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TARGET MAINS 2022

CURRENT AFFAIRS

POLITY-4

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TOPICS:

1. Anti Defection Law.
2. EWS Reservation.
3. Issues in Judiciary.

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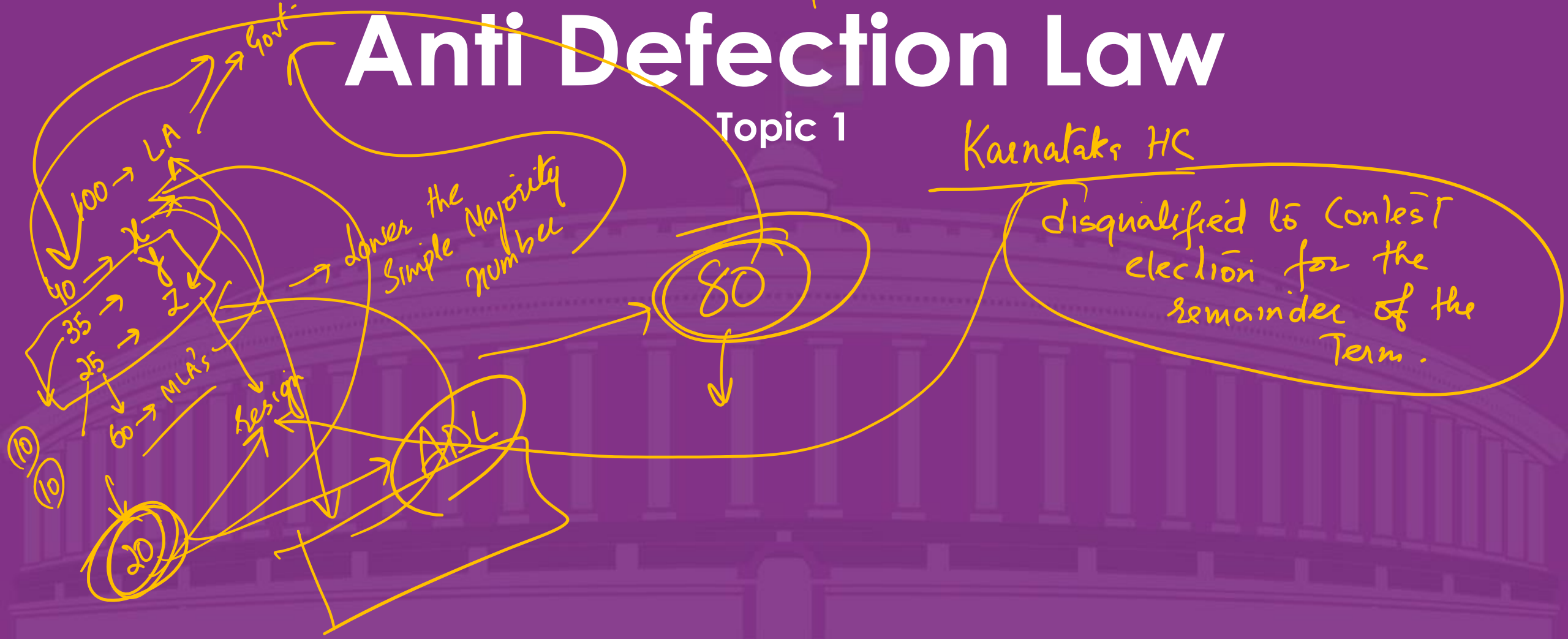
1) Provisions
2) Issues
3) Concerns
4) Solutions
5) Office of Profit

Anti Defection Law

Topic 1



3 months

GOA

1985 → 52nd C.A.Act

↓

10th Schedule → defections → STABILITY → Under threat

ARTICLE 142 → Complete Justice.

1) VOLUNTARILY RESIGNS → DISQUALIFIED

2) Whip → VIOLATES → DISQUALIFIED

3-line whip

3) Nominated Legislator

4) Independent member of a House.

DISQUALIFICATION Grounds

→ PRESIDING OFFICER

Speaker → LS/LA

Chairman → RS/LC

a) Time limit.

b) → ruling party → not impartial

c) Dissent — killed.

↳ freedom of speech

d) OoP →

(SOLUTION)

a) Time limit → prescribe.

b) P/q →

c) 2/3rd Merger → should not be allowed. ✗

d) Resignations → new loophole.

e)

- In a deliberative democracy, debate and discussion are key to framing strong laws. Debates on the floor of the House are an opportunity for legislators to raise their concerns and voice their opinions on an issue. It is expected that in this capacity he must be able to determine public interest and contribute to the lawmaking process. By weighing upon various factors he should determine his position on an issue and form an informed opinion. These factors could be a combination of his ideologies, voters' preferences and his political affiliation.

