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 judgesetc.
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 litigationin 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 litigationpolicy.

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 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 ineach 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. Ithas 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 justiceand 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 inlaw 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 Adalatby 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 trifle disputes.

Arbitration

1. 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-trails 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 a expedite manner.
    2. Arbitration and conciliation act 1996 provides for negotiation, re-conciliation & 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 incase 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 andcited 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. Politicalinterests have adopted defamation laws to settle scores.
    2. There is an adequate civil remedy against defamation which canbe 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 uponstates 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'slife.
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 andArticle 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 innocentin 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 bythe Government.
    3. Huge delays in judiciary have 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 tothe likely period of imprisonment is a poor commentary on a system beset by delay. The sooner this is addressed, the better it isfor the administration of criminal justice.

All India Judicial Services

1. Concept of Indian Judicial Service (IJS)

- The Indian Judicial Service is a proposed All India Service (like IAS, IPS, IFS) for recruiting judges to the subordinate judiciary (district courts and below) through a national-level exam.
- Idea: To create a uniform, merit-based, transparent recruitment process for the lower judiciary instead of the present system where states recruit separately under the control of High Courts.

2. Current Recruitment System

- Articles 233 & 234 of the Constitution: District Judges are appointed by the Governor in consultation with the High Court; other judges are appointed by the Governor based on High Court + State Public Service Commission recommendations.
- Presently:
  - District Judge (Entry Level) – Through Higher Judicial Service (HJS) exam by respective High Courts.
  - Civil Judge / Judicial Magistrate (Entry Level) – Through State Judicial Service (PCS-J) conducted by State Public Service Commissions or High Courts.
- Recruitment process, syllabus, and standards vary widely across states.

3. Background & Evolution of IJS Idea

- 1958: Law Commission (14th Report) first recommended an All India Judicial Service.
- 1976: 42nd Constitutional Amendment inserted Article 312(1) allowing creation of IJS by Parliament.
- 1990s–2000s: SC in *All India Judges Association v. Union of India* (1992, 1993, 2002) supported IJS to bring uniformity in recruitment and improve quality.
- 2006 onwards: Union Government, Law Commission (116th Report), NITI Aayog, and Parliamentary Committees have pushed the idea.
- Still not implemented due to resistance from High Courts & states.

4. Arguments in Favour

1. Uniform Standards – Same exam ensures consistency in quality of judges.
2. Merit-based Selection – Transparent recruitment reduces nepotism and delays.
3. Solve Vacancy Crisis – Over 5,000+ subordinate judicial posts are lying vacant (as per 2024 data).
4. National Talent Pool – Attract bright young law graduates across India.
5. Promotes Efficiency – Judicial service officers can rise through promotions, reducing dependency on lateral High Court appointments.

5. Arguments Against

1. Federalism Issue – States see it as encroachment on their power (since judiciary is state subject for lower courts).
2. High Court's Autonomy – Articles 233–234 give High Courts primacy in judicial appointments; IJS may dilute this.
3. Language Barrier – State judiciary requires knowledge of local laws & regional languages, difficult in a centralised system.
4. One-size-fits-all Problem – Different states have different laws (esp. land, tenancy, customs).
5. Practical Implementation – Who will conduct the exam? Who will control service? Still unclear.

6. Judicial & Government Position

- Supreme Court: Favoured IJS but also highlighted need for consensus of states.
- Union Government: Supports creation of IJS, but has not been able to implement due to opposition from states.
- High Courts: Many oppose citing loss of control and regional language issues.
- States: Some like Haryana, Rajasthan support; others like Tamil Nadu, West Bengal oppose strongly.

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.

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 require 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 leadto arbitrary and inconsistent decisions.
    2. Tribunals are entirely dependent on their nodal ministries for theirday-to-day functioning. These ministries can compromise the functioning of the tribunal by providing inadequate resources withthe 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 ithas 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 bespelt 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 asadopted 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. There is reduction of number of Tribunal. 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 tobe 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, salariesand 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 thewebsite 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 ahigh court.
3. The MoP states that up to three judges in the supreme court needto 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 ofthe 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 andjudiciary.

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 retiredjudges.
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 leftout 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. 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 willlead 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.