Executive vs Judiciary

- A major confrontation is on between the Union government and the Supreme Court over the former's resentment towards the Collegium system of appointments and its push to have a dominant say in judicial appointments and transfers.
- The government has also started airing its grievance against the invalidation of the National Judicial Appointments Commission (NJAC) by the court in 2015.
- Law Minister Kiren Rijiju shot a salvo at the Supreme Court Collegium, saying they were "preoccupied" with making judicial appointments when their primary job is delivering justice
- CJI advised that the Collegium and the government should work with a sense of "constitutional statesmanship" rather than find fault with each other.
- December 8, Justice Kaul's Bench said nobody was stopping the government from bringing a new law on judicial appointments, but till then the Collegium system and its Memorandum of Procedure (MoP) was the "final word".
- The Court said that even if a law was enacted in the future, its constitutionality would be duly scrutinized by the Supreme Court.
- The parliamentary standing committee on Law and Personnel led by in its report said both the judiciary and the government need to do some "out-of-the-box" thinking to deal with the "perennial" judicial vacancies in High Courts.
- It said that both institutions were not adhering to the timeline given in the Second Judges case and the MoP.
- The MoP required the Chief Justices of High Courts to initiate the proposals six months prior to vacancies.
- The Constitution (99th Amendment) Act was passed by Parliament to provide for a National Judicial Commission, which was duly formed by the NJAC Act.

What is the MoP and what is its current status?

- The procedure for the appointment of judges to the Supreme Court and the High Courts, in accordance with the Collegium system, was laid down in the MoP prepared in 1998.
- It states that the initiation of a proposal for the appointment of Supreme Court judges vested with the CJI and that of High Court judges with the Chief Justice of the High Courts concerned.
- On October 12, 2015, the court struck down the NJAC Act and the Constitution Amendment which sought to give politicians and civil society a final say in the appointment of judges to the highest courts.

What are the government's grievances?

- The Centre argues that the Collegiums, both at the Supreme Court and High Court levels, are delaying judicial appointments.
- The NJAC was a good law thwarted by the court. It says that the High Courts are not making recommendations six months in advance of a vacancy.
- As on November 30, 2022, there are 332 judicial vacancies in the High Courts out of a total sanctioned strength of 1,108 judges.

- The High Courts have made 146 (44%) recommendations which are under consideration of the government and the Supreme Court.
- The High Courts are required to make recommendations for the remaining 186 vacancies (56%).

What is the SC's response?

- The court said the Collegium system, combined with the MoP, is the law as it exists now.
- The government has either kept Collegium recommendations pending for no apparent reason or it has repeatedly sent back names reiterated by the Collegium.
- The court accused the government of not appointing persons who are not "palatable" to it.
- Women running for elections face numerous challenges, it is essential to create a level playing field through appropriate legal measures.
- The establishment of quotas for women is an obvious answer.
- Mandated reservation for women in gram panchayats was established in all major States since the mid-1990s.
- Attempts have also been made to extend quotas for women in the Lok Sabha and State Assemblies through a Women's Reservation Bill.
- There is substantial evidence showing that increased female representation in policymaking goes a long way in improving perceptions about female effectiveness in leadership roles.
- This decreases the bias among voters against women candidates and results in a subsequent increase in the percentage of female politicians contesting and winning elections.

THE HINDU

National policy on rare diseases

- A rare disease is a health condition of low prevalence that affects a small number of people compared with other prevalent diseases in the general population.
- It is estimated that globally around 6000 to 8000 rare diseases exist with new rare diseases being reported in the medical literature regularly.
- Generally accepted international research is between 6% and 8%. Rare diseases include genetic diseases, rare cancers, infectious tropical diseases and degenerative diseases.
- 80% of rare diseases are genetic in origin and hence disproportionately impact children.
- There is no universally accepted definition of a rare disease.
- Different countries define rare diseases differently.
- Rare diseases constitute significant economic burden independent of a country's size and demographics, arising from increased healthcare spending.
- As resources are limited, there is a macroeconomic

allocation dilemma due to opportunity cost of funding rare disease treatment: on one hand, health problems of much larger number of persons can be addressed by allocating a relatively smalleramount, on the other, much greater resources will be required for addressing health problems of a relatively smaller number of persons.

