TRANSPARENCY IN JUDICIARY

INTERNATIONAL SOLAR ALLIANCE

IASBABA'S FRONTLINE & IDSA BI-MONTHLY GIST

ILLEGAL MIGRANTS

ANTARCTICA & ARCTIC - SIGNIFICANCE

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Contents

Supreme Court Evolution

GS 2

- **Judiciary**
- **Dispute redressal mechanisms**

Intro

- **Supreme Court first began functioning on January 28, 1950**, at Parliament House, New Delhi, before shifting to its present building at Tilak Marg in 1958

Role of Supreme Court

MC Setalvad view

- The **first Attorney General of India, M.C. Setalvad**, in his address marking the court's inauguration, observed that **its jurisdiction and powers were wider than those exercised by the highest court of any country in the Commonwealth or by the Supreme Court of the United States**.
- To Setalvad, its **foremost task was to interpret the Constitution, which he said was a means of ordering the life of a progressive people**.
- Citing the Federal Court, the precursor of the Supreme Court, **he said that the Constitution was to be interpreted in no narrow spirit.**

Alladi Krishnaswamy Ayyar view

- Alladi Krishnaswamy Ayyar, who played an influential role in drafting the provisions relating to the judiciary in the Constituent Assembly, described the Supreme Court as "having a wider jurisdiction than any superior court in any part of the world"
- The Supreme Court was conceived as a powerful institution by deliberate design.

Criticism of wider role to Supreme Court

- Many have wondered whether such a situation is desirable in a constitutional democracy which has struggled to grapple with many entrenched forms of elitism, privilege and undemocratic conduct.
- They have pointed out that the **seeking of greater power by any wing of government will attract greater scrutiny and will necessarily lead to demands for greater accountability and transparency in its functioning.**
- As it has turned out, **judges in India have come to play a much greater role in governance and policymaking** than was envisaged for them.

Constitutional role

- Constitution envisaged the establishment of an independent judiciary with the Supreme Court at the apex.
- The Supreme Court is invested with the powers to issue writs to **enforce the fundamental rights under Article 32 of the Constitution, described by B.R. Ambedkar as its soul**
- Court is **also invested with the power to entertain appeals from High Courts and tribunals**.
- **All Supreme Court orders become enforceable throughout the territory of India, and all authorities, civil or judicial, are to act in its aid**.

Supreme Court in respect of Parliament

- **Justice Kania, first CJI** had conceded **that the Supreme Court was secondary to Parliament as the custodian of the Constitution** and that the court was not an authority to supervise the wisdom and the propriety of the enactments of the legislature and the actions of the executive. His thinking **influenced the way the Supreme Court decided cases in its early days.**
- Majority judges were still under the **influence of colonial jurisprudence** and were oblivious to the fact that they were to expound the jurisprudence of a new Constitution for people who had just freed themselves from colonial rule

AK Gopalan case

- In **A.K. Gopalan vs State of Madras**, a case decided in **1950**, the court failed to rise to the occasion. **Gopalan, a veteran communist leader from Kerala**, was detained without trial under the **Preventive Detention Act**. He **argued that provisions of Article 19 of the Constitution guaranteeing various personal freedoms should be read into Article 21 (the right to life and liberty) and Article 22**, which enables the state to make laws providing for preventive detention.
- The Supreme **Court held that the rights conferred by Article 19 were the rights of free men and both punitive and preventive detention were outside its range**. This **meant that a detenu could not claim procedural fairness as a fundamental right**
- It was **held that the law prescribing preventive detention was not required to satisfy the requirements of reasonableness**.
- **Justice Fazl Ali dissented** and said that the **fundamental rights overlapped each other and that preventive detention under Article 22 also amounted to deprivation of personal liber**ty **and of the right to the freedom of movement**, dealt with in Article 19(1)(d).

Fluctuating Supreme Court after 1970s

1. **Basic structure doctrine**

- The Indian judiciary has, through "creative" interpretation, **wrested for itself the all-important and exclusive power to declare which constitutional amendments can pass muster**. This was done through the "basic structure" doctrine in the **Kesavananda Bharaticase** (1973) despite the fact that there is no textual basis for this doctrine and the framers of the Constitution did not intend to bestow this high power on the judiciary.
- However, the **legitimacy of this power was accepted by the political class over time, as it came to be seen as a pragmatic response to an overweening executive.** The doctrine now stands as a bulwark against similar excesses of power by future executive authorities.

2. **RC Cooper Case**

- **In 1970**, the minority **view of Justice Fazl Ali was accepted by the majority of the 11-judge bench** (10:1) in ***R.C. Cooper vs Union of India***. In this case, the **court rejected the argument that Article 31(2) (right to property) was a complete code in itself and not subject to any reasonable restrictions as contemplated by Article 19**.
- Thus, the **court quashed the nationalisation of banks on the ground that the compensation paid was unreasonable**
- In **several subsequent cases**, the Supreme Court held that **even if only one of the several grounds of detention was bad for vagueness or another reason, the order of detention would be quashed**

3. **ADM Jabalpur case**

- However, **in 1976**, during the Emergency, the Supreme Court **reversed this great jurisprudence in the case *A.D.M. Jabalpur vs Shivakant Shukla***
- **It held that life and liberty of a citizen were mere bounties of the state and could be withdrawn whenever it wanted**.
- **Justice H.R. Khanna dissented** from the majority judges in this case and held **that right to life and liberty existed before the Constitution and, therefore, could not be taken away by the state under any circumstances**

