The supreme failure

What is the issue?

By failing to decide in key constitutional cases in a timely way, the apex court has not acted as the "watchful guardian" (sentinel on the qui vive).

Why Supreme Court is considered as an agent of social justice?

- Supreme Court acts as a lighthouse. Its gracious rays of justice and liberty light up the troubled surface of the water, making India a free and strong nation.
- In the last few years, the Indian Supreme Court has delivered some judgments of far-reaching consequence.
- Some of them are
    - Declared the right to privacy a fundamental right
    - Decriminalised consensual sexual conduct between adults of the same sex
    - Recognised transgender persons as the third gender
    - Outlawed triple talaq.
- These decisions shore up the belief in republican values like liberty and equality reified in our Constitution.
- However in the wake of mounting majoritarianism and surging ethnocultural nationalism the apex court has postponed its decision on various constitutional cases
- As a result the role of Supreme Court as watchful guardian is put under question.

Is Supreme Court defaulting in its role as a "watchful guardian"?

- Handful of cases related to constitutional and other legal matters that can have serious repercussions on the fundamental rights and core republican values are pending before the supreme court. These include
    - 25 main cases – 5 judge constitution bench
    - 5 cases – 7 judge constitution bench
    - 5 cases – 9 judge constitution bench.
- Related to these main cases, there are more than 500 connected cases.
- These cases cannot be decided till the legal issues in the main cases before the constitutional benches are addressed.

What are some of the pending constitutional cases?

The following cases continue to languish in the apex court for a prolonged period of time.

- **Constitutionality of the Citizenship (Amendment) Act 2019 –** It provides non-Muslim communities from Bangladesh, Pakistan, and Afghanistan a fast-track route to Indian

citizenship

- **Petitions challenging Dilution of Article 370** of the Constitution by a Presidential Order of August 5, 2019 and split Jammu and Kashmir into two Union Territories.
- **Petitions challenging the constitutionality of 103rd Amendment Act 2019 -** It provides reservations in public educational institutions and government jobs for economically weaker sections. The case has not been heard since August 5, 2020, while the law has already been implemented.
- **Vivek Narayan Sharma v. Union of India –** This case relates to the legality of demonetisation of all Rs500 and Rs1,000 notes aimed at curbing black money.
- It was the most audacious economic experiment. More than 99% of the cash came back into the banking system, according to RBI. The case is pending for more than 5 years.
- **Constitutional challenge to the electoral bonds scheme -** This scheme strikes at the heart of our polity because anonymous funding of political parties is the root cause of corruption in public life.

What needs to be done?

- By failing to decide key constitutional cases in a time-bound manner, the Supreme Court has not acted as the "sentinel on the qui vive.
- Unless the Court strives in every possible way to assure that the Constitution, the law, applies fairly to all citizens, the Court cannot be said to have fulfilled its custodial responsibility.
- The Court should perform its constitutional duty of being a formidable counterforce to brute majoritarianism.
- The power of judicial review that the Chief Justice of India calls as critical to democracy should be exercised assiduously.
- Else India's hard-fought constitutional democracy would be in grave peril.

Reference

1. https://www.thehindu.com/opinion/op-ed/the-supreme-failure/article38354697.ece

SHANKAR IAS PARLIAMENT
Information is Empowering