As per the law, a legislator could be disqualified if he votes against or abstains from voting, contrary to his party's direction. This means that if a legislator defies the party whip on any issue he is deemed to have defected and will lose his membership to the House. A whip can be issued to all votes on bills, motions and resolutions.

The Law does not provide sufficient incentive for an MP or MLA to examine an issue in depth and think through it to participate in the debate. With the issuance of a whip, a member of the legislature is in effect reduced to a mere voting number in House. He will finally have to obey the position determined by his party leadership. A free exchange of ideas, debate and dissent within political parties is curtailed. We have often seen Members of Parliament opposing a bill on the floor of the House during their speech, but falling in line to vote according to the party whip.

QUALITY OF DEBATES ↓ Going Down.

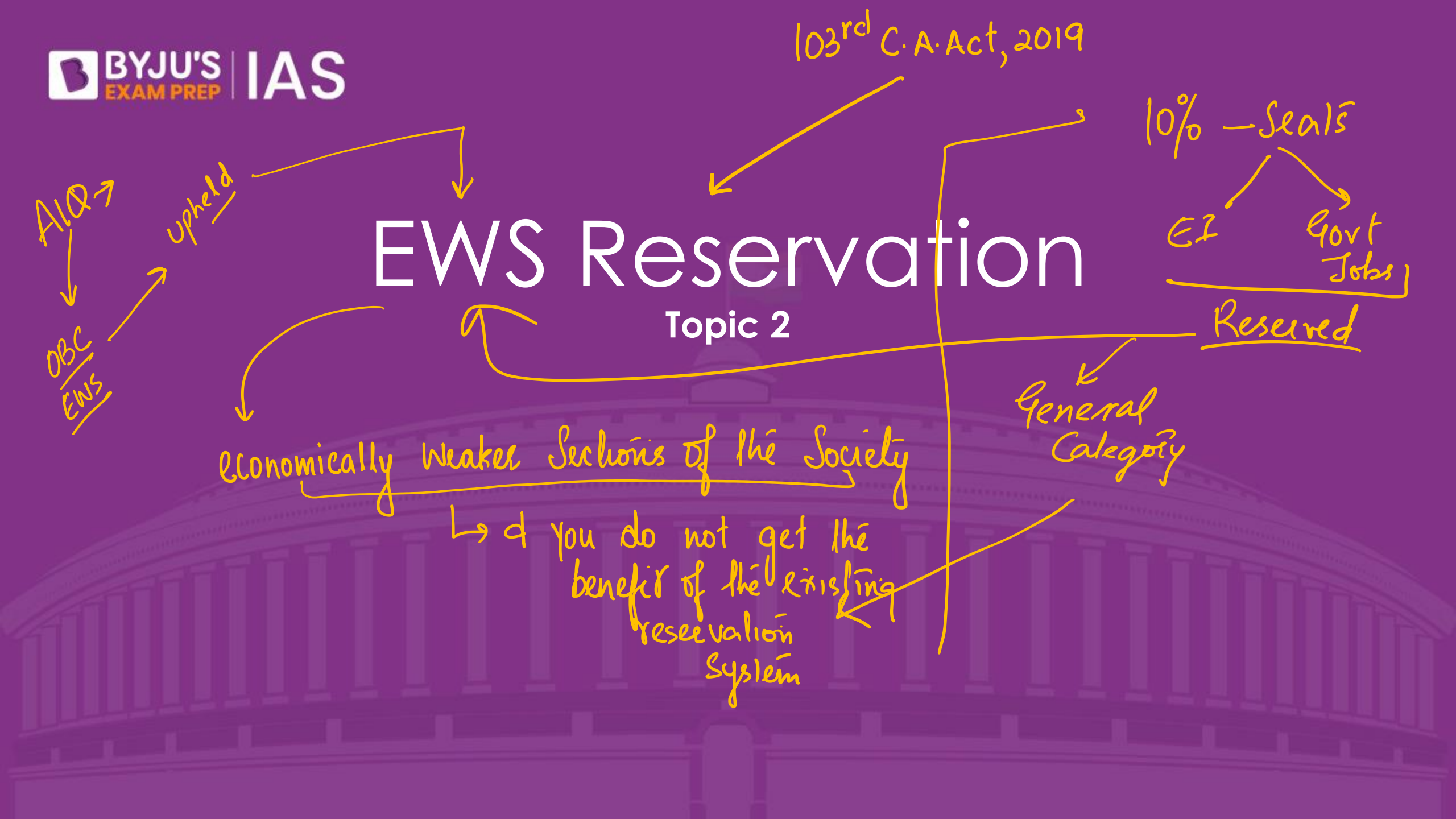
- After being voted to office, the elected representative is accountable to his voters. He is held accountable by his constituents for his decisions and actions during his re-election bid for the next ferm. The Anti-Defection Law weakens this accountability as all his actions and decisions can simply be justified on the grounds of following party diktat. It breaks the link between the elected legislator and his electors.

