

**UPSC**  
**NCERT Summary**  
**Political Debate- 3**

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## **JUDICIAL REVIEW**

- Law will not be in force until an amendment of the constitution relating to the same matter.
- In such situation the provision of that law will again come into force, if it is compatible with the constitution as amended. This is called the Theory of Eclipse.
- In a similar manner, laws made after adoption of the Constitution by the Constituent Assembly must be compatible with the constitution, otherwise the laws and amendments will be deemed to be void-ab-initio.
- Judicial review is actually adopted in the Indian constitution from the constitution of the United States of America. In the Indian constitution, Judicial Review is dealt under Article 13. Judicial Review actually refers that the Constitution is the supreme power of the nation and all laws are under its supremacy. Article 13 deals that
- All pre-constitutional laws, after the coming into force of constitution, if in conflict with it in all or some of its provisions then the provisions of constitution will prevail and the provisions of that pre-constitutional.

## **IMPACT OF THE 42ND AMENDMENT**

The 42nd Amendment enacted during the Emergency made far-reaching changes to curtail the powers of the courts and to make the Parliament sovereign. Firstly, the 42nd Amendment stated that no amendment to the Constitution could be questioned in a Court of Law. And “for the removal of the doubts, it is hereby declared that there shall be no limitation what ever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this constitution.” In this manner, through this Amendment the Supreme Court’s power to judicial review of constitutional amendments was taken away to establish the complete and total sovereignty of Parliament. The Amendment stated that:

- A High Court cannot pronounce invalid any Central law,

- The Supreme Court shall not pronounce a State law as unconstitutional unless a Central law has also been challenged.

Further, the minimum number of judges of the Supreme Court who shall sit to determine the constitutional validity of any Central or State law shall be seven and in the case of High Court, five. It was also stated that a majority of not less than two-thirds of the judges hearing such a case must agree before a law is declared invalid. But after this the 43rd Amendment was passed which restored the pre-emergency position of the Supreme Court's power of judicial review over laws passed by state legislatures and Parliament.

- As far as Parliament's sovereignty with regard to amending the Constitution is concerned, there is no change. The power of Parliament to amend the Constitution exists as under the 42nd Amendment.
- The judgment of the Supreme Court in the *Minerva Mills* case in May 1980 was a setback to the position of unlimited powers claimed by the Parliament to amend any part of Constitution. This judgment recognized only limited powers of the Parliament to amend the Constitution without altering the basic structure.
- In such situations, the Supreme Court or High Court interprets the laws as if they are in conformity with the constitution. If such an interpretation is not possible because of inconsistency, and where a separation is possible, the provision that is inconsistent with constitution is considered to be void. In addition to article 13, articles 32, 124, 131, 219, 226 and 246 provide a constitutional bases to the Judicial review in India.
- The Indian Constitution has not recognized the doctrine of separation of powers in its absolute form but the functions of the different organs have been clearly differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ of the functions that essentially belongs to another.
- Though the Constitution has adopted the parliamentary form of government, where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.
- The Judiciary plays a very important role as a protector of the constitutional values that the founding fathers have given us. They try to undo the harm that is being done by the legislature and the executive and also they try to provide every citizen what has been promised by the Constitution under the Directive Principles of State Policy.
- In such type of situations Supreme Court or High Court interprets the law as if they are in conformity with constitution or not. If find it not in conformity, they declare it either whole & if possible to separate, then

only that much of provision to be void which are inconsistent with that of the Constitution.

- Judicial review in India comprises of three aspects: judicial review of legislative action, judicial review of judicial decisions and judicial review of administrative action. The judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it.
- It is they who have to ensure that, the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of functions, transgress constitutional limitations. Thus, judicial review is a highly complex and developing subject.
- Judicial review has its roots long back and its scope and extent varies from case to case. It is considered to be the basic feature of the Constitution.
- The court in its exercise of its power of judicial review would zealously guard the human rights, fundamental rights and the citizens' rights of life and liberty as also many nonstatutory powers of governmental bodies as regards their control over property and assets of various kinds, which could be expended on building, hospitals, roads and the like, or overseas aid, or compensating victims of crime.

