# Complete Justice

## What is the issue?

- Mohammed Zubair, the co-founder of Alt News, continues to be in prison despite the Supreme Court of India granting him interim bail, because of remand in another case by the Delhi police.
- The Court was aware of the futility of the bail order. Yet, the Court did not direct his release by granting him bail in the other case too.

## What is the story behind?

- The order relates to a case challenging the Allahabad High Court's judgment refusing to quash the FIR against Mr. Zubair.
- The charge was under Section 295A of the Indian Penal Code (IPC) - outraging religious feelings by insulting religion or religious beliefs.
- Later, a charge under Section 153-A IPC, of promoting religious enmity, was added.
- The Court accepted that there was not even a *prima facie* case against Mr. Zubair. It accepted that the case itself was a device to crush dissent.
- It seemingly accepted the contentions, as evident from the grant of bail.
- Yet, the Court said the order was with respect to only the case registered in Uttar Pradesh. This has meant the continued detention of Mr. Zubair.

To know more about the Mohammed Zubair Case, click here.

## What are the powers of the Supreme Court?

- The Supreme Court of India is regarded as the world's most powerful court, on account of its wide power of judicial review.
- It has the jurisdiction to issue writs under Article 32 of the Constitution.
- It has the original jurisdiction under Article 131 of the Constitution.
- There is also wide appellate power under Articles 132, 133, 134 and 136 of the Constitution.
- As per Article 142 of the Constitution, the Supreme Court has the power to "make such order as is necessary for doing complete justice in any cause or matter pending before it".
- Yet, the top court has shown itself to be helpless when issues of individual liberty have been placed before it on very many occasions.

## What are the challenges before the judiciary?

- Many political prisoners languish in prison after their bail pleas have been repeatedly rejected by different courts.
- **Executive is able to register multiple FIRs in different States** of India to ensure that the dissident is not released from prison even if bail is granted in some of the cases.
- Thus, the executive's **jail jurisprudence** effectively surpasses the Court's **bail jurisdiction**.
- This scenario, which reflects the new normal in the country's criminal jurisprudence, poses

crucial challenges to the judiciary.

- The Supreme Court cannot afford to be conventional if it really wants to tackle this situation.
- Conventional legal wisdom proclaims that every criminal case is a case that requires to be dealt with as such and taken to its logical conclusion.
- The criminal justice system in tough times **degenerates into 'rule by law'**, that replaces 'rule of law'.
- The law becomes an effective device in the hands of the Government for the purposes of a witch-hunt and this operates against the opponents of a regime, as a class.
- In such a legal ambience, it will be equally fallacious to treat each case as isolated, as in reality, it is not so.

## What is being done in other countries?

Even in challenging times, a constitutional court should be able to evolve a mechanism of its own to preserve the democratic foundation of the country by intervening in the incremental process of nation's "deconstitutionalisation".

- At least under certain conditions of sufficient independence, political support and remedial power, the courts can too play an important role in buttressing democratic processes and commitments.
- This is the essence of **responsive judicial review**.
- The constitutional courts in Colombia and Brazil have developed the new doctrine of "**unconstitutional state of affairs**".
- This enables the court to address structural deficits with a sense of realism and to pass effective orders even by deviating from procedural rigour, with a view to protect fundamental rights.
- This is, in certain ways, akin to the practice of Public Interest Litigation (PIL) in India and structural injunctions in the United States.

## What is next?

- The courts subserving the interest of the executive may even pose a serious threat to personal liberty.
- However, in certain rare situations, the court could still act as a determined umpire who checks the executive's excesses.
    - The Supreme Court's intervention in the Centre's COVID-19 vaccine policy and the Pegasus episode illustrates this point.
- The need is to expand the latter approach and to create and perpetuate a democratic judicial atmosphere that supports the cause of freedom.
- In principle, the Supreme Court of India is constitutionally equipped with the power to invoke its jurisdiction for the larger cause of liberty, even by deviating from the conventional technical route.
- The Court needs a **new version of judicial activism**, which the Court itself evolved, in the 1980s.
- The "complete justice" under **Article 142** is meant to be used when the legalistic arguments such as those raised by the state in Mr. Zubair's case have the effect of sabotaging the goal of constitutional justice.
- Article 142 arms the Supreme Court with the supplemental power of complete justice.
- It is essential for the Supreme Court of India to treat political prisoners and dissenters facing

multiple FIRs and undergoing unjustifiably long **incarceration as a class**.

**Reference**

https://www.thehindu.com/opinion/lead/a-new-judicial-device-for-complete-justice/article65632346.ece