- In sharp contrast, in other democracies, the individual candidate's position on issues, and past legislative voting patterns have to be justified to the voters and are central to electoral campaign and debate. For instance, there have been several instances during Congressional elections when the individual voting information of a member has been used to analyse their record as a legislator.

We think
↓
ADL

- The Anti-Defection Law was introduced with the intention to curb 'evils of political defections' and promote party discipline. Ironically, however, political defections continue to be common even today.
- It has not been able to prevent defections.

Going forward, one of the immediate reforms needed to strengthen our legislature is to limit the Anti-Defection Law to votes which affect the stability of a government. These would include votes on No-Confidence Motions or Money Bills. A balance between ensuring party discipline and maintaining government stability on one hand; and empowering our legislators to exercise their judgement and vote as per their conscience, on the other, must be determined. This would be a starting point to a larger public debate about the need at all for such a law.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103rd C.A.Act, 2019
10% – Seats
EZ
Govt Jobs
Reserved
AIQ
OBC
EWS
upheld
EWS Reservation
Topic 2
Economically Weaker Sections of the Society
↳ & you do not get the benefit of the existing reservation System
General Category

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Pros

1. Secular Law → Without any discrimination on the grounds of religions
2. Promotes economic welfare → Economic Justice → 10%
3. Not against the 1993 SC Judgment
4. Unintended consequence – removes the reservation stigma

Except in Extraordinary Circumstances.

- First, this law was passed in haste. It was legislation by stealth. The Constitution (One Hundred and Twenty-fourth Amendment) Bill, 2019 was introduced in Parliament unannounced on 8 January 2019, as if some national security matter was involved. It was passed in both the houses within 48 hours, and got presidential approval the next day.
- The Constitution (One Hundred and Third Amendment) Act, 2019 was notified on 12 January 2019 in the Union gazette. As this was a Constitution amendment bill and the purpose of the bill was to insert clause15(6) and 16(6) in the chapter on Fundamental Rights, so it should have been discussed thoroughly in the highest law-making body of India — Parliament. Ideally, the draft should have been circulated to the parliamentarians before its introduction, so that they could go through the bill and prepare their responses. Ideally, such bills with far-reaching implications should be sent to department-related committees for wider discussion and consultation. It's not illegal to introduce and pass a bill in haste, but this is certainly against constitutional morality and propriety. The bill didn't have a chance to go through proper scrutiny of Parliament.

Second, this Constitution amendment is based on a wrong or unverified premise. The Statement of Object and Reason in the bill clearly mentions that: "The economically weaker sections of citizens have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged." This is at best a wild guess or a supposition because the government has not produced any data to back this point. As a matter of fact, the Union or state governments have no such data to prove that 'upper' caste individuals, who have less than Rs 8 lakh annual income, are not adequately represented in government jobs and higher educational institutions. There is a strong possibility that they are actually over-represented in these places.

There is one more problem in this regard. The SC and ST quota is based on their total population. OBC population, according to the Mandal Commission, is 52 per cent, but as there is a cap of 50 per cent on reservation, the OBCs got 27 per cent. But what is the rationale for the 10 per cent quota for the EWS? Why not 7 per cent, or 15 per cent? It sounds arbitrary.

Violates the Indra Sawhney Judgment.

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Reservation is not a poverty alleviation tool.

