

General Studies-2; Topic: Functioning of judiciary

Judicial Accountability and Judicial Reforms

1) Introduction

- The Indian Judiciary plays an increasingly important role in the life and the governance of this country.
- It is argued that the Indian judiciary has become all powerful, mostly by taking on enormous authority in policy areas that are technically beyond its ambit.
- Recently it was declared that the CJI is the master of the roster with the sole prerogative to determine which Bench of judges gets to hear which cases.

2) Why judicial reforms and accountability is imperative for India?

- For clearing the backlog of cases
- To ensure speedy justice. Speedy justice is not only our fundamental right but also a prerequisite for maintaining the rule of law and delivering good governance.
- In its absence, the judicial system ends up serving the interests of the corrupt and the law-breakers.
- Trade, commerce, manufacturing, services, personal safety hinge on the effectiveness of the rule of law. Therefore, judicial reforms should be made the prime development agenda.
- Judicial accountability is more important, as derogation of values in judiciary is far more dangerous than in any other wing of the government as judiciary has to act as the guardian of our constitution.
- The courts in India enjoy virtually absolute power than any Court in the world. So it is vital that judges of the superior judiciary be accountable for their performance and their conduct.
- If judicial independence is a pillar of our democracy, then without accountability there can be no legitimacy.

3) Why Judicial Activism?

- Judicial activism itself is an outcome of judicial independence
- It is undertaken to protect those who may not otherwise have ready access to justice
- To see to it that the government protects the fundamental rights of its citizens.
- To uphold politico-socio-economic justice
- To fill the perceived gap created by failure of executive.
- Judicial enthusiasm to participate in social reforms and changes
- **Examples of judicial activism are**
 - a. Protection of women at work place by framing Vishaka guidelines
 - b. Rescuing children working in industry
 - c. Banning of liquor shops around highways
 - d. Mandating standing for national anthem in cinema halls
- There are arguments that judiciary is stepping into areas that are, strictly in the realm of policy.
- When judicial activism and review wades into policy making, sometimes its consequences can be disruptive.
- Therefore there has to be a fine balance between all the organs of state to uphold constitutionalism.
- Cooperative constitutionalism is the responsibility of the three organs of the State to protect the Constitution.

4) Concerns / Challenges

- There are issues of corruption in the courts
- Judiciary has not evolved a mechanism to look into the corruption charges on the judges.
- When CBI interferes in the working of judiciary, it leads to executive control over the judiciary, which goes against the basic principles of the constitution.
- The chief justice constituting a 5 judge bench including himself when he is facing allegations ignores the justice to be seen to be done.
- The use of Article 142 has also become a sign of immense judicial indiscipline
- Article 142 gives judges the power to do whatever it takes to secure justice
- Judicial ineffectiveness is to a great extent responsible for the increase in crimes like rape, murder, looting, cheating and so on.
- There are almost 30 million cases pending and it takes between 12 to 15 years for a judgment. In the meantime, witnesses could die, turn hostile, go missing, or get killed.
- In many cases, what is being dispensed as justice after so many years of litigation is flawed.

5) Way Forward

- The cardinal principle that the Chief Justice of India is the master of the roster must be re-examined.
- Urgent reform is required to restore the moral authority of the Supreme Court
- The primary principle is that justice not only be done, but be seen to be done, which always holds good.
- Lot of care needs to be exercised so that the anti-corruption measures taken do not undermine the independence of the judiciary
- Transparency in court proceedings and appointments of judges.
- Creation of a transparent, full-time independent judicial complaints commission to investigate complaints against judges
- Judicial system should be accessible and effective for the poor
- Setting up an All India Judicial Services
- Use of information technology tools for better court/ time management
- Making the bar and the bench sensitive and accountable towards issues of social justice.
- There has to be a mechanism to enforce, in letter and spirit, all that is enshrined in the constitution.