



NEWS ANALYSIS

18 SEPTEMBER 2024

Yesterday's Prelims Practice Question

Global Methane Pledge, an effort to cut methane emissions by a third by the end of this decade is led by

- a) India and US
- b) US and EU
- c) India and EU
- d) India, US and EU

Explanation

- ❑ U.S. President Joe Biden announced the **Global Methane Pledge**, a **U.S.–EU-led effort to cut methane emissions by a third by the end of this decade**.
- ❑ Mr. Biden made the announcement at the **Major Economies Forum on Energy and Climate (MEF)**, hosted virtually by the White House, in which leaders from several countries and the EU participated.



Today's Prelims Practice Question

Q)'Trade and Economic Partnership Agreement' (TEPA) is sometimes seen in the news in the context of negotiations held between India and

- (a) Gulf Cooperation Council
- (b) Organization for Economic Cooperation and Development
- (c) Shanghai Cooperation Organization
- (d) European Free Trade Association

Demographic advantage, Indian economy's sweet spot

Demographic advantage, Indian economy's sweet spot

Much has been written about India's emergence as an economic giant – it is the world's fastest growing big economy, and is currently the fifth largest. Demographics is a major factor in propelling this rise given that the median age is around 28 years and 63% of the population is of working age. However, the labour force participation rate stood at 55.2% in 2022, according to a recent report released by the International Labour Organization (ILO), which goes on to state that falling labour intensity is likely due to growth being led by the services sector rather than manufacturing. Therefore, while we are certainly not experiencing "jobless growth", more steps are needed to harness the demographic dividend.

Continue with the reforms agenda

First and foremost, there is a need to press ahead with the ongoing reforms agenda to maintain, if not accelerate, India's growth trajectory as that by itself will create opportunities galore. There was a welcome reference to this in Finance Minister Nirmala Sitharaman's Budget speech to initiate and incentivise improvements in productivity and to facilitate markets and sectors to become more efficient. While there is much that the Centre has done to enhance ease of doing business, much of what needs to be done next, especially in the context of production, concerns the States (which is where the action is now). Hence, both need to walk in lockstep to broaden and deepen reforms.

The Economic Survey for 2023-24 states that technological advancements have led to a declining capital-to-output ratio and an increasing capital-to-labour ratio. It was perhaps in this context that Arvind Panagariya, economist and Chairman of the 16th Finance Commission, while speaking at a recent event in the Federation Of Indian Chambers Of Commerce and Industry



Subhrakant Panda

Managing Director,
Indian Metals and
Ferro Alloys Limited
(IMFA)

Gainfully employing a large, young and aspirational population is not easy but it is a challenge India can take on

said capital-led economic growth is not ideal as the country has an abundance of labour.

The reluctance of Micro, Small and Medium Enterprises, the backbone of employment, to grow in size and scale as well as that of large business houses to foray into labour-intensive sectors can be attributed to the compliance burden and costs imposed by outdated labour laws.

The impasse over implementing the new labour codes approved by Parliament is sending a wrong signal to existing and prospective investors alike. It is important that one or two States with an evolved manufacturing ecosystem break the logjam by taking the lead.

The Centre's efforts to give a boost to the manufacturing sector is generally viewed from the angle that it is untenable for 45% of the workforce to be employed in the agricultural sector which accounts for only 18% of GDP. While taking steps to enhance agricultural productivity, we must not forget those who are engaged in the unorganised and non-agricultural sectors – about 19% of the workforce – which are highly fragmented and suffer from low productivity.

It is important to address their aspirations by focusing on high-growth potential sectors such as toys, apparel, tourism, and logistics which are also labour intensive. Then, as skills get upgraded, there will be an opportunity to move up the value chain and provide even better and higher paying jobs.

Skilling is a continuous process

Skilling is an important aspect of making future generations productive members of society. The Economic Survey highlighted that only 4.4% of the workforce in the age cohort of 15-29 years is formally skilled. This is a huge concern, and the dichotomy of labour surplus and skills shortage must be addressed through meaningful

public-private partnerships wherein industry plays an integral role in devising the curriculum and imparting 'on the job training'. Moreover, skilling is not a one-time intervention but a lifelong process which requires flexibility in institutional mechanisms as well as learning agility.