4. **PIL**

- The court began to make amends for its role during the Emergency

- It thus encouraged epistolary jurisdiction, through which it **converted ordinary letters written by people bringing issues of public importance to its notice to public interest litigation (PIL) petitions.**
- Through this, the **court dispensed with the need for *locus standi*** and allowed petitioners who themselves might not have suffered any injury to represent others who were not in a position to approach the court for some reasons.
- The effective use of PIL in the post-Emergency period was made by **Justices P.N. Bhagwati, V.R. Krishna Iyer, Chinnappa Reddy and D.A. Desai.**
- Supreme **Court laid the foundations of its vast jurisdiction through the medium of "public interest litigatio**n". This, too, is a jurisdiction that has no textual or "originalist" basis (the latter category refers to the original intent of the framers of the Constitution).
- Justices V.R. Krishna Iyer and P.N. Bhagwati, who led this innovation, **extolled the virtues of "substantive" justice and identified an obsession with "formalism" and "proceduralism" as a vice that characterised Anglo-American jurisprudence** and which the evolving Indian jurisprudence ought to avoid. This innovation, too, came to be accepted widely over time as several social activists and movements began to invoke it to remedy various ills of governance.
- **Justice Bhagwati's creative and expansive interpretation of Article 21 gave people many new unenumerated rights**. Justice Bhagwati, who passed away on June 15, was also at the centre of a controversy when he wrote an adulatory letter to Prime Minister Indira Gandhi after her return to power in 1980.
- **Justice Krishna Iye**r ruled that Indira Gandhi when she was disqualified for violating election law lost her status as a Member of Parliament but could retain her position as Prime Minister. His decision was one of the factors that led to the imposition of the Emergency - **experience as a prisoner, a legislator and a Minister in Kerala, before becoming a judge in the Supreme Court**, made him **champion the rights of the oppressed and the underprivileged, both as a judge and after his retirement**.

Criticism of PIL

- In a recent scholarly work, **Anuj Bhuwania** has **raised the concern that because a PIL petition does away with procedural requirements it could well be defeating its own objectives**
- He **cites the 1989 Bhopal gas disaster** claims settlement, which he says was judicial bad faith passing for panchayati justice, that the **survivors of the gas leak tragedy were not even consulted before the court pronounced on their fate.**
- **PIL has become a giant machine to turn people who could be plaintiffs into victims**, he further says in his recent **book**, ***Courting the People: Public Interest Litigation in Post-Emergency India***

5. **Expanded role in coalition era**

- Through the use of many other techniques and strategies, the Indian judiciary began to exercise an unprecedented level of authority during the 1989-2014 period. This period also coincided with the phase in Indian politics when coalitions were in charge of the Central government.
- Several observers have noted that the expanded role of the Indian judiciary has, over time, gained legitimacy and credibility among the wider public and the political and governing classes. This is partly attributable to a sense that superior court judges have gained the trust of the public in ways that the political and bureaucratic classes have not.
- A contributing factor to the g**rowing prestige of the judiciary has no doubt been the fact that the inner workings of the judiciary have not been open to the public in a manner similar to the workings of the political and bureaucratic machinery**, thanks largely to the consistent efforts of the press and the electronic media. The judiciary has been quite sensitive to this dimension, and in recent years, **aggressively used its contempt powers** to stave off scrutiny by the media into its functioning.

Fundamental Rights

- Supreme Court has built up a **robust jurisprudence in favour of freedom of expression, right from *Romesh Thappar vs State of Madras*, in 1950**, when it struck down the notification the then Madras Government issued banning the entry into the State or the circulation, sale and distribution of *CrossRoads*, a journal published from Bombay, as offending the freedom of speech and expression guaranteed by the Constitution
- In **1951, in *State of Madras vs Champakam Dorairajan***, the court **struck down the community-wise distribution of admission to medical colleges as violative of Article 15**, which guarantees non-discrimination on grounds of religion, race, caste, sex, place of birth or any of them
- **These two cases led to the First Amendment** of the Constitution by the Provisional Parliament, which undid the judgments of the Supreme Court. Thus, **reasonable restrictions on the fundamental rights were inserted under Article 19(2), and the state was enabled to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes**.
- During this period, the **Supreme Court's decisions seemed to uphold the challenges posed by the propertied class to the progressive legislation of the government**.
- **Yet, there was a general consensus in favour of Parliament's right to determine policy in the economic realm**

- While the Supreme Court struck down egalitarian laws on the ground that they militated against the fundamental rights, there was a consensus that Parliament could amend the relevant provisions in a manner to render those laws constitutional.
- Thus, **restrictions were added to each of the fundamental rights to allow for laws that aimed to fulfil the Directive Principles of State Policy**.
- In ***I.C. Golaknath and Others vs State of Punjab & Anrs*** **(1968)**, the Supreme Court **restricted Parliament's power to amend the Constitution saying that the fundamental rights in Part III are unamendable**.
- Then came the Supreme Court's **quashing of the Bank Nationalisation Act, 1969, in *R.C.Cooper* and the abolishment of the privy purses**.
- **In 1973**, the Supreme Court's 13-judge Constitution Bench delivered the judgment in the **Keshavananda Bharati case**, enunciating the **basic structure** doctrine, by which certain basic features of the Constitution were declared unamendable by Parliament.
- In **subsequent cases, the court held that the scope of giving effect to the goals set by Articles 39(b) and (c) to fulfil the Directive Principles of State Policy could not be restricted by the fundamental rights**.
- The court **reasoned that the Directive Principles must be read in harmony with the fundamental rights**