## **JUDICIAL REFORM IN INDIA**

- The institution of judiciary and the rule of law is the essence of modern civilization and democratic governance. It is important that people's faith in judiciary and the rule of law is not only preserved but enhanced as well and simple way to achieve that is by ensuring an effective system of justice delivery.
- For decades judicial system has been crying for reforms as the cheap and speedy justice has been by and large elusive.
- There is a huge pendency of over 2.5 crore cases despite measures to reduce it. Experts have expressed fears that there has been a loss of public confidence in the judiciary, and an increasing resort to lawlessness and violent crime to settle disputes. They feel, that public confidence in the judiciary must be restored immediately, in order to arrest and reverse this negative trend.
- Over the last five decades various legally constituted/government authorities such as the Law Commission of India, Parliamentary Standing Committees, and other government appointed Committees, several benches of the Supreme Court, eminent lawyers and judges, various legal associations/ organizations and NGOs have identified problems in the judicial system and called for addressing them speedily.

- Yet, the effective implementation of many such recommendations is still pending. According to one of the Parliamentary Standing Committee on Home Affairs (2001) almost 50% of the reports of the Law Commissions awaited implementation.
- The poor budgetary support to the judiciary has been alluded to as one of the reasons for non-implementation of judicial reforms. Rs.700 crore allocated to the judiciary during the 10th Plan (2002-2007) constituted 0.078 percent of the total plan outlay of Rs. 8,93,183 crore. During the Ninth Plan the allocation was even less, only 0.071 percent.
- It has been observed that such meager allocations are too inadequate to meet the requirements of the judiciary. It is said that India spends just 0.2 percent of the gross national product on judiciary. According to the first National Judicial Pay Commission, all states but one have been providing less than 1% of their respective budgets for subordinate judiciary which is afflicted with huge pendency.
- But, lack of resources cannot be a reason for denying justice or any other fundamental right to most citizens, especially the disadvantaged sections, who “have limited access to justice, due to unclear laws and high costs that act as effective barriers”.
- Observing that ‘justice delayed is justice denied’ in P. Ramachandra Rao v. State of Karnataka (2002), a Constitution Bench of the Supreme Court reiterated from Hussainara Khatoon case that “It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the preamble of the Constitution as also from the directive principles of State policy.
- It is high time that the Union of India and the various States realize their constitutional obligation and do something ‘concrete in the direction of strengthening the justice delivery system.”
- Other major factors include neglect in improving judicial infrastructure over the past decades, inordinate delays in filling up vacancies of judges and very low population-to-judge ratio that require immediate attention to improve the performance of judiciary.
- The 120th Law Commission Report had pointed out that India’s population-to-judge ratio is one of the lowest in the world with only 10 judges for every million of its population as compared to about 150 judges for the same number in the United States and Britain. According to the ‘All India Judges’ Association’, the Supreme Court had directed the government to increase the judge strength to 50 judges per 10 lakh population by 2007 in a phased manner, which has not been fulfilled so

far. Even for filling up of vacancies of approved strength of judges much needs to be done.

- It is observed that 25 percent of the judge positions remain vacant due to procedural delays. The sanctioned strength of judges of the High Courts was 886 and working strength was 608 as on 6th January 2009 leaving 278 vacancies. Similarly, with 11,767 working strength of Subordinate Judges there were 2710 vacancies. on March 1, 2007.
- The E-enabling will help the courts to function more efficiently and speed up the disposal of cases. It would also network these courts with the higher courts and thus facilitate greater accountability.
- Another centrally sponsored scheme for development of infrastructure facilities including setting up of court buildings and residential accommodation for the judicial officers is under operation since 1993-1994. Rs. 286.19 crore were released to the States from 2006-07 to 2008-09 under this scheme. The outlay for the judiciary during the 11th Plan has been sought on the basis a perspective plan having projections of such requirements over a ten year period.
- Meanwhile, the disposal of cases can be increased by greater use of the existing infrastructure with courts having more than one shift. Gujarat is one of the states where evening courts are functioning with appreciable results.
- Fast Track Courts (FTC) recommended by 11th Finance Commission have also proved effective in addressing pendency. Keeping this in mind the government has already extended the term of 1,562 FT courts operating at sessions' level up to 31st March 2010 by providing central support to the states. As per union Law Ministry, these courts have out of 28.49 lakh transferred cases to them disposed off 21.83 lakh cases.
- The Central Government proposes to set up more than five thousand Gram Nyayalayas at intermediate panchayat levels under the Gram Nyayalayas Act, 2008 in order to bring justice delivery system at the door step of rural population. The procedure to be followed by these courts has been kept simple and flexible so that these cases can be heard and disposed of within 90 days' period.
- Recourse to Alternate Dispute Redressal (ADR) mechanism can greatly help in reducing pendency of cases through arbitration, negotiations, conciliation and mediation. In the United States and many other countries, ADR as dispute resolving mechanism has been highly successful.
- India already has Arbitration Conciliation Act 1996 and the Code of Civil Procedure has also been amended. However, the measure suffers from grossly inadequate number of trained mediators and conciliators.