The emphasis of the New Education Policy (NEP) 2020 on foundational skills as well as higher order cognitive skills and critical thinking is a good step but, in a constantly changing world, the document must be reviewed periodically and updated.

Impact of AI/ML

Finally, in an era of artificial intelligence (AI) and machine learning (ML), repetitive tasks with low skills are most at risk but there will always be a need for human intervention and oversight.

While we must not underestimate the impact of AI/ML, neither should it be demonised. The key is to have appropriate regulations govern its use while harnessing what it has to offer. In addition to the opportunities offered by various emerging sectors, AI/ML itself is estimated by Statista to grow by nearly nine times to become a \$826.73 billion worldwide market by 2030. Further, according to NASSCOM, India already has the second largest talent pool globally in this field but the current gap between demand and supply is 51% which is projected to widen. Though very niche, it is an opportunity which should not be missed.

Gainfully employing a large, young and aspirational population is not easy but it is a far better challenge to have than dealing with an ageing one with its attendant economic and societal implications. India is in a sweet spot and must employ a holistic approach to create a talent pool so as to harness its demographic dividend for the benefit of the world at large.

- India's economic growth is drawing attention as it becomes the **world's fastest-growing large economy**, with a **median age of 28** and 63% of the population in the **working age group**.
- However, the **labour force participation rate is low at 55.2%**, indicating that while **growth is not "jobless,"** significant reforms are necessary to harness the demographic dividend effectively.

Economic Reforms and Growth

- ❑ To sustain and accelerate growth, India must continue its reform agenda, focusing on **improving productivity and efficiency in markets**.
- ❑ The **Economic Survey 2023-24** highlights that technological advancements are changing the **capital-to-labour ratio**, suggesting an imbalance in **capital-led growth versus labor utilization**.
- ❑ Economists argue that India should leverage its **abundant labor force** rather than focusing solely on **capital-intensive sectors**.
- ❑ The reluctance of **Micro, Small and Medium Enterprises (MSMEs)** to scale up, alongside large businesses avoiding **labour-intensive sectors**, stems from compliance burdens of outdated labour laws.
- ❑ The impasse over new labour codes is deterring potential investors and needs resolution, especially in States with established manufacturing ecosystems.

Employment Sectors and Skilling

- ❑ With 45% of the workforce in agriculture, contributing only **18% to GDP**, there is an urgent need to enhance agricultural productivity and transition workers to other sectors. 19% of the workforce is engaged in fragmented, low-productivity non-agricultural sectors.
- ❑ Targeting high-growth, labour-intensive sectors such as toys, apparel, tourism, and logistics can address aspirations of the workforce.
- ❑ As skills improve, there is potential for job enhancement and increased wages, helping to uplift the economy.
- ❑ Only **4% of the 15-29 age cohort is formally skilled**. Effective skilling requires public-private partnerships for curriculum development, recognizing that skill development must be a continuous process to adapt to market needs.

Education, AI, and Future Outlook

- ❑ The **New Education Policy (NEP) 2020** emphasizes **foundational and higher-order cognitive skills**, but it requires periodic reviews to remain relevant in a rapidly changing world. Continuous adaptation of educational frameworks is essential for preparing a skilled workforce.
- ❑ In the context of **artificial intelligence (AI) and machine learning (ML)**, low-skill, repetitive jobs are at risk, yet human oversight remains vital.
- ❑ India has the second-largest talent pool in AI, but a projected 51% gap between demand and supply needs addressing to capitalize on this opportunity.
- ❑ India's young and aspirational population presents a unique challenge that is preferable to an ageing demographic.
- ❑ A holistic approach to skill development and job creation is crucial to harness the demographic dividend and position India as a global economic leader.

A climate crisis agenda remains urgent

A climate crisis agenda remains urgent

The next five years are critical for India's climate action efforts, given its ambitious 2030 targets. While significant advances in solar and renewable energy are under way, India's heavy reliance on coal remains a concern, with clean energy accounting for only 22% of the electricity mix. Key environmental issues that need urgent attention include reducing heat stress, improving air quality, managing waste, and enhancing energy efficiency. The growing demand for energy must be matched with comprehensive policies addressing these challenges in the near term. Encouraging businesses to view climate action as an opportunity rather than a challenge is essential, and acting swiftly on India's carbon market is a crucial step in this direction.