Death penalty

- Supreme Court's judgment in ***Bachan Singh vs State of Punjab*** **(1980)**, which **declared the death penalty constitutional**
- however, held that it should **be imposed only in the rarest of rare cases, when the alternative of a life sentence was unquestionably foreclosed**
- Constitution Bench in this case also **held that while sentencing a convict and taking into consideration the mitigating circumstances**, the court should adopt a criminal-centric approach rather than be merely swayed by the enormity of the crime
- **subsequent benches of the Supreme Court did not fully appreciate the essence of *Bachan Singh* and mechanically confirmed death sentences** in many cases, calling them the rarest of rare
- **In recent years, however, the court appears to have applied some correctives and considered the alternative of life sentences without remission even in cases considered to be the rarest of rare**, although the denial of remission even to reformed convicts means that some arbitrariness remains
- **Court has also made it mandatory for the review petitions of death row convicts to be heard in open court by a three-judge bench of the Supreme Court to mitigate the chances of errors at the sentencing stage**.
- **The court has commuted the death sentences of several convicts to life imprisonment on the grounds of supervening factors, such as delay in disposal of**

mercy petitions, solitary confinement and mental illness, apart from introducing several safeguards to enable convicts to make use of legal remedies available to them effectively until they are hanged

Connecting the dots

- **Constitution has envisaged very wide role for the Supreme Court. Examine whether the Court fulfilled the expectations ascertained to it after independence.**
- **PIL though are an important tool to empower common citizens, but also has created problems of its own sort. Examine.**

Transparency in Judiciary

GS 2

- **Judiciary**
- **Important aspects of governance and transparency**

RTI vs Judiciary

Intro

- The apex court summarily rejects RTI requests, and insists that applicants exclusively request information under its administrative rules (Supreme Court Rules) framed in 1966, and re-issued with minor changes in 2014.

Supreme Court arguments against RTI

- Central Information Commissioner Shailesh Gandhi.
- In May 2011, appearing before the Commission, the Additional Registrar of the Court, Smita Sharma objected only to the use of the RTI

1. **Supreme Court Rules provide information**

- She **maintained that the Supreme Court Rules alone governed access to the information** sought.

2. **Rules are primary against RTI**

- **Claiming that the Rules were consistent with the RTI**, she asked Mr. Gandhi to reinstate the **primacy of Supreme Court Rules over the RTI, in line with previous Central Information Commission (CIC) rulings.**

CIC ruling, 2011 for RTI

- **It was held that the Supreme Court Rules are inconsistent with the RTI Act, and that the Registry must respond to applications within the RTI framework alone.**
- **Supreme Court Rules undermined the RTI**.

1. **No time frame**

- Unlike the RTI Act, the Rules do not provide for: a time frame for furnishing information; an appeal mechanism, and penalties for delays or wrongful refusal of information.

2. **Discretion in providing information**

- Rules also make disclosures to citizens **contingent upon "good cause shown**".
- In sum, the Rules allowed the Registry to provide information at its unquestionable discretion, violating the text and spirit of the RTI.

Open Court Justice

Open accessible justice

- Open court system of justice administration requires that Court proceedings must be open and accessible to public and the media.
- It is necessary to maintain trust of public in judicial system of a nation as Supreme Court stated in **Vineet Narain writ petition or Jain Hawala Diary case ,1997** "Justice should not only be done but also seen to be done "
- Supreme Court's judgment in ***Sahara India Real Estate Corporation Limited v Securities Exchange Board of India*** **(2012**) had pointed out that **courts had to keep proportionality and necessity in mind while passing such orders postponing publication of proceedings by the media**.
- In India **Section 153 B, Civil procedure code and section 327, Criminal Procedure Code** mandate public access to court proceedings.
- **Open justice is the cornerstone of the judicial system** in India.
- **In theory, hearings in courts are open to all members of the public to witness and for members of the mass media to report from**.

- In practice, however, the s**mall and cramped courtrooms and the need to prevent any impediment to the proceedings, mean that entry is restricted and the general public relies on journalists to provide a fair and accurate summary of proceedings on the court**.
- The greater the stakes in a case, the higher the interest of the public and consequently, the more pressure on the court to ensure that its conduct of a case is beyond reproach.
- **Recently gag orders" by the court on media reporting** of two high-profile cases, the c**riminal trial of multiple police officers for the murder of Sohrabuddin Sheikh** and others, and the writ petition in the Allahabad High Court in the context of sanction for p**rosecution of Uttar Pradesh(UP) Chief Minister, Yogi Adityanath, for hate speech were issued.**

Issues

Audibility and access to court proceedings are complementary to each other and absence of either one reduces practice of justice to travesty of justice in following aspects.

- Inaudible judgements made by a judge lead to confusion in audience that may include lawyers litigants and even media present in courtroom it may lead to rife propaganda
- Such misrecorded judgements may entail unnecessary further court proceedings increasing burden on judicial system.
- Inaudibility deprives citizens from Right to Information as guaranteed by article 19 c
- A proper use of microphone ensures better legal awareness not only for law practitioners but also for legislators and general public and non-judicial members in tribunals
- It also improves accountability of judges towards administration of justice. Higher courts must act as role models to lower judiciary.

Way forward

- Before limiting reporting of the cases, **courts are required to satisfy themselves that no other measures were possible to protect the sanctity of the trial and that the postponement of reporting was only as long as was necessary to ensure that trial took place without interference**.
- Unless microphones are put to practice transparency virtue is but a caged parrot .However prejudice must be exercised where privacy of an individual or security of nation and other sensitive matters are vulnerable.