Both judicial officers and lawyers need to be trained with a view to grow alternate system into the mainstream of justice.

- The government will have to take an overall view of procedural laws that allow endless interlocutory appeals and the role of 'delay lawyers' in posing impediments to resolve cases. Despite the Criminal Procedure Code (Amendment Act) 2002, bringing change in the procedure in suits and civil proceedings by way of reducing delays, the situation remains far from satisfactory.
- The issue of frivolous litigation will also have to be addressed and one of the ways could be by imposing heavy costs. The police investigation system needs to be strengthened and modernized that would decrease load on judiciary.
- While having a holistic view of all the intricacies and nuances of the justice delivery system, its present pitfalls and fault lines will have to be considered to ensure transparency and accountability of the judicial system.

## **NAXALISM - PERCEPTION AND REALITY**

- Addressing the senior police officers of the country on September 15, Prime Minister Manmohan Singh reiterated that left-wing extremism is perhaps "the gravest internal security threat our country faces", and deplored that "we have not achieved as much success as we would have liked in containing this menace".
- The Naxal influence has indeed spread over a huge geographical area. According to the Home Minister's own statement, various Naxal group have pockets of influence in 20 states across the country, and over 2000 police station areas in 223 districts of these states are partially or substantially affected by the menace.
- The states particularly affected are Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Uttar Pradesh, West Bengal, Kerala, Karnataka, Tamil Nadu, and Haryana.
- Naxal violence has been on a high trajectory. There have been violent incidents in about 400 police station areas of 90 districts in 13 states. There were, in 2008, a total of 1591 incidents of Naxal violence resulting in 721 killings.
- This year, there have already been (till August 27) 1405 incidents of Naxal violence resulting in the death of 580 persons. Casualties among security forces personnel have been quite high. Altogether, 231 security forces personnel lost their lives in Naxal violence in 2008, while 270 (Oct 15) personnel have already lost their lives this year so far.

- The Ninth Congress of the People's War Group held in 2007 "reaffirmed the general line of New Democratic Revolution with agrarian revolution as its axis and protracted people's war as the path of the Indian revolution", and resolved to "advance the people's war throughout the country, further strengthen the people's army, deepen the mass base of the party and wage a broad-based militant mass movement against the neo-liberal policies of globalization, liberalization, privatization."
- Naxal activities have since then been on a canter. The expansion of Naxal influence is also to be attributed to their plan to take the battle to new fields. This was spelled out by the party's politbureau in one of its policy documents where it was mentioned that "we have to further aggravate the situation and create more difficulties to the enemy forces by expanding our guerrilla war to new areas on the one hand and intensifying the mass resistance in the existing areas so as to disperse the enemy forces over a sufficiently wider area; hence the foremost task in every state is to intensify the war in their respective states while in areas of intense enemy repression there is need to expand the area of struggle by proper planning by the concerned committees; tactical counter-offensives should be stepped up and also taken up in new areas so as to divert a section of the enemy forces from attacking our guerrilla bases and organs of political power."
- While it is true that the Naxal movement is on a high trajectory and that its arc of violence is expanding, it is also true that there has been considerable dilution in its ideology. The present generation of Naxal leaders are obsessed with the idea of capturing power with the barrel of the gun, and the success of Maoists in Nepal seems to have turned their head.
- They do not realise that the accretion in their influence and support has not been so much due to the relevance or even appeal of their ideology as due to the inefficiency and corruption of the government which has generally failed to deliver, particularly in the farflung remote areas. An analysis of some of the basic concepts would bring this out.