We intend to correct the Historical wrongs committed against communities

→ Scholarships
Skill Enhancement
Coaching →

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Issues in Judiciary

Topic 3

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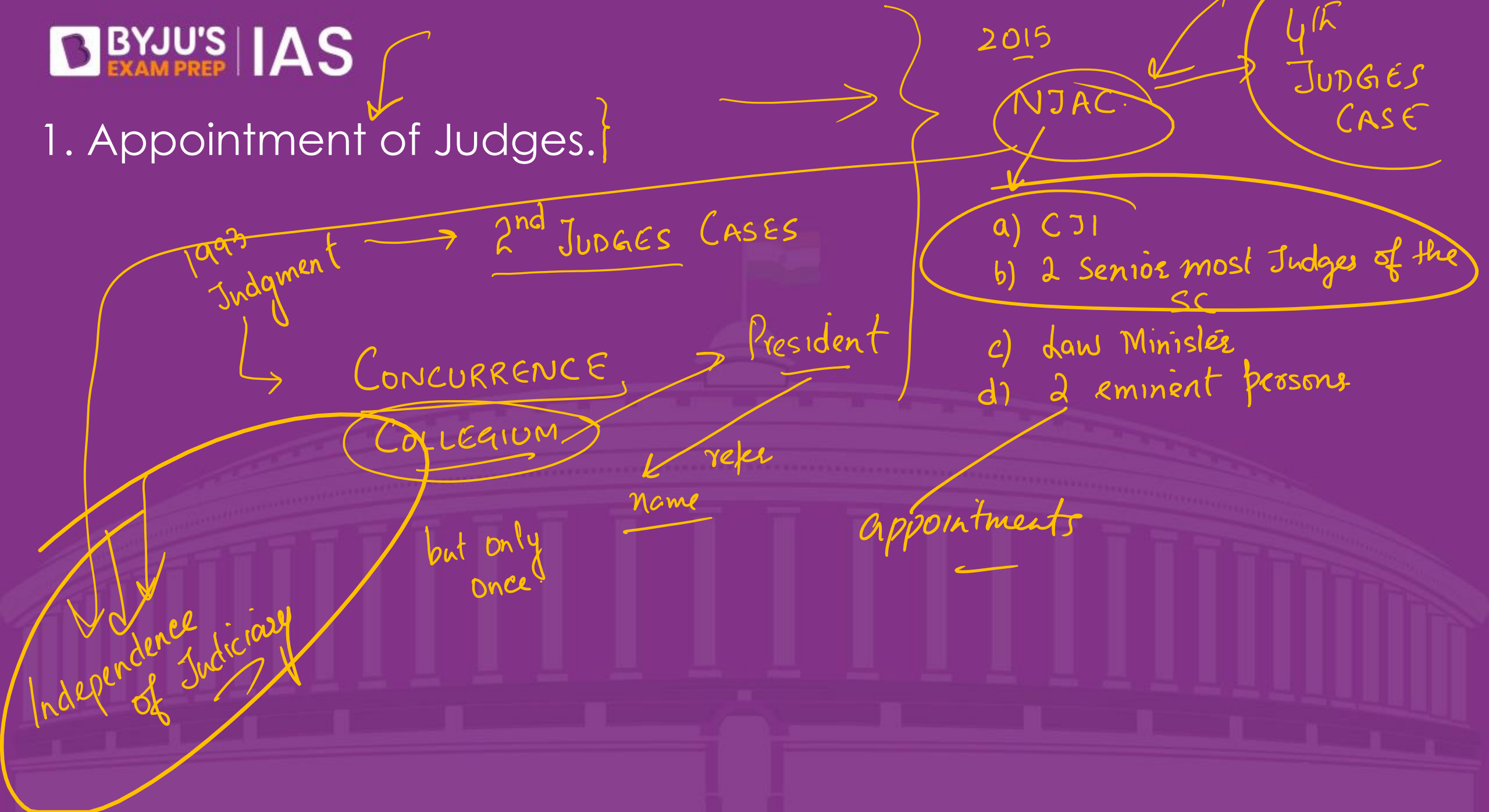
1. Appointment of Judges.



- When drafting the Constitution, the Constituent Assembly took great efforts to ensure that the judiciary was independent of any coercive political influence. **To that end, it introduced a number of significant provisions in the Constitution:**