Supreme Court Roster

Context

- **Making public the Supreme Court's "roster**", the allocation of case categories to different judges of the SC, is a welcome step, as any step promoting greater transparency should be.
- A litigant or a lawyer practising here will now be able to know how cases are being allocated to various judges on the basis of subject matter.
- It has come after four senior-most judges of the SC held an unprecedented press conference indicating their loss of faith in Chief Justice of India, relates precisely to the manner of allocation of cases. The manner in which sensitive cases were being allocated by the CJI to certain judges suggested that it was totally arbitrary and designed to ensure a certain outcome, in some cases favouring the Union government.
- At least four large high courts — those of Allahabad, Bombay, Delhi and Karnataka — also make their rosters available on their websites.
- It is unfortunate that **not all high courts have followed this lead and one hopes that the SC's move spurs them to do so.**

Role of CJI in determining roster

- The crux lay, and continues to lie, in the absence of any norms or transparency in the manner in which the **CJI exercised his discretionary power — to go beyond the roster and allocate specific cases to specific benches**.
- This continues to be a bone of contention and won't be resolved unless clear and specific norms are laid down guiding the CJI's exercise of discretion.
- This is precisely the demand that is being made by the **four senior-most judges who have asked for a panel, instead of the roster being determined by the CJI alone.**
- The fact that the **CJI's court will be the only one to hear Public Interest Litigations is also problematic**. To be fair, PILs constitute a very small number of the total cases in the SC. Even including appeals from judgements of high courts in PIL cases and PILs filed in the SC itself, no more than 1 per cent of cases in the SC are PILs. But PILs are also more likely than most other case types to raise important issues, and spark confrontation between the judiciary and executive.
- Per se, having only the CJI hear PILs is not in a bad move. But in the present context, where questions over his integrity and independence have been raised, this allocation is unlikely to inspire much confidence.

Criticism

1. **Less detailed**

- The **SC's roster allocation is far less detailed when compared to those of the four high courts** mentioned above.
- In the Delhi High Court, cases are divided between benches on the basis of not just subject matter but also by date, with some types of cases being divided between different benches depending on when they were filed.
- In the Allahabad High Court, writ petitions are divided among the benches based on which local law they are concerned with.
- It is quite clear that the high courts have taken the task of roster management a bit more seriously thus far than the SC has, trying to fine-tune the way in which cases are heard.

2. **Only contain list of categories and thus vague**

- The SC's roster on the other hand is just a list of case categories allocated to certain judges.
- Some categories are allocated across the benches. For instance, no fewer than **11 benches hear "criminal matters" — a classification that includes everything from bail cases to death penalty appeals**.
- **No inter se classification or division has been made between the benches** suggesting that not a lot of thought has gone into this exercise.
- Likewise, the **wide residuary category of "ordinary civil matters" has been allocated to 11 benches.**

Way forward

1. **To prevent conflict of different benches**

- One, it will **prevent two different benches from hearing the same kind of case and taking divergent views at the same time**.
- This happens far more often than it should, needlessly unsettles the law and forces the SC to set up larger benches to resolve the conflicting interpretations.

2. **Specialising judges for certain field**

- Two, it will allow for effective case management within the SC.
- Though judges in India are not specialists in any specific areas of the law, they will be in a better position to dispose of cases the more they handle the same kind of case.

Connecting the dots

- **There are both positives and negatives of introducing RTI in judiciary. Analyse the statement with relevant facts.**
- **Open courts are a cornerstone to ensure transparency in justice. Critically analyse why open justice is to be ensured in context of gag orders by the courts stifling media to cover the proceedings in certain cases.**
- **The roster of the Courts should fulfil two conditions – preventing conflicts between different benches and ensuring specialisation of judges. Explain how these conditions will ensure transparency and efficiency in judiciary.**

Larger Benches or Smaller Benches

GS 2

- **Judiciary**

Polyvocal character of Court

- At the time of the commencement of the Constitution in 1950, the Supreme Court was envisaged as having a Chief Justice and seven puisne judges, with Parliament having the power to increase this number. **In the early years, all judges sat together**, but as the work of the court increased and a backlog accumulated, Parliament increased the number of judges from eight in 1950 to 11 in 1956, 14 in 1960, 18 in 1978, 26 in 1986 and 31 in 2008 (the current strength).
- Judges started sitting in smaller Benches of two or three, coming together in larger Benches of five or more only in certain cases.
- **Over the years, with similar matters being heard by different but small benches**, the Supreme **Court has acquired** what **Nick Robinson** calls a **polyvocal character**
- A decision of the Indian Supreme Court is almost never a judgement of the entire court. Most judgements are from benches of just two or three judges. **This sprawling structure of the Indian Supreme Court, with its many benches hearing hundreds of cases between them on any given day, is a product of the historical prioritization**—by the Constitution, Parliament, and the judges themselves—of wide access to the Supreme Court."
- During the **early decades** after independence, **constitution benches were created for over 100 cases in a decade**. That number has **slowed down to about 20 in each decade over the last 30 or so years**. As a proportion of disposed cases, **constitution benches have dropped to a fraction of 1% from over 5%.**

- The largest bench that has ever adjudicated on a case is 13, in the matter of Kesavananda Bharati v. State of Kerala in 1973.

Comparison with other constitutional schemes

- This is **different from the US, where all nine Supreme Court judges sit together**. In the **UK, Australia, Canada and South Africa, too, judges generally sit together, or in large Benches**.
- Since most of these courts have seven to nine judges, even five- or seven-judge judgments reflect the opinion of the majority.

Constituent Assembly view

- In his original draft of the Constitution, **Sir B N Rau, Advisor to the Constituent Assembly**, proposed (on the advice of Justice Felix Frankfurter of the US Supreme Court) that India's **Supreme Court should exercise its jurisdiction as a full court, and not as separate Benches**.
- But this was n**ot endorsed by the Constituent Assembly, which was keen to make optimal use of judicial time.**

What sorts of cases are heard by the larger Benches?

- Under **Article 145(3)**, "any case involving a **substantial question of law as to the interpretation of the Constitution" must be decided by a Bench of at least five judges**. Such a Bench is called a Constitution Bench.
- However, in several cases, constitutional issues have been decided by smaller Benches as well.

Why larger bench needed?