Mitigating pollutants
India is highly vulnerable to heat stress and may soon face heat waves beyond human survivability limits. Mitigating both CO2 emissions and short-lived super pollutants such as methane, black carbon, and hydrofluorocarbons is crucial. These super pollutants, especially methane, contribute significantly to global warming and trap much more heat than CO2 over short periods. Reducing them can prevent more near-term warming than cutting CO2 alone. Breaking down the climate problem into manageable pieces by pollutants, states, or sectors can make solutions more effective. Tailor-made treaties, fair to both rich and poor countries, can be integrated into the Paris Agreement for accountability. The Montreal Protocol provides a successful blueprint. With its Kigali Amendment and move away from super potent F-gases, it is expected to avoid 0.5°C of warming by the end of this century. The next target should be methane, with the potential to avoid nearly 0.3°C of warming by the 2040s. A new treaty led by the U.S., European Union, and China



Zerin Oishi
Director of the India Program at the Institute for Governance and Sustainable Development

could lock in corporate commitments to reduce methane emissions to near zero by 2030.

Reducing methane emissions through financially feasible gas capture and biogas projects can tackle one of the most potent greenhouse gases (GHGs) while improving urban sanitation. Reducing short-lived climate pollutants (SLCPs) such as black carbon and enhancing the National Clean Air Programme can significantly improve air quality and public health. However, society must recognise that air pollution is a year-round problem requiring sustained action.

Cleaning the air will require five critical changes: fostering collective responsibility, proactively investing in clean air initiatives, integrating sustainable development, leveraging data-driven interventions for precise actions, and recognising clean air as a driver of economic growth. Effective solutions require coordinated efforts, better monitoring, and regulatory reforms, highlighting the economic and health benefits of clean air for all stakeholders. For improving energy efficiency, faster decarbonisation and adoption of low global warming potential refrigerants, as per the Kigali Amendment, are crucial steps towards reducing GHG emissions.

Importance of carbon markets
Carbon markets will help incentivise reductions in GHGs by offering financial rewards for cutting emissions. To keep global temperatures from rising above 1.5°C, global GHG emissions need to be reduced by at least 43%. Carbon markets will play a critical role in driving these reductions. India aims to launch the 'India Carbon Market' in 2025. This could help it achieve its Nationally Determined Contributions goals and potentially become the world's largest emissions trading system by 2030. A well-developed carbon market in India could avoid \$35 trillion in climate-related costs

over the next 50 years.

Despite its inclusion in voter demands, the climate crisis was ignored during the Lok Sabha election campaign

over the next 50 years.

Incentivising faster climate action by developing financial 'carrots' and a more nuanced approach to carbon trading is essential. Current single-basket metrics, which convert all climate pollutants and emission into CO2 equivalents, offer economic efficiency but obscure the diverse impacts of different pollutants. A more useful measuring stick would treat long-lived pollutants, such as CO2, separately from SLCPs, such as methane or black carbon. Such an approach would provide separate currencies for different pollutants, better accounting for their varied impacts over space and time.

All these actions and more are needed. These require critical scale and coordination. On the governance level, India needs a nodal authority with constitutional powers to ensure collaborative, pre-emptive action with timelines for all stakeholders. This is the bare minimum to ensure accountability and coordination across tiers of government.

A missed opportunity
The 2024 Lok Sabha election largely ignored the escalating climate crisis, despite its inclusion in voter demands. Party commitments to climate action were grossly inadequate. This neglect comes at a time when temperatures across the country are at an all-time high. Low voter turnout was attributed to searing heatwaves across the country. Rising unemployment, farming crises, and high living costs keep the poor focused on survival, deepening inequality. Unlike the West, India lacks a 'green party', and the sustainability discourse feels disconnected from ordinary citizens' reality.

Climate-progressive leadership will need to relentlessly work for an environmentally better India. This means pushing beyond mere tokenism and integrating climate action into the core of political agendas.

