Judicial Role in Improved Lawmaking

What is the issue?

Chief Justice of India N.V. Ramana highlighted the problem of deterioration in the quality of deliberation in Parliament prompting calls for reforms from multiple stakeholders

What are the issues?

- Passage of laws without adequate notice and deliberation
- Rushed lawmaking sacrificing the two core ideals of constitutional democracy - equal participation and respect for fundamental rights
- Very high number of disruptions leading to a reduction in time for discussions
- Passage of bills in the same session - In the recent session, 15 new Bills were introduced and passed in the same session of the Parliament
- In the latest monsoon session, 14 Bills were passed in the LS after debates spanning 10 minutes or less.
- In the 17th LS session, only 12% were referred to Parliamentary Committee

How can the Judiciary improve the lawmaking process?

- By enforcing the text and spirit of the constitutional provisions governing legislative procedures .
- e.g Addressing issues like passing the bills even though the voice votes are unclear
- By addressing the issues of certification of ordinary bills as Money Bills to bypass the Rajya Sabha
- In Aadhaar case, Supreme Court, to an extent, recognized its power to check whether such procedural provisions had been complied with
- In exercising judicial review, the court must call on the State to provide justifications explaining why the law is reasonable and valid
- The Supreme Court adopted this approach in the Indian Hotel and Restaurants Association (2013) case
- Choosing whether to employ the doctrine of “presumption of constitutionality”

The term ‘presumption of constitutionality' is a legal principle that is used by courts during statutory interpretation — the process by which courts interpret and apply a law passed by the legislature

What is CJI’s suggestion?

- CJI suggested that the legislature should be reformed from within without raising concerns of separation of powers
- However, legislative majorities have little incentive to cooperate for such reform
- Hence the judiciary can help restore faith in the ‘temples of democracy’

Source: The Hindu

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