- For a substantial question of law, the **polyvocal character of the court creates ambiguity and results in a periodic requirement for review**.
- A **larger bench has greater legitimacy and greater value for precedent setting** than a small bench.
- **The tendency of the court to choose efficiency versus effectiveness and legitimacy will likely result in a greater case load over time, with the same issues swirling in a different context with each coming decade**.
- Even though the **Constitution was always meant to be a living and evolving one, continually re-examining basic issues of the Constitution leaves a rather confused state**.

Who constitutes the Benches, and who sits on them?

- Even though the **Chief Justice of India is the head of the judiciary, he is only the first among equals**.
- The **Constitution does not make him the "Master of Rolls"; it is the Supreme Court Rules that vest in him the power to constitute Benches** as part of his administrative responsibilities.
- Though all judges, including the CJI, are equal in their judicial powers, ideally, the vast experience of senior judges should be used in Constitution Benches. However, legally speaking, junior judges too, can be picked.

Way forward

- **Contrary to** what the **Law Commission recommended in 2009**, a **separate constitution bench outside the Supreme Court makes little sense**.
- A **better way would be to filter out the more mundane cases on the docket, allowing more time for constitutional jurisprudence**

Connecting the dots

- **The balkanisation of Supreme Court into numerous benches has made its character polyvocal. Examine how. Also analyse if larger benches are the way forward.**

Devaluing High Courts

GS 2

- **Judiciary**
- **Dispute redressal mechanisms**

Intro

- For the framers of our Constitution, high courts, occupied a central position. They were conceived as a **forum for adjudicating disputes under the Constitution, Central and State statutes before they moved to the Supreme Court**; their **jurisdiction was more extensive than the Supreme Court's.**
- In contrast to the American model of a bifurcated federal and state judiciary, our high courts resolve all disputes.

- In the initial years, several constitutional issues came to the Supreme Court after high courts grappled with those issues. The First Amendment to the Constitution was triggered by a Patna High Court ruling declaring a land reform law as unconstitutional.
- Increasingly, the jurisdiction of our 24 High Courts has been subject to relentless attack from Parliament, and, unfortunately, even the Supreme Court.

Parliament mandated tribunals affect High Courts

- Parliament has inflicted damage on high courts with r**ampant tribunalisation**.
- Tribunals have replaced high courts for disputes under the **Companies Act, Competition Act, SEBI Act, Electricity Act, Consumer Protection Act** among others. Any person aggrieved by an order of an appellate tribunal can directly appeal to the Supreme Court, side-stepping the high court.

1. **Tribunals lack independence from the executive as High Courts do**

- These **tribunals do not enjoy the same constitutional protection as high courts**. The **appointment process and service conditions** of high court judges are not under the control of the executive. The enormous institutional investment to protect the independence of high courts is dispensed with when it comes to tribunals. **Many tribunals still owe allegiance to their parent ministries.**

2. **Tribunals expensive and not accessible as High Courts**

- Tribunals are also not as accessible as high courts. For example, there are just four benches of the Green Tribunal for the whole country.
- This makes justice expensive and difficult to access.

3. **Tribunal procedure make Supreme Court an appellate court than envisaged deliberative body**

- Conferring a direct right of appeal to the Supreme Court from tribunals has changed the Supreme Court from being a constitutional court to a mere appellate court.
- A backlog of over 58,000 cases in the Supreme Court precludes it from being a deliberative court reflecting over critical questions of law. It can affect the quality of the court's jurisprudence. If high courts were to exercise appellate jurisdiction over orders of tribunals, they would act as filters, enabling the Supreme Court to confine itself to those substantial questions where there is divergence among high courts.

4. **Supreme Court lose expertise from High Court due to tribunals**

- Third, high courts are the training grounds for future Supreme Court judges. When high court judges deal with several cases under a particular area of law, they carry with them the benefit of their experience and insights to the Supreme Court.
- When high courts are side-stepped in favour of tribunals, Supreme Court judges hearing appeals from tribunals would have to deal with the finer nuances of disputes under specialised areas of law for the very first time.
- The rationale advanced for avoiding high courts is the colossal backlog. The **way ahead lies in the creation of specialised divisions in high courts for tax, company law and environmental disputes.**
- Further, when retired high court judges invariably preside over every tribunal, the justification of expert adjudication by tribunals disappears.

Supreme Court Writ petitions undermine High Courts

- The jurisdiction of high courts is also undermined by the Supreme Court when it directly entertains various writ petitions.
- When the Supreme Court exercises original jurisdiction, it deprives the citizen and the state of the right to challenge potentially erroneous orders.
- A classic instance is the Supreme Court's ruling in the 2G case. To overcome this ruling, the President had to invoke the advisory jurisdiction of the Supreme Court. The ordinary citizen enjoys no such privilege.
- This difficulty becomes even more acute **when the Supreme Court takes on a legislative role** by framing guidelines in the larger public interest. **Neither the individual nor the state has an effective remedy** to challenge these norms.

Connecting the dots

- **Tribunalisation by the Parliament to adjudicate various matters has devalued the role of High Courts. Examine.**

Significance of Antarctica and Arctic regions in context of Climate Change

GS 1

- **Distribution of natural resources across the world**
- **Geographical features and their location- changes in critical geographical features (including water bodies and ice-caps) and the effects of such changes**

Intro

Antarctica is the biggest reserve of fresh water in the world, which it holds in form of ice sheets and permafrost. In a rapidly warming world, Antarctica's ice shelf are loosing ice and started to melt off. For example recently Larsen C Shelf broke itself off from the main landmass of Antarctica, before that Larsen A and B shelf have already been drifted.