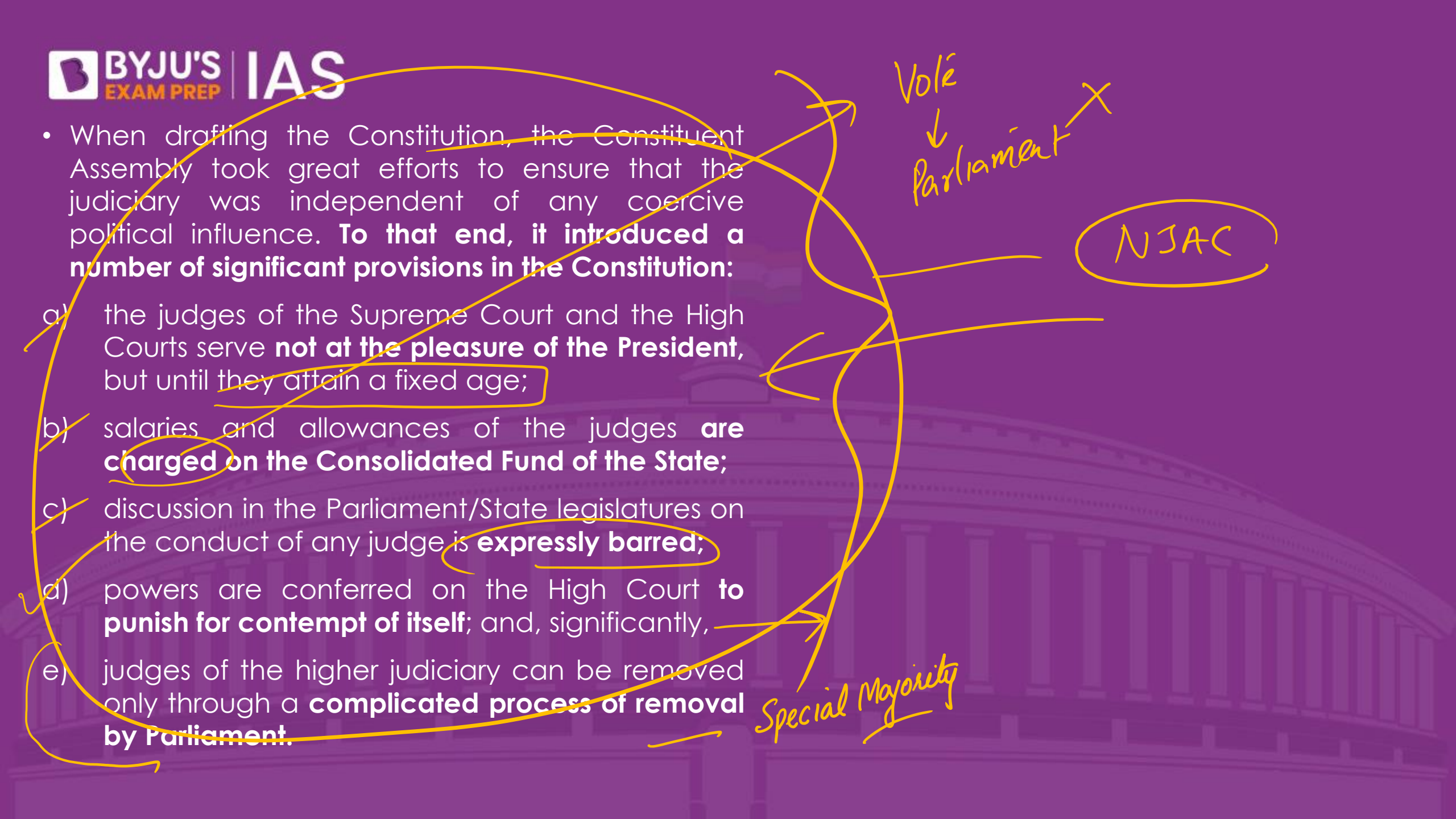
a) the judges of the Supreme Court and the High Courts serve **not at the pleasure of the President,** but until they attain a fixed age;

b) salaries and allowances of the judges **are charged on the Consolidated Fund of the State;**

c) discussion in the Parliament/State legislatures on the conduct of any judge is **expressly barred;**

d) powers are conferred on the High Court **to punish for contempt of itself**; and, significantly,

e) judges of the higher judiciary can be removed only through a **complicated process of removal by Parliament.**



- But, as valued as judicial independence was to the Assembly, it did not see the vesting of the ultimate power of appointing judges on the executive as an infraction of that principle; on the contrary, it viewed such power **as a vital cog in the checks and balances required to ensure a proper separation of powers.**

- Parliament **merely sought to realign the process of appointments** in consonance with a general principle of separation of powers.
- Given that the originally enacted Constitution placed overriding power on the executive to make judicial appointments, it is unfathomable how the proposed system, **which accords the judiciary not merely a consultative role but a determinative one**, can be found to infringe the independence of the judiciary.

