



# drishti

## The Big Picture - Strengthening Judicial Apparatus

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Expressing concern over the pendency of cases, the Chief Justice of India (CJI) has said that more than two lakh cases are pending in courts for the past 25 years, while over 1,000 cases have not been disposed of even after five decades. Speaking at a public function, the CJI said that though the judiciary faces criticism for the **huge number of pending cases**, it is not entirely responsible for the delay as the executive also has some responsibility in the justice delivery mechanism. He also expressed hope that the Centre will accept his proposal to raise the retirement age of High Court judges to 65 years from the current 62.

Meanwhile, the Lok Sabha has given its nod to a **Bill to increase the strength of Supreme Court judges** from the present 30 to 33. As of now, the Supreme Court has a sanctioned strength of 30 judges, plus the Chief Justice of India which makes it 31 judges. This is the sixth time that the number of judges in the Supreme Court has been increased.

## Concerns

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- **High Courts selecting the Judges:** In the lower Judiciary, there are civil judges and higher judicial service people. So far as civil judges are concerned, they are normally selected by the Public Service Commission but the Higher Judicial Service people are often selected by the High Courts. **Judges are competent in deciding a dispute but may not be similarly competent in selecting the people to fill the vacancies.**
- **The difference in the retirement age:** The current age of retirement for the Supreme Court judges is 65 years while for the High Court Judges is 62 years. This three-year difference often influences administrative decisions.
- **Poor 'Judge to People' Ratio:** India has **20 judges per million population**, the lowest in the world. The highest being in America which is 107 per million population.
- **Vacancies:** In the lower courts, over 5,000 posts of judicial officers are vacant. In some cases, the examination to fill such posts is conducted through the state public service commissions, it seems that the commissions have failed to do their job.
- **Poor Quality of Judges:** Many-a-times, especially at the lower judiciary, Judges are asked to decide an issue about which they have no knowledge at all. It has been seen that most of the times, the judges ask the client about the related law and the statute.
- **Huge Pendency:** Close to 2.7 crore cases are pending in the trial courts. According to the 2012 report by National Court Management Systems, India is going to see a rise in the pendency of the cases to almost 15 crore cases in the next three decades.
- **Collegium, not doing its job:** The sanctioned strength of the Supreme Court was 31 including the CJI but India has hardly had 31 judges as the collegium did not fill up the vacancies in a timely manner. People in the collegium know which judge is going to retire on which date but still they do not take decisions in advance and thus vacancy remains.
- **The Executive adds to the Problem:** The **government is the biggest litigant** in India. It has been seen that the majority of the cases in the courts are for directing the executive to take decisions. Also, the executive writes very bad orders i.e. order being not clear, which results in the filing up of cases in the courts.
- **Increased Awareness:** People are now becoming more aware of their rights. They are going to the courts as to when their rights get violated. Also, the population has increased many folds but the number of judges has not increased accordingly.
- **Conduct of the Advocates:** It has been seen that advocates seek frequent adjournments, leading to lengthy procedures and hence delayed justice.

## Role of the Executive

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- It is the executive which has to take the ultimate decision as far as providing finances to the judiciary is concerned.
- It is the executive's duty to provide the necessary infrastructure to the judges and lay down certain standards.

- It is in the executive's hand to increase the number of judges. For eg, in the recent case the number has been increased **by making a simple amendment in the Supreme Court (Number of Judges Act), 1956.**
- The executive has also taken steps to improve the functioning of the Judiciary.
  - **Almost 1,000 archaic laws have been repealed.** Once the Law is repealed, all related cases automatically collapse.
  - It was the executive only which raised the issue of the vacancy in the trial courts with the Supreme Court.

## Suggestions

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- To improve the quality of the judges.
  - Make the age of retirement of judges in the High Court and Supreme Court equal.
  - Ban the post-retirement appointments.
  - There is a need to have an **Indian Judicial Service.** The executive can help with the same.
- Besides increasing the number of judges, there is a need to have **more courts** as well.
- **Proper monitoring at the district level** i.e. at the lower level is very important as it has been seen that judges in the lower courts do not behave in a desired manner.
- The **executive should find some other mechanism to resolve disputes involving it.**
- The courts should be made **tech-savvy.**
- **Alternative Dispute Resolution Mechanism:** Use of mediation, conciliation and Lok Adalats will ease the burden on the mainstream judiciary.
- **Deciding old cases:** It has been seen that when a matter is listed, the judges do not take up old cases instead take up new cases. An administrative decision needs to be taken that old cases have to be decided first and thereafter the new cases have to be decided.
  - There is an option that the retired judges can be hired for giving judgement on the older cases.
- Pendency in the Supreme Court is not that huge (around 60,000 cases). **If the Supreme Court takes decisions timely, that will ease the burden on the lower judiciary.**
  - For eg- all cases on Section 377 of IPC have collapsed as the Supreme Court has declared the same as unconstitutional.
- A case has to be ultimately decided, therefore, **unlimited stays should be discouraged.**
- The Indian Judiciary needs **professional court managers** for handling its administrative work.

## Way Forward

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- There is a need to take a **holistic and realistic view of the present situation** of the Indian Judiciary.
- The Executive needs to ensure that every order it passes should be clear i.e. it needs to mention things like the authority and intention behind the order, remedy available, etc.
- A proper **white paper on the entire state of the Indian Judiciary** is needed. Once the white paper is released, a proper discussion by all the stakeholders i.e. the Supreme Court, High Courts, the central government , state governments, the Law Commission, academia and media , etc, is required.