Significance of Antarctica to tackle Climate change

1. **Large quantity of fresh water**

- Antarctica holds a staggering amount of water. The three ice sheets that cover the continent contain around **70% of our planet's fresh water**, all of which we now know to be vulnerable to warming air and oceans. If all the ice sheets were to melt, Antarctica would raise global sea levels by at least 56m.

2. **Impact in changing climate of Southern hemisphere**

- Meltwater would slow down the world's ocean circulation, and shifting wind belts may affect the climate in the southern hemisphere.
- Ocean currents flow and winds blow precisely because of temperature difference between poles and equator region. With global warming this difference will come down thus affecting both currents and winds.
- Naturally it will significantly disturb the balance of climate. For example - erratic monsoon, frequent El-Nino and La-Nina

4. **Reservoir of Carbon**

- Existing Ice Sheets have kept a massive source of Carbon Dioxide and Methane underneath.
- If these ice sheets are to melt, huge mass of these greenhouse gases will escape and further exacerbate Global Warming catastrophically.

5. **Heat budget of the Earth**

- Icesheets are excellent medium for reflecting back the sunlight, known as albedo. Thus Antarctica is significant in balancing the heat budget of earth.

6. **Presence of minerals**

- Antarctica is lesser known but significant store house of minerals, some of which are not even quantified. Eg. gold deposits.
- Presently, there may not be commercially viable to extract, but with GW they are more likely to be.

Conclusion

- In Polar Regions, surface temperatures are projected to rise twice as fast as the global average, due to a phenomenon known as **polar amplification**. It is therefore crucial to reduce CO_2 levels now for the benefit of future generations, or adapt to a world in which more of our shorelines are significantly redrawn.
- Antarctica is one of the most crucial components of earth's ecosystem and has significant position in preserving earth's landscape, ecosystem and climate. It is a global common, thus humanity needs to coordinate its developmental activities and limit the emission of greenhouse gases.

Arctic region

Intro

- Satellite measurements of seasonal sea ice that formed over the Arctic every year were likely to be incorrect by a substantial degree. The **presence of salt distorted satellite readings and, as a result, scientists overestimated the thickness of Arctic sea ice.**
- They found that sea ice in the Arctic was much thinner than estimated and declining rapidly and that it could become completely ice-free during summer even earlier than predicted by popular scientific models.
- **Fast-thinning sea ice in the Arctic Ocean could radically alter global weather patterns**; increase the frequency of extreme weather events all over the world; bring about drastic changes in the Arctic ecosystem, its food chain and the life of indigenous communities; and also pose a threat to the survival of animals such as polar bears, Arctic seals and walruses.
- **For the past 10 years, the European radar satellite called CryoSat-2 has been measuring the thickness of sea ice all over the Arctic.**

What is sea ice?

- There is no sun in the Arctic during the winter season and so, **because of the cold atmosphere, the ocean freezes and forms what we call "sea ice**".
- Sea ice is **highly saline and snow accumulates on top of this salty ice. As spring arrives, the sun comes out and the snow on top of the sea ice starts melting**. This is **followed by the melting of the ice**. This is an annual cycle.

Impact of climate change

- Nowadays as a result of climate change caused by anthropogenic activities and natural variability is that the **ocean freezes late and melts earlier**. This is because as the ice cover melts quickly, the ocean gets exposed to sunlight for a longer period.
- This **causes enhanced warming of the Arctic Ocean, which in turn increases the temperature of mid-latitude oceans such as the Indian Ocean, the Pacific Ocean and the Atlantic Ocean**.
- When the ocean gets warmer, it influences global weather patterns, triggering destructive tropical cyclones, affecting the timing of the Asian monsoon season, intensifying heat in coastal areas and so on.

Why readings are potentially wrong?

- When snow falls on top of sea ice, it will absorb some amount of salt and the snow cover also becomes partially or completely salty.
- Because of the **presence of this salty snow on top of sea ice, the radar signals originating from the CryoSat-2 satellite fail to penetrate through the whole snow cover**.

Arctic region

- The Arctic is an ocean surrounded by land, covering regions of Canada, the United States, Norway, Finland, Russia, Iceland, Sweden and Denmark (including Greenland). So there is a lot of characteristic variability in climate and differences in sea ice types found in these regions.
- **Russian and Siberian Arctic** regions are extremely cold, as compared to, for example, the Canadian Arctic.
- The **Norwegian Arctic** has more open waters because of its close proximity to the warm Atlantic Ocean. Moreover, snow falling in the Norwegian Arctic is also high because of the greater moisture in the warmer atmosphere. Sea ice found in certain

regions is less salty. For example, ice forming on the Baltic Sea is less salty because of the freshwater run-off from rivers into the ocean.

- The detected error in sea ice thickness which needs to be accounted from CryoSat-2 data also varies from place to place.

Melting Arctic ice

- Over the past 30 years, the **Arctic sea ice volume has been found to have decreased substantially, by over 10 per cent per decade**, which is alarming. That is why climate modellers have predicted that Arctic sea ice may likely disappear by 2050.
- **Sea ice will still be forming during the winter season, but it will all melt away very early because of increasing Arctic warming.**

First-year sea ice

- The annual growth cycle of Arctic sea ice starts from September, when the sun starts going down the horizon and polar darkness sets in. **By October-November, the sun disappears completely** for almost 24 hours, and the Arctic becomes completely dark and extremely cold. This **triggers the freezing of the Arctic Ocean, leading to sea ice growth, which continues to thicken until the end of April.**
- **With snow falling on top of sea ice, the sea ice thickness can reach up to two metres**.
- When the sun starts showing up again for almost 24 hours **by the end of May, increased solar radiation causes the melting of snow, followed by the gradual melting of sea ice**. This **melting continues until the end of August**, when almost all the sea ice melts completely.
- **This ice, which grows in September and melts away by next September, is called as "first-year sea ice"**. However, not all sea ice melts completely.
- The s**ea ice which remains after the melting season is called "multi-year sea ice**". This will again continue growing in the next winter season, and multi-year sea ice becomes thicker and thicker, sometimes up to **eight metres.**

