

**LAWXPERTSMV. CURRENT AFFAIRS REVIEW FOR LAW OPTIONAL UPSC.  
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**SUPREME COURTS AND HIGH COURTS : (a) APPOINTMENTS AND TRANSFER (b) POWERS, FUNCTIONS AND JURISDICTION**

1. APPOINTMENTS : NJAC TUSSLE – UPDATES.
2. SC ISSUE CONTEMPT HC JUDGES : FIRST TIME IN INDIAN HISTORY + TRANSFER OF