Context

- ❑ India's climate action efforts are entering a critical phase as the country sets ambitious targets for 2030.
- ❑ Despite progress in **renewable energy**, coal dependence remains high, with clean energy constituting only **22% of the electricity mix**.
- ❑ Urgent environmental issues such as heat stress, air quality, waste management, and energy efficiency require immediate attention to align with rising energy demands.

Mitigating Pollutants

- ❑ India faces significant risks from heat stress, potentially encountering heat waves beyond human survivability limits.
- ❑ Mitigating CO₂ and short-lived climate pollutants like methane is essential, as these super pollutants have a much greater short-term warming impact.
- ❑ Addressing climate challenges through tailored treaties can enhance accountability under the Paris Agreement.
- ❑ Learning from the **Montreal Protocol's** success with the Kigali Amendment, a focus on reducing methane emissions could prevent nearly 0.3°C of warming by the 2040s.
- ❑ Improving air quality requires five key actions: collective responsibility, investment in clean air initiatives, sustainable development integration, data-driven interventions, and recognizing air quality's economic benefits.
- ❑ Consistent efforts are necessary to tackle air pollution as a persistent issue.

Importance of Carbon Markets

- ❑ Carbon markets can incentivize **greenhouse gas (GHG) reductions** by offering financial rewards for emission cuts.
- ❑ With the goal of limiting temperature rise to 1.5-2°C, a reduction of at least 43% in global GHG emissions is required, making these markets essential for achieving this target.
- ❑ India aims to launch its '**India Carbon Market**' in 2026, potentially establishing the world's largest emissions trading system by 2030.
- ❑ This could help meet **Nationally Determined Contributions (NDCs)** and avoid \$35 trillion in climate-related costs over the next 50 years.
- ❑ Current carbon trading metrics aggregate all pollutants into CO2 equivalents, which can obscure the distinct impacts of different pollutants.
- ❑ Separating long-lived pollutants from short-lived climate pollutants in carbon markets could yield more effective climate action.

Governance and Political Engagement

- ❑ Establishing a constitutional nodal authority for climate action is essential for ensuring coordinated, pre-emptive measures with timelines across government tiers.
- ❑ This would facilitate accountability and effective governance in tackling climate issues.
- ❑ The 2024 Lok Sabha elections showed a troubling neglect of climate issues, despite public demand.
- ❑ The absence of a strong political commitment to climate action exacerbates vulnerabilities, particularly for the economically disadvantaged, who prioritize immediate survival.
- ❑ For meaningful progress, climate action must become central to political agendas, moving beyond token gestures. Climate-progressive leadership is necessary to foster a sustainable and equitable future for India.

The continuing distribution of the death penalty

The continuing distribution of the death penalty

The life of the death sentence in India has been unending, and like a phoenix revives itself in different forms every now and then. The latest addition to this is the **Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024**, adopted by the West Bengal government, the reason being the brutal rape and murder of a doctor at Kolkata's R.G. Kar Medical College and Hospital. It seeks to amend the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Protection of Children from Sexual Offences Act, 2012, in their application to the State of West Bengal. Among other things, it introduces the death penalty for the offence of rape.

While it has been unanimously passed by the Bengal Assembly, the State Governor was critical but has referred it to the President of India Droupadi Murmu for consideration. In the same month of August, there were several such cases in other States with the survivors being Dalit/Advised women and children. In 2022 alone, the National Crime Records Bureau recorded 31,516 rapes in India, nearly four each hour, and 246 cases of murder with rape/gang rape. Rajasthan, Uttar Pradesh, and Madhya Pradesh topped the list with 5,209, 3,690, and 3,029 recorded cases of rape, respectively.

Global data

In global figures from Amnesty International, at the end of 2023, nearly three quarters of countries had abolished the death penalty in law or practice: 112 countries had completely abolished the death penalty in law for all crimes, while 144 countries overall had abolished the death penalty in law or practice. But 55 countries still retained the death penalty in law and practice. In South Asia, while Bhutan and Nepal are the only abolitionists for all crimes, the Maldives and Sri Lanka are abolitionists in practice. India, along with Afghanistan, Bangladesh, Pakistan, are the retentionists. Project3DA reports that in 2023 alone, India had 120 recorded death sentences. There were no recorded executions, and the number is down from 87 in 2022. Moreover, there were 90 people under the death sentence in India at the end of 2023, a constant rise since 2019, when it was 378. It is also the highest death row population in a calendar year in around two decades.