Study concerned only about the "first-year ice"

- Over the past 30 years, the Arctic has accumulated a lot of multi-year sea ice. But because of the earth's rotation, every free moving object in the northern hemisphere moves clockwise or deflected to the right. This is called the "Coriolis force". This inherently means that even the Arctic sea ice is moving clockwise around the North Pole constantly.
- **As the ocean currents also follow the Coriolis force, the multi-year sea ice which has been accumulated over the years is moving continuously around the North**

Pole, and the majority of this ice drains off into the Atlantic Ocean, via east of Greenland. It takes up between two and 10 years for this process to complete, depending on the location where sea ice is formed. The **Atlantic Ocean is a warmer ocean, and because of the warmer ocean temperature, the older, thicker multi-year sea ice which drains into the Atlantic Ocean melts away quickly**.

- Right now, **in the Arctic, 75 per cent of sea ice is first-year sea ice**, while the remaining 25 per cent is multi-year sea ice. That is why the concentration has been more on first-year sea ice.
- In the coming years, scientists believe that there will not be any multi-year sea ice remaining in the Arctic, and first-year sea ice will be dominant. However, ironically, first-year sea ice is already facing the effects of climate change.

Permafrost and climate change

- Permafrost is **not ice**. It is **either soil, rock or sediment that has been frozen over for more than two consecutive years**.
- Permafrost has been found to be a big catchment of methane.
- **With more Arctic warming, permafrost melts and releases methane, which leads to enhanced global warming**. This effect has been found m**ore prominent in the Siberian Arctic**.

Connecting the dots

- **Antarctica is critical in containing climate change for various reasons. Enumerate the reasons.**
- **Arctic region is fast developing into a catastrophe in context of climate change. Examine how its geography will be affected due to climate change.**

India and the International Solar Alliance

GS 2

- **Important international institutions and effects on India**

Intro

- In March 2018, **India, along with France, hosted the members of the International Solar Alliance (ISA),** marking an important milestone in its efforts to take the alliance, which was Prime Minister Narendra Modi's brainchild, and supported ably by France, forward.
- The Delhi Summit was co-hosted by India and France and was attended by 23 heads of states and governments from other ISA signatory countries.
- Mr. Narendra Modi also announced the creation of a solar technology mission for R&D and 500 training slots for member countries.
- India also extended Line of Credit of up to $1.4 billion for 27 projects in 15 countries at the summit.

Genesis of ISA

- The Alliance, which was inaugurated a few days after the 2015 United Nations Climate Change Conference in Paris, **became a treaty-based inter-governmental international organisation on 6 December 2017, with 61 countries signing** the ISA agreement (and 32 of them ratified it so far).
- The key idea of the ISA is to "**harmonize and aggregate demand for solar finance, solar technologies, innovation, research and development, and capacity building**".

Objectives

1. Mobilising more than $1 trillion of investments by 2030 for massive deployment of solar energy;
2. Global deployment of over 1,000GW of solar generation capacity;
3. Making solar energy available at affordable rates, create solar grids and establish solar credit mechanism;
4. Reducing the cost of finance and cost of technology;
5. Enhancing energy security and sustainable development;
6. Addressing common as well as specific obstacles that lie in the way of rapid and massive scaling up of solar energy in these countries;
7. Act as a broader platform for deep diplomatic engagement on crucial developmental issues.

Since 2016, the ISA has **launched five programmes of action — rural and decentralized application; access to affordable finance; mini grids; solar e-mobility; and rooftop installations.**

Issues with ISA

1. **Financing**

- The ISA aims to mobilise **$1 trillion low-cost financing for massive deployment of solar energy by 2030** and bring together 121 countries that lie between the Tropics of Cancer and Capricorn that receive plenty of sunshine and are mostly developing nations.
- Most of the **countries that are part of the ISA** are from Asia, Africa, South America and the Pacific, are **hydrocarbon-deficit with high energy demand and are grappling with issues ranging from lack of infrastructure, lack of manufacturing capacity and high energy tariff**s.
- Therefore, it is increasingly important for these countries to get access to renewable energy (RE) at affordable prices.
- Though funding is **expected to come from individual countries, international organisations, non-governmental organisations and multilateral development banks**, securing adequate financing will continue to remain a challenge.
- To facilitate the ISA secretariat and the ISA corpus fund, **India has already contributed $ 62 million**.
- The ISA has also partnered with international organisations like the European Investment Bank, World Bank, European Bank for Reconstruction and Development and the International Energy Agency.
- ISA signed joint financial declarations with the African Development Bank (AfDB), the Asian Development Bank (ADB), the Asia Infrastructure Investment Bank (AIIB), the Green Climate Fund (GCF) and the New Development Bank (NDB, established by the BRICS countries).
- ISA and the International Renewable Energy Agency (IRENA) signed a joint declaration to confirm their commitment to solar projects.
- The ISA has **also invited several financial institutions to form a $ 300 billion global risk mitigation fund, which** will reduce credit risk and increase investments more than ten-fold.Ten such funds of $ 30 billion each have been planned by the ISA.
- Indian solar industry's risk mitigation and credit enhancement mechanism that has been developed by the Indian Renewable Energy Development Agency (IREDA) can be used as a model for adaptation by other ISA member countries.