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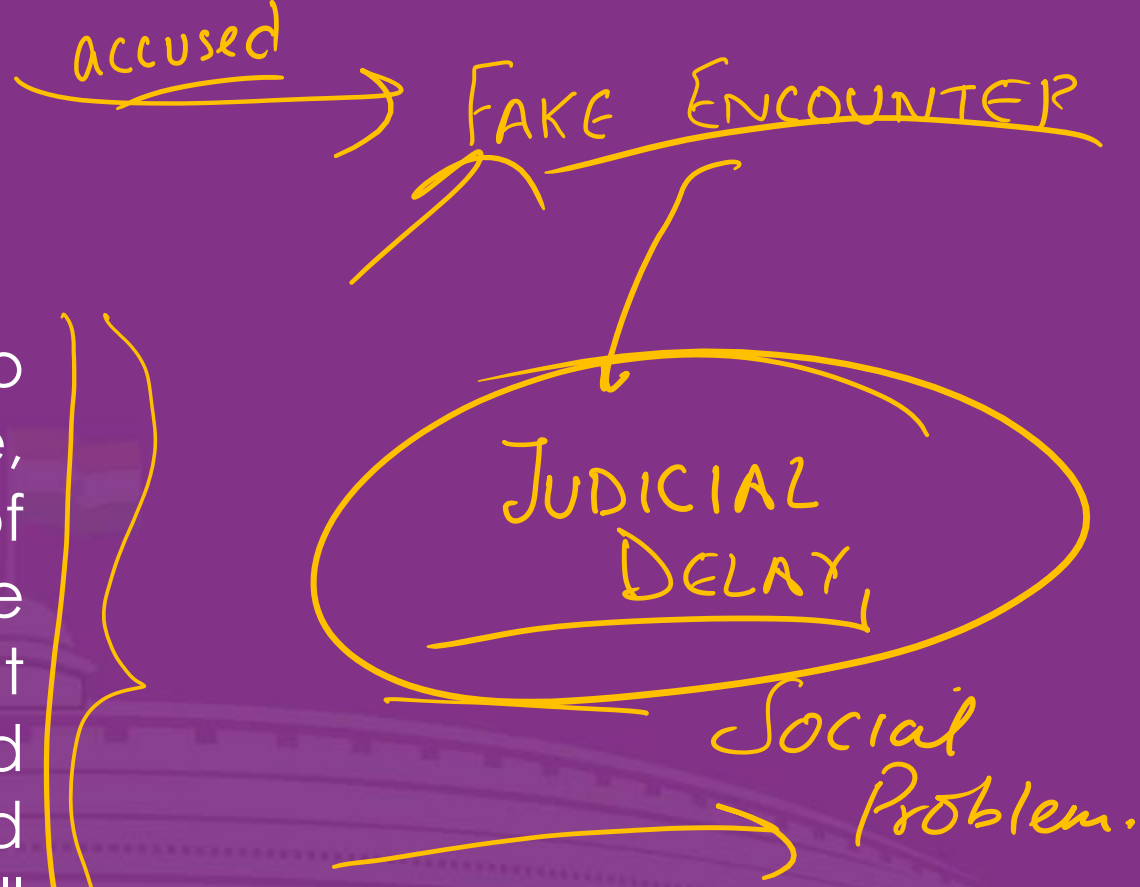
JUDICIAL REVIEW

Power of the courts of a country to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the constitution. Actions judged inconsistent are declared unconstitutional and, therefore, null and void. The institution of judicial review in this sense depends upon the existence of a written constitution.



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JUDICIAL RESTRAINT

- A **procedural or substantive approach** to the exercise of judicial review.
- As a procedural doctrine, the principle of restraint urges judges to refrain from deciding legal issues, and especially constitutional ones, unless the decision is necessary to the resolution of a concrete dispute between adverse parties.
- As a substantive one, it urges judges considering constitutional questions to grant substantial deference to the views of the elected branches and invalidate their actions only when constitutional limits have clearly been violated.

Presumption of Constitutionality

- **Judicial activism,** an approach to the exercise of judicial review, or a description of a particular judicial decision, in which a judge is generally considered more willing to decide constitutional issues and to invalidate legislative or executive actions.

- The expression "Judicial Activism" signifies the anxiety of the courts to find out an appropriate remedy for the aggrieved person by formulating a new rule to settle the conflicting questions in the event of uncertain laws or absence of any law on a given point.