Most of such death row prisoners spend several years on death row, with some being executed later. They have severe physical, psychological and mental health problems and without any state compensation, which suggest grave procedural flaws and perhaps caste, class, and religious biases that pervade different institutions of the Indian criminal justice system and the people who evade power through them. Some of these prisoners commit suicide, signifying the inhuman prison conditions in which they are made to live, including prison overcrowding, as undertrials are mostly from the



Shailesh Kumar
Lecturer in Criminal Law at Royal Holloway, University of London, a Commonwealth Scholar, and an Editorial Board member of the Project3DA Criminal Law Blog

marginalised communities and left to fend for themselves. They continue to constitute three-fourths of the total number of incarcerated people in India.

On VAWC and societal responses

Unfortunately, the use of 'decolonisation language' that gave birth to the BNS (replacing the Indian Penal Code), while enabling a few positive changes, has increased the number of offences punishable by death from 12 to 18. India has shifted to a more deterrent regime for sexual offences without any significant change in women's safety and empowerment. A glance at the nature of offences where the death sentence has been given by sessions courts in 2023, shows murder involving sexual offences at the top of the chart (6-4). Sexual violence against women and children (VAWC), particularly where the victim is killed, most often led to outbursts of public anger, grief, and shock, followed by the demand of capital punishment from certain sections for the rapists, who are often termed as *rutabas*, *hansan*, *vahhi darinda*.

This framing creates an 'othering' – as if the accused is not from the same society that we inhabit – and justifies death for them as a nod for avengement, which also seems to be rooted in India's religious and societal culture that celebrates death (the killing of devils by gods and goddesses). Such calls for 'justice' to victims mostly use the honour of the family, community, and nation, ignoring the victim's autonomy and what they want, which is also reflected in judicial discourse. On the other hand, there is a normalisation and politico-legal tolerance of everyday VAWC by men, including their public flogging, sexual violence, and killing – outside by strangers without any public intervention, and at home by husbands and relatives. Worryingly, searches for all victims' videos trend on Google and explicit sites.

The recommendations made by the Justice Verma Committee argued that the death sentence does not necessarily act as a deterrent against crimes such as sexual offences, including gang rapes. However, the Union Cabinet did not consider those recommendations. So, if the objective behind the death penalty is not fulfilled, the carceral politics of sexual violence must be dismantled by infusing abolitionist feminism. A key concern is also to bring human rights-based language to masses, the majority of whom do not have access to it, and whose thoughts towards the death penalty are shaped by cultural and religious values. There must be an abolitionist feminist movement to refuse the death sentence and even life imprisonment without parole as responses to sexual violence including rape. This movement should seek to understand and work upon the social causes and cultural conditions that lead to VAWC.

It also needs to work on the structural issues of redistribution of land and wealth for the marginalised communities, their representation in all spaces and institutions – both private and

public – and a radical shift towards properly funded public education and health care.

Governments and society need to work on the kind of targeted support and a range of state facilities rape survivors need in order to access education, employment, health, marital and family life. They also need to provide support to families of rape survivors, particularly minor siblings, if any, in terms of their access to education and resources, and take part in community building and a realisation of fraternity to ensure their dignity that the Indian Constitution upholds.

Complex issues but there must be a start

There need to be victim-centred procedural and institutional reforms and some sort of 'beta padhao, beti bachao' (educate the son, to protect the daughter) policy initiative to eliminate the patriarchal notion of the honour of the family, community, and nation residing in female bodies and virginity. Instilling and ignoring the problems mentioned above will make the abolition movement appear superficial to say the least and forced from the top. The death penalty is the safest escape route from accountability as it does not burden the state with the hard work of reforming the police, prosecution, judiciary and supporting survivors. A culture of utilising existing research for an evidence-based informed policymaking by the central and State legislatures needs to be inculcated to avoid knee-jerk populist reactions that lead to criminal injustice.