THE HINDU

National Policy for Rare Diseases (NPRD), 2021

- The Government has launched National Policy for Rare Diseases (NPRD), 2021 in March 2021 for the treatment of rare disease patients. The salient features of NPRD, 2021 are as under:
- The rare diseases have been identified and categorized into 3 groups namely Group 1, Group 2, and Group 3.
- Group-2: Diseases requiring long-term/lifelong treatment having a relatively lower cost of treatment and benefit have been documented in the literature and annual or more frequent surveillance is required.
- Group 3:- Diseases for which definitive treatment is available but challenges are to make the optimal patient selection for benefit, very high cost, and lifelong therapy.
- Provision for financial support of up to Rs. 50 lakhs to the patients suffering from any category of Rare Diseases and for treatment in any of the Centre of Excellence (CoE) mentioned in NPRD-2021, outside the Umbrella Scheme of Rashtriya Arogaya Nidhi.
- In order to receive financial assistance for the treatment of rare diseases, the patient of the nearby area may approach the nearest Centre of Excellence to get him assessed and avail of the benefits.
- Eight (08) Centres of Excellence (CoEs) have been identified for the diagnosis, prevention, and treatment of rare diseases.
- Five Nidan Kendras have been set up for genetic testing and counselling services.
- The NPRD, 2021 has provisions for promotion of research and development for diagnosis and treatment of rare diseases;
- Promotion of local development and manufacture of drugs and creation of conducive environment for indigenous manufacturing of drugs for rare diseases at affordable prices.

THE HINDU

Big tech and anti-competition law

- The Indian anti-trust body, the Competition Commission of India (CCI)'s move, in October, to impose a penalty of ₹1,337.76 crores on Google for abusing its dominant position in the android mobile device ecosystem.
- When India established the CCI under the Indian Competition Act 2002, it was to protect and promote competition in markets, and prevent practices that hinder competition.

- However, it did not account for the network effect of Big Tech companies as a force to reckon with.
- As their market dominance increased rather exponentially, the European Union, the United States, and even Australia realised their market- distorting abilities and moved to transform their competition law.
- The EU's Digital Market Act and "gatekeepers" who will enforce rules and regulations ex-ante to foresee anti-competitive practices is an examples.

Market dominance issue

- As the CCI says, the intent of Google's business was to make users on its platforms abide by its revenue-earning service, i.e., an online search to directly affect the sale of their online advertising services.
- Thus, network effects, along with a status quo bias, created significant entry barriers for competitors to enter or operate in the markets concerned.
- While the competition laws address that anomaly, they are too slow to respond in complex technical sectors.
- By the time an order is passed, the dominant player has gained an edge as in the case of Google.
- Thus, in this context, there is an urgent need for ex-ante legislation to prevent market failures and mitigate possible anti-competitive conduct.
- Thus pricing plays a fundamental role in defining the position of any digital platform in the marketplace. It is essential to establish an ex-ante framework to ensure a level playing field for local sellers.
- The Government's Open Network for Digital Commerce (ONDC) platform is a reliable option for these small players
- Use of data, issue of consumer protection
- While the data economy has evolved, we have not dealt with its regulation as effectively.
- There is sensitive data stored on these platforms (financial records, phone location, and medical history).
- Big corporations have asserted ownership of the right to use or transfer this data without restriction.
- Predatory pricing entails the lowering of prices that forces other firms to be out-competed.
- Amazon and Flipkart were accused of deep discounting and creating in-house brands to compete with local sellers.
- Only recently, the CCI raided their offices in an anti-competition probe, leading to Amazon being forced to cut its ties with Cloudtail.
- While one might attribute it to efficiency barriers, the greed for data is a motivation.
- Further, the storage and collection of women's and children's data need to be dealt with more cautiously to build a safe digital place.
- Finally, market distortion can also lead to poorer quality of services, data monopoly, and stifle innovation.
- For a consumer, there is a need to establish harmony of the Competition law with the new Consumer Protection Act 2020 and e-commerce rules.
- The new law should include a mechanism to ensure fair compensation for consumers who face the brunt of the anti-competitive practices of the Big Techs

- There is an urgent need to contextualise the law to the digital marketplace and devise new provisions with adequate ex-ante legislation.
- The EU has already noted this need through the Digital Markets Act.
- It is time that similar legislation is adopted in India. It is equally important to contextualize India's reality
- Kirana stores competing with -retailers such as Big Basket is an example of unfair competition between legacy businesses and their digital counterparts.

THE HINDU

IR HEADLINES

- Chinese hospitals caught off-guard as COVID cases surge after opening
- Iran publicly carries out second protest execution
- 3 killed in attack on Kabul hotel popular with Chinese
- Protests against the ouster of Castillo turn violent in Peru; new President proposes moving up elections.

THE HINDU

Economy Headlines

- Oct. industrial output contracts 4%, slide seen a second time in 3 months
- Net direct tax revenue growth accelerated to 24.3% by November
- India imported coal worth ₹2.3 lakh crore in April- September.

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