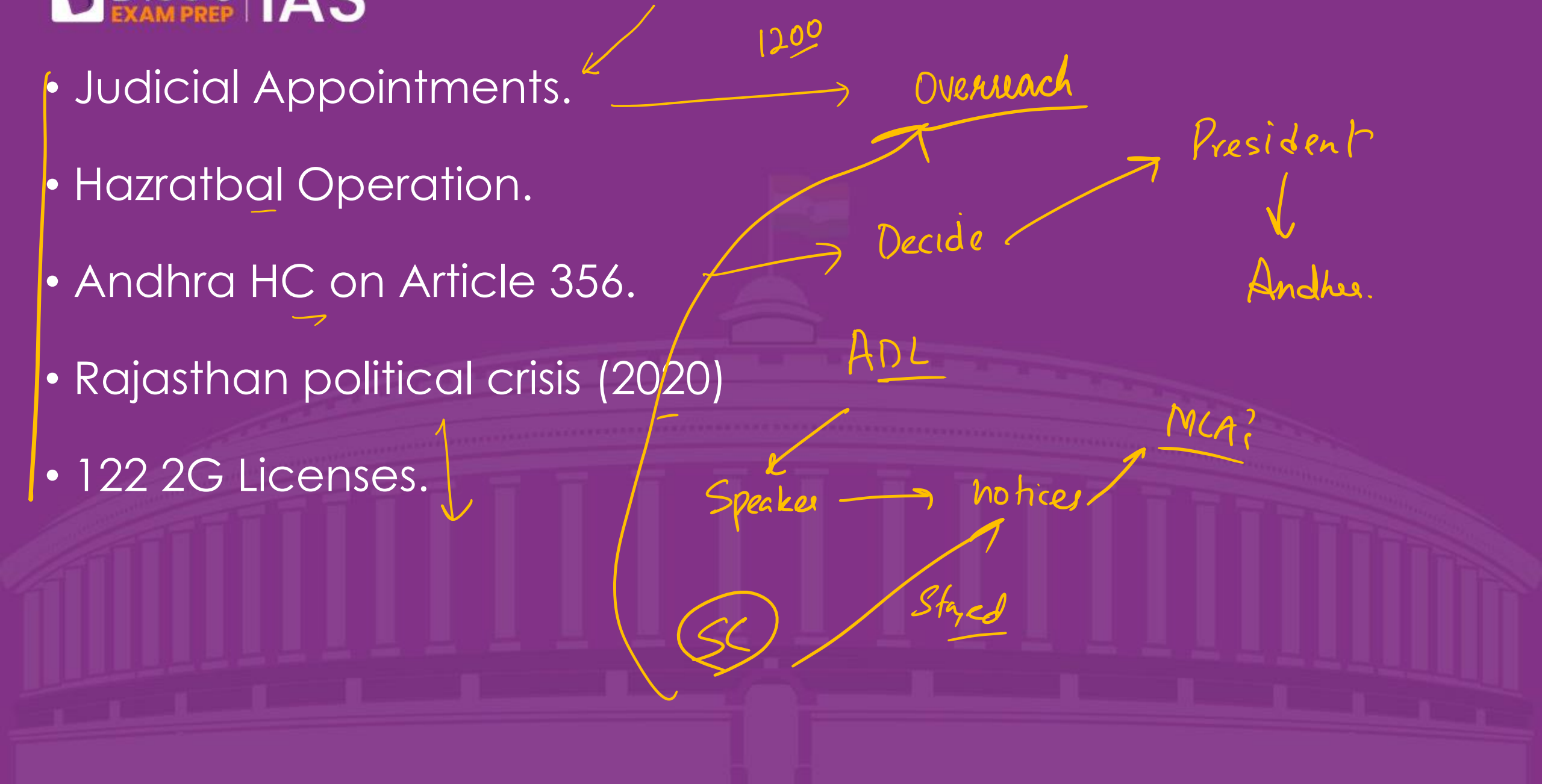
- No longer were the Court's clientele drawn from landlords, businessmen, corporations and affluent persons. With PIL, the common man, the disadvantaged and marginalised sections of society had also easy access to the Court with the help of social activists.
- This unique judicial activism was not found in other countries and leading judges abroad such as Lord Harry Woolf of the United Kingdom and Justice Michael Kirby of Australia, applauded it.

PIL

Matters

- Over the years, the social action dimension of PIL has been diluted and eclipsed by another type of "public cause litigation" in courts. In this type of litigation, the court's intervention is not sought for enforcing the rights of the disadvantaged or poor sections of the society but simply for correcting the actions or omissions of the executive or public officials or departments of government or public bodies.

- Judicial Appointments.
- Hazratbal Operation.
- Andhra HC on Article 356.
- Rajasthan political crisis (2020)
- 122 2G Licenses.



- **Justice Jackson :** The doctrine of judicial activism which justifies easy and constant readiness to set aside decisions of other branches of Government is wholly incompatible with a faith in democracy and in so far it encourages a belief that judges should be left to correct the result of public indifference it is a vicious teaching.

- **JUDICIAL EVASION**
- not deciding issues until it was too late for the outcome to matter.
- Electoral Bonds.
- Article 370 petitions.
- CAA petitions.
- J&K Internet ban.

- According to a 2021 report there are more than 73,000 cases pending in the Supreme Court.
- This figure touches 44 million if we take into account all the courts of India.
- **Why is there such a huge backlog of cases in the Indian judicial system?** The problem that plagues the Indian judicial system and slows it down can be broken down **into three areas of concerns.**

- Our honourable judges are obviously using their spare time fruitfully to ponder on what ails the nation. And the nation gives them enough spare time. Currently, the Supreme Court has 193 working days in a year, high courts 210 days and trial courts 245 days. The Supreme Court has five vacations in its annual calendar—a summer break of 45 days, winter break of 15 days and Holi vacation of one week. It closes for five days each for Dussehra and Diwali. There are about 73,000 cases pending before the Supreme Court and about 44 million in all the courts of India, up 19% since last year.

- Our judicial system remains the least digitized area of governance. According to a 2019 investigation by thequint.com, athe Supreme Court, whose judges appear deeply concerned about pollution and deforestation, uses at least 48 million sheets of A4-sized paper every year—and the text has to be typed in 13-14 font size, double-spaced and with a 3 cm margin on either side.

