

Judicial Accountability

Mains Syllabus: GS II - Structure, organisation and functioning of the Judiciary; Separation of powers between various organs

Why in News?

Recently a Delhi High Court Justice was repatriated to the parent court after several sacks of high value currency notes were allegedly found in his property.

What are the significances of judicial accountability?

- **Judicial accountability** - It refers to the responsibility and obligation to uphold the rule of law, fairness, and justice.
- It emphasizes transparency, ethical behavior, and adherence to established legal principles.
- **Ensures impartiality**- Judges remain impartial and fair in their decisions.
- **Builds public trust** - To maintain public trust and confidence in the judiciary.
- **Promotes institutional responsibility** - By rendering the judiciary responsive to the needs of the public.

What are the perceived challenges in holding judiciary accountable?

- **Ineffective removal process** - The removal of judges requires a high threshold of parliamentary support, making it a rarely used and impractical tool.
- No judge has been impeached till date, though some impeachment actions are taken.

The first case of impeachment is that of Justice V. Ramaswami of the Supreme Court (1991-1993). Though the enquiry committee found him guilty of misbehaviour, he could not be removed as the impeachment motion was defeated in the Lok sabha.

Removal of Judges

- Article 124 (for the removal of a Supreme Court judge) and Article 218 (for the removal of a high court judge) of the constitution provides for the removal of judges.
- They can be removed by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-third of the members of the House present.
- **Ground of removal** - Proved misbehavior or incapacity.
- **Removal procedure** - The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:
 - A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/ Chairman.
 - The Speaker/Chairman may admit the motion or refuse to admit it.
 - If it is admitted, then the Speaker/ Chairman is to constitute a three-member committee to investigate into the charges.
 - The committee should consist of
 - The chief justice or a judge of the Supreme Court
 - A chief justice of a high court
 - A distinguished jurist.
 - If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
 - After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
 - Finally, the president passes an order removing the judge.

- **Political influence in removal process** - In the Ramaswamy case, impeachment issued by the apex court failed due to the lack of majority vote from the Houses of the Parliament.
- **Judicial immunity** - In the Justice R. Veeraswamy case, it was declared that judges of SC or HC cannot be subjected to investigation in any criminal offence of corruption, or a FIR be registered against them without the prior permission of the CJI.
- **Not covered by Lokpal** - Recently Supreme Court stayed a Lokpal Order that brought judges of High Courts under its jurisdiction.
- Special Bench of the Supreme Court is examining the Lokpal's jurisdiction over sitting High Court judges.
- **Lack of transparency** - Internal mechanisms like the in-house procedure for addressing judicial misconduct are often confidential, leaving the public unaware of outcomes.
- **Contempt of court laws** - Strict contempt laws discourage open discussions about judicial misconduct, limiting public scrutiny.
- **Absence of an independent oversight body** - Unlike other government institutions, the judiciary largely regulates itself, leading to potential conflicts of interest.
- **Delays in proceedings** - Cases of judicial misconduct often drag on for years, reducing their deterrent effect.
- **Lack of transparency in collegium system** - Lack of transparency and proper criteria for selecting judges remains a huge issue in the collegium appointments process.
- **Overburdened collegium** - Every year, hundred judges of the High Court and the

Supreme Court are to be selected and in any proper selection process, at least a 1,000 candidates have to be examined for their relative merits and demerits.

- Since the sitting judges of collegium are very busy with their judicial work and have little time to devote to this task.

What can be done?

- A full-time judicial appointments commission, comprising retired judges and other eminent public men, who are totally independent of the government can be appointed for selecting judges in a transparent manner.
- A high-powered and full-time judicial complaints commission comprising five men/women who are independent of the government as well the judiciary can be established.
- This complaints commission can receive complaints against judges of the higher judiciary from people.
- If they feel that there is a prima facie case, they can have the matter investigated or hold the trial of the judge through another committee, much like the judges inquiry committee.
- This would address the problem of judicial misconduct and corruption to a substantial degree.
- Higher judiciary can be brought under the Lokpal jurisdiction.

Reference

[The Hindu | The judiciary's 'between a rock and hard place' moment](#)