Additionally, research needs to be conducted on if and how the socio-religious background of judges plays a role in them awarding the death sentence.

Indian society is again striving for social change through legal reform. It seeks the care, the safety and the support for rape survivors and their families, alongside state accountability. But we must remain attentive to how the apparatus of laws (including contract, family, labour and property laws) constructs the socio-economic status of women and children, particularly from the oppressed castes and other marginalised communities. It asymmetrically distributes wealth, knowledge and power.

Abolition of the death penalty and creating a safer environment for women and children are complex issues. They require understanding, teaching, and engaging the law, critically. There must be an admission of and public talk about caste, race, religion and gender-based violence through an intersectionality lens, including by the organisations and the people who champion these causes. Feminists argue that sexual offences are more about power than sex.

There is a need for public and judicial awareness campaigns debunking the myth of the death sentence leading to a reduction in VAWC and to bring gender equity from within the private sphere (family) to the public sphere rather than distributing death penalty and sentence inflation. Punishment alone cannot change society.

- ❑ The recent legislative move (**Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024**) comes amidst **rising sexual violence in India**, with 31,516 rapes reported in 2022.
- ❑ The Bill has been referred to the President, sparking a **national debate on capital punishment's effectiveness**.

Creating a safer environment for women and children is a complex issue; punishment alone cannot change society

Legislative Developments

- ❑ The Bill increases the number of offences punishable by death from 12 to 18, reflecting **public outrage over sexual violence**. Critics argue that harsher penalties do not improve women's safety, as high rates of violence persist.
- ❑ Despite unanimous passage by the West Bengal Assembly, the Governor has expressed concerns and referred the Bill to the President. This move indicates the need for a balance between legislative action and judicial oversight.
- ❑ Data from the **National Crime Records Bureau** shows that **Rajasthan, Uttar Pradesh, and Madhya Pradesh** lead in rape cases, emphasizing systemic violence against women. This data reinforces the necessity for targeted legal reforms beyond punitive measures.



Global Perspective and Trends

- ❑ Globally, 112 countries have abolished the death penalty, while India remains a retentionist nation. This trend challenges the effectiveness of capital punishment as a deterrent to crime.
- ❑ Death row prisoners face severe mental and physical health challenges, often stemming from inadequate support. The increasing number of marginalized individuals on death row highlights socio-economic disparities in the justice system.
- ❑ Victim-centered reforms should include educational initiatives to challenge patriarchal norms. Comprehensive state support for survivors and their families is crucial for fostering resilience and dignity.



Q) Separation of judiciary from the executive protects sanctity of judiciary in this context. Prohibiting judges from participating in politics is a crucial step to uphold judicial independence. Analyse.



In a deadlock: Union Minister for Law and Justice Kiren Rijiju interacts with Chief Justice of India D. Y. Chandrachud in New Delhi on November 9, 2023.

Why is there friction between the government and the judiciary?

What is the trigger for the current conflict? Why did the Supreme Court strike down the law on National Judicial Appointments? What is the government's grouse against the Collegium system? What was the Constitution (99th Amendment) Act? What is the new CJI planning?

Krishnakant Rajagopal

The story so far

A major confrontation is on between the Union government and the Supreme Court over the former's resentment towards the Collegium system of appointments and its push to have a dominant say in judicial appointments and transfers. The government has also started airing its grievance against the invalidation of the National Judicial Appointments Commission (NJAC) by the court in law. The current round of conflict has two triggers. One is the government's repeated public criticism of the Collegium system on the ground that it is "opaque". The other concerns a ping-pong battle between the Collegium and the government over the names being recommended and reiterated for appointment in constitutional courts.

How did the latest bout begin?

On October 17, Law Minister Kiren Rijiju shot a salvo at the Supreme Court Collegium, saying they were "preoccupied" with making judicial appointments when their primary job is delivering justice. Mr. Rijiju's comments came at the fag end of the 48th Chief Justice of India N.V. Ramana's tenure, which saw the Collegium recommend 363 names for High Court judgeships and 11 names for the Supreme Court. On November 6, Mr. Rijiju complained again on the lack of accountability of the Collegium system and made reference to the court striking down the NJAC law, which gave the government an equal say in appointments, in October 2015. His criticism coincided with Justice D.Y. Chandrachud taking over as top judge on November 9 for a two-year tenure.

