



A COURT IN CRISIS

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(Mains GS 2 : Separation of powers between various organs, dispute redressal mechanisms and institutions & Structure, organisation and functioning of the Executive and the Judiciary)

Context:

- Justice N.V. Ramana was sworn in as the 48th Chief Justice of India (CJI) by President Ram Nath Kovind at Rashtrapati Bhavan.
- Justice Ramana takes over at a time when the judiciary is going back to a virtual mode, due to the second wave of Covid-19, and is entrusted with ensuring un-interrupted access to justice.
- The Chief justice of India should address the controversial issues for restoring the highest prestige of the court.

The oath and its importance:

- CJI do swear in the name of god/ solemnly affirm to “bear true faith and allegiance to Constitution of India as by law established; uphold the sovereignty and integrity of India; duly and faithfully and to the best of [his] ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will and uphold the Constitution and the laws”.
- The framers of the Constitution understood the importance of the oath of office of judges of the Supreme Court of India (SC) and carefully designed its language.
- The words, “without fear or favour” to “uphold the constitution and the laws” are extremely significant and stress the need for a fiercely independent court.
- Article 50 of the Constitution provides: “The State shall take steps to separate the judiciary from the executive in the public services of the State.”
- In the Constituent Assembly debates, K T Shah, perhaps fearing for the future, moved an amendment on December 10, 1948, to this Article proposing a “separation of powers as between the principal organs of the State, viz., the Legislative, the Executive, and the Judicial.”

Controversies on political cases:

- Dr. B R Ambedkar on May 24, 1949, while debating Article 103 (Now Article 124), stating that the judiciary decides cases in which the Government has, if at all, the remotest interest, in fact, no interest at all.
- The judiciary is engaged in deciding the issue between citizens and very rarely between citizens and the Government.
- Consequently, the chances of influencing the conduct of a member of the judiciary by the Government are very remote”.
- However, today, the judiciary, especially the SC, is called upon to decide a large number of cases in which the government has a direct interest. These can be politically sensitive cases too.

Master of roster:

- The Chief Justice of India is the first amongst the equals but by virtue of his office assumes significant powers as the Master of the Roster to constitute benches and allocate matters.
- The SC has reaffirmed this position in case of Campaign for Judicial Accountability and Reforms v. Union of India, (2018) with Chief Justice Dipak Misra presiding.
- The result has been that many matters were either treated casually or deflected for no reason from serious hearing.

The reminder:

- The SC is expected to seek strict accountability from the legislature and executive and any infraction of the Constitution and laws must be corrected.
- A country of billion-plus needs its highest court to stand for the people.
- Perhaps, judges need a gentle reminder that the Preamble to the constitution begins with the words, “We, the people of India.... enact and give to ourselves this Constitution”.
- The power of the judges comes from the people, like the executive and the legislature.
- The judiciary is besieged by inherent and fundamental challenges. Millions of pending cases, quality of judges and their decisions, organisational issues and its integrity and impartiality, need urgent attention.
- Yet, in the last two decades precious little has been done. Justice is eluding the common man, including the vulnerable sections of society.

Conclusion:

- The new Chief Justice must seriously introspect and review its functioning and free itself of the bias in constituting benches and allocating cases.
- Judiciary also needs to take concrete steps to revitalise the administration of justice so that the rule of law be restored and the Constitution served.