2. **Tariff on solar products**

- One of the foremost objectives of the ISA has been to **undertake joint efforts to reduce the cost of finance and technology**.
- While the cost of solar installations has been decreasing worldwide, it still remains high in many of the ISA countries.
- **Most African countries also have a high most favoured nation (MFN) tariffs for photo voltaic (PV) cells, modules and semi-conductor devices**. This is **exacerbated by their lack of manufacturing capacities** and high tariffs.
- The **Pacific island countries have the highest MFN applied rates for solar products**, with some going as high as 30-40 per cent.
- Hence, to further the spread of technology related to solar energy, reducing high tariff barriers is essential as such duties are detrimental to cost-effective solar deployment.

3. **Cooperation in energy storage technology**

- Energy storage technologies have the **potential to change the face of RE**.
- **Non-fuel minerals like cobalt are essential to energy storage technologies**.
- **Sixty per cent of global cobalt reserves are located in the Democratic Republic of Congo, which is a signatory to the ISA**.
- **Chile, another signatory, is part of the 'lithium triangle' of countries that contain approximately 54 per cent of the world's lithium reserves**.
- Although Chile and Congo have yet to ratify the ISA agreement, cooperation with these mineral rich countries within the ISA can unlock large gains for solar energy.

Opportunities for India

1. **Geopolitical heft**

- In addition to hosting this foundational summit that will shape the structure and course of the ISA, the Permanent Secretariat of ISA will also be located in India at Gurugram, the **first time that an inter-governmental treaty-based alliance will have its headquarters in India**.
- This will allow India the opportunity to position itself in a key **global leadership role in the arena of climate change, RE and sustainable development**.
- During the Summit, India kicked off 27 projects in 15 countries enabling it to increase the scale and reach of its global engagements.

2. **Enhance capacity for climate change negotiations**

- The Indian leadership also sees its active role within the ISA as a reiteration of India's commitment to fulfilling its global commitment on addressing climate change in a time-bound manner and help boost global confidence in India's capacities.

3. **Building as technological hub for solar products**

- The ISA is not only expected to spur innovation in the RE space but also help make India a technological hub with independent manufacturing capabilities of RE equipment like solar panels, rather than being dependent on imports, through initiatives like 'Make in India'.
- India is expected to play a role in "**marrying Indian tech and finance capabilities with specific projects around the world**".

4. **Gain power for all domestically**

- India announced a **goal of obtaining 40 per cent of its electricity from non-fossil fuels by 2030** at the Paris climate change summit.
- It is close to achieving 20 GW grid connected solar power generation capacity this fiscal year (2018), in pursuit of achieving its target of **100 GW by 2022.**

Connecting the dots

- **International Solar Alliance is significant for India for both geopolitical and domestic reasons. Explain.**
- **What are the challenges that International Solar Alliance face in achieving its objective of enhancing the use of solar power? Suggest the way forward.**

Illegal Migrants in India

GS 2

- **India and its neighbourhood**

GS 3

- **Border management**

Context

- In **1951, Assam became the only State in the country to get a National Register of Citizens** (NRC).
- On the midnight of **December 31, 2017**, the north-eastern State published the **first draft of an updated NRC, listing the names of 1.9 crore people out of 3.29 crore applicants.**
- The Supreme Court, which has been monitoring the process of NRC updation, had set the time frame for the publication of the draft. The apex court has fixed February 20 for further orders.
- People of the State are now eagerly awaiting the publication of the final draft of the updated NRC hoping that it will settle, once and for all, the vexed issue of identification and expulsion of illegal Bangladeshi immigrants in the State.

Issue of amendment in Citizenship Act

- The government is also pushing for the passing of the **Citizenship (Amendment) Bill, 2016, which seeks to grant citizenship to Hindu Bangladeshis and other non-Muslim minorities from Bangladesh, Pakistan and Afghanistan**. This threatens to make the updated NRC infructuous as far as the expulsion of illegal Bangladeshi immigrants is concerned.
- NRC that will enable the government to **drive out Bangladeshi immigrants who entered Assam after 1971 in accordance with the Assam Accord** while at the same time pushing for the **Citizenship (Amendment) Act so that all Hindu Bangladeshis who came after 1971 without valid travel documents can be granted Indian citizenship**.
- Thus, the updated NRC will be reduced to an instrument for identification and driving out only illegal Muslim Bangladeshi immigrants or keeping them as "stateless" citizens if they cannot be expelled in the **absence of a repatriation treaty between India and Bangladesh.**

Stand of political parties

- The **Asom Gana Parishad (AGP), a coalition partner in the BJP-led government in the State**, has **warned of snapping political ties with the BJP if the Centre goes ahead with the Citizenship (Amendment) Bil**l. The party echoed the demand of student and youth bodies, including the All Assam Students' Union, and the opposition parties that the NRC must be updated in accordance with the **Assam Accord for the identification and "expulsion" of all illegal Bangladeshis**, irrespective of them being Hindus or Muslims, who had entered without valid documents after the **March 24, 1971**, cut-off date.
- The **BJP has crafted a tactical move to consolidate the support of the people in both Brahmaputra and Barak valleys**, with Chief Minister Sarbananda Sonowal harping on the harmony of all communities in the two valleys and the hills.

Threat to Assamese identity

- Significantly, the fact that the data on language of the 2011 Census has not been made public has raised concerns among a large section of Assamese speakers.
- They fear that if the Citizenship (Amendment) Bill is made into an Act to grant citizenship to post-1971 Hindu Bangladeshi immigrants, it might **pose a threat to the Assamese language and its speakers**.
- Their apprehension stems from the language data of the 2001 Census in which Assamese speakers were found to have declined to 48.80 per cent of the population from 57.81 per cent recorded in 1991 even as the number of Bengali speakers had increased from 21.67 per cent to 27.54 per cent in the same period.

Connecting the dots

- **The illegal migration across the border into India has several implications for internal security of India. Discuss those issues critically.**

Best Wishes!

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