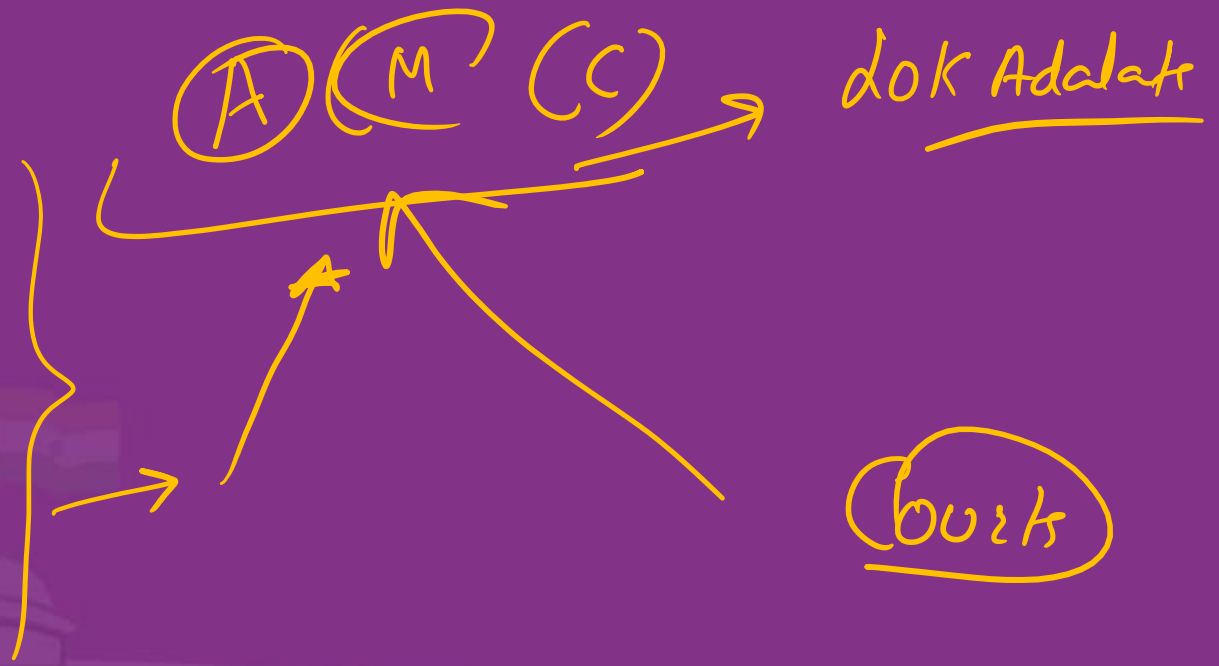
- Firstly, there are too many lacunas and gaps in Indian laws and acts **resulting in filing of several frivolous cases**, thus, increasing the number of litigations.
- For example, the property rights and the related tenancy rights in India are so ill-defined that there are large numbers of litigations surrounding property disputes.

- Secondly, the legal proceedings are themselves, so complicated and ill-defined that the rate of clearing of cases is abysmally slow.
- In a case of 50 hearings, on an average, there would be 10-15 adjournments **on inconsequential grounds.** Then, the judge would be absent for another 10 of those hearings. Thus, the number of effective hearings in a case is quite low.
- Also, the gap between the dates of hearing extends to several months increasing the pendency of cases.

- Thirdly, there is an acute shortage of judges in Indian courts. Currently, there are 464 vacancies of judges in Indian high courts and Supreme Court. **India has only 10.5 judges per million of population which is quite a poor ratio, when compared to other countries.** The impact of such low ratio is reflected in the choking of India's judicial system with a high number of pending cases and new litigations being filed every day.

50 Judges / million population

- In the Scandinavian countries, before a person files an appeal in the court of law, he/she has to seek redressal of their grievance through alternate dispute resolution (ADR) mechanisms.
- ADR is an extra-judicial body that resolves grievances through mediation, **thus reducing the number of cases filed in the court of law.**



- Over the years, the various commissions/committees have given innumerable suggestions to reform the judicial system such as:

I. constituting more number of benches,

II. increasing the judges ratio from 10.5 to 50 judges/million of population,

III. computerising the entire judicial process,

IV. bunching of similar cases and **conducting their hearing under one bench etc.**

- The widespread support for the encounter killing of the four accused in the 2019 Hyderabad gang-rape and murder case is a symptom, albeit an extreme one, of the increasing trust deficit between the citizens and the justice system. The prospect of delayed justice is one of the driving factors of this trust deficit, prompting people to support extrajudicial actions. This shows that the problem of judicial delay has morphed into a social issue with potentially terrifying ramifications for India's constitutional and democratic structure.

- There are 44 million cases clogging India's district courts. Nearly 21 per cent of these cases have been pending for five years or more. The issue of judicial backlog and delay is widely acknowledged and extensively written about; but it seems to be nowhere close to being resolved. Today, a litigant can be stuck in court corridors for 20 years if a case goes all the way to the Supreme Court. The original litigant may not be alive by the time the apex court resolves the issue. It is a stretch to describe any verdict given after 20 years as 'justice'.