Meanwhile, on November 17, Chief Justice Chandrachud agreed to list in due course a writ petition to reconsider the Collegium system. The SC also began its counter-offensive with the CJI advising that the Collegium and the government should work with a sense of "constitutional stamanship" rather than find fault with each other. On the judicial side, a Bench led by Justice Sanjay Kishan Kaul took cognisance

of the government sitting on Collegium recommendations for years together for "undisclosed reasons". It later went on to link the government's willingness to "cross some Rubicons" and take on the judiciary by delaying Collegium recommendations to the quashing of the NJAC mechanism. But the same evening, there were media reports that the government had returned 20 names recommended by the Collegium for High Court judgeships. A few days later, Vice-President Jagdeep Dhankar remarked that a law – with a specifically naming the NJAC – passed by Parliament and expressing the will of the people had been "undoing" by the court disregarding parliamentary sovereignty.

The procedure for appointment of judges to the Supreme Court and the High Courts, in accordance with the Collegium system, was laid down in the Memorandum of Procedure

On December 8, Justice Kaul's Bench said nobody was stopping the government from bringing a new law on judicial appointments, but "till then the Collegium system and its Memorandum of Procedure (MoP) was the 'final word'". The Court said that even if a law was enacted in the future, its constitutionality would be duly scrutinised by the Supreme Court.

The parliamentary standing committee on Law and Personnel led by senior BJP leader Sushil Kumar Modi in its report said both the judiciary and the government need to do some "out-of-the-box" thinking to deal with the "perennial" judicial vacancies in High Courts. It said that both institutions were not adhering to the timeline given in the Second Judges case and the MoP.

What is the MoP and what is its current status?

The procedure for appointment of judges to the Supreme Court and the High Courts, in accordance with the Collegium system, was laid down in the MoP prepared in

1998. It states that the initiation of a proposal for appointment of Supreme Court judges vested with the CJI and that of High Court judges with the Chief Justice of the High Courts concerned. The MoP required the Chief Justices of High Courts to initiate the proposals six months prior to vacancies. The Constitution (99th Amendment) Act was passed by Parliament to provide for a National Judicial Commission, which was duly formed by the NJAC Act. On October 12, 2015, the court struck down the NJAC Act and the Constitution amendment which sought to give politicians and civil society a final say in the appointment of judges to the highest courts. However, the court said the 21-year-old Collegium system needed a re-look. The court directed the government to finalise a revised MoP in consultation with the CJI and the Collegium. A revised MoP was sent to the CJI by the government on March 22, 2016 for the response of the Collegium.

The Collegium responded with its own revisions on May 25 and July 7 of 2016. There was an additional round of consultations when the government responded to these revisions on August 3, 2016 to which the Collegium sent back comments on March 13, 2017. Incidentally, the government, after a gap of three months, wrote to the Chief Justice of India on July 4, 2017, drawing the latter's attention to the court's own judgment in a suo motu contempt case against Calcutta High Court judge, Justice U.S. Karan, who was sentenced to six months' imprisonment. Two judges on the Bench, Justices Ranjan Gogoi and J. Chandrasekhar, had observed that the appointment of Mr. Karan revealed loopholes in the Collegium system and laid bare the lacuna in making a correct "assessment of the personality" at the time of elevation of people to the Bench. The court did not respond to the letter, according to the government. The Centre said it would finalise the MoP only after receiving inputs from the Supreme Court.

What are the government's grievances?

The Centre argues that the Collegium, both at the Supreme Court and High Court levels, are delaying judicial appointments. The NJAC was a good law thwarted by the court.

It says that the High Courts are not making recommendations six months in advance of a vacancy. As on November 20, 2022, there are 332 judicial vacancies in the High Courts out of a total sanctioned strength of 1,108 judges. The High Courts have made 146 (44%) recommendations which are under consideration of the government and the Supreme Court. The High Courts are required to make recommendations for the remaining 186 vacancies (56%). Many High Courts have not made recommendations under the Bar and Service quotas for vacancies in the past one to five years. It said 43 High Court judges are scheduled to retire between December 1, 2022 and May 31, 2023, taking the vacancies up to 229. So far, no recommendations have been received.

The government has complained that the Supreme Court rejects 25% names recommended by the High Courts for judgeships. While making 355 appointments during 2022, 221 recommendations made by the High Courts were processed. The remaining 56 proposals were rejected by the Supreme Court Collegium. Sixty-six fresh proposals of names for judgeships are pending Intelligence Bureau inputs. The delay in the appointment process has affected the timely filling up of vacancies in the High Courts. The Supreme Court itself has six vacancies. Justice Dipankar Datta, whose recommendation was pending with the government for nearly three months, was sworn in as the 28th judge of the Supreme Court on December 12.

The Centre argues that the Collegium system is on the ground that it is "opaque". The other concern is the government's repeated public criticism of the Collegium and the government over the names being recommended for appointment in constitutional courts.

The Centre argues that the Collegium system is the law as it exists now. The government has kept Collegium recommendations pending for no apparent reason. The court has accused the government of not appointing persons who are not "palatable" to it.

The Supreme Court said that the Collegium system is the law as it exists now. The government has kept Collegium recommendations pending for no apparent reason or it has repeatedly sent back names reiterated by the Collegium. The court accused the government of not appointing persons who are not "palatable" to it.

THE GIST

A major confrontation is on between the Union government and the Supreme Court. The current conflict has two triggers. One is the government's repeated public criticism of the Collegium system on the ground that it is "opaque". The other concerns a ping-pong battle between the Collegium and the government over the names being recommended for appointment in constitutional courts.

The Centre argues that the Collegium, both at the Supreme Court and High Court levels, are delaying judicial appointments and the NJAC was a good law thwarted by the court.

The Supreme Court said that the Collegium system is the law as it exists now. The government has kept Collegium recommendations pending for no apparent reason. The court has accused the government of not appointing persons who are not "palatable" to it.

Approach

- ❑ Introduce separation of judiciary from the executive.
- ❑ Stand on the Post-retirement job by Government for retired judges.
- ❑ Discuss importance of prohibition.
- ❑ Conclude the answer by writing a way forward

Prohibiting judges from participating in politics is indeed a crucial step to maintain judicial independence. Judicial independence is the cornerstone of democracy, ensuring that the judiciary remains free from external pressures and influences, particularly from the political branches of government.

Stand on the Post-retirement job by Government for retired judges:

- ❑ 14th report of the Law Commission of India considered the question of such nominations and appointments before forming a negative opinion.
- ❑ The report said it is clearly undesirable that Supreme Court Judges should look forward to other Government employment after their retirement.

Importance of Prohibition

- ❑ **Separation of Powers:** It reinforces the separation of powers, which is fundamental to the functioning of a democratic system.
- ❑ **Impartiality:** It preserves the impartiality of the judiciary by preventing judges from having political biases that could affect their judgment.
- ❑ **Integrity:** It maintains the integrity of the judiciary by avoiding conflicts of interest and ensuring that decisions are made based on law and not political convenience.
- ❑ **Public Confidence:** It enhances public confidence in the judiciary, as people are more likely to trust a system that is free from political maneuvering.

Need of the hour:

- ❑ There is a creeping worry that post-retirement jobs are a result of pre-retirement judgments.
- ❑ Above all, public confidence in the judiciary cannot be shaken through such appointments. The issue needs to be resolved convincingly.
- ❑ Besides, ethics demand that no retired judge of the highest court accepts a post that will room to criticism and controversy.
- ❑ Retirement age of judges should be raised to 70 years.
- ❑ They should be given their last salary as pension and not given any post that does not involve judicial or quasi-judicial work for at least three years

Prohibiting judges from engaging in political activities is essential to safeguard the independence of the judiciary and ensure that justice is administered without fear or favor.



Thank you

Address

**B-47, Main Road Shivalik
Enclave, Block-B, Shivalik Colony,
Malviya Nagar, New Delhi-110017**

Phone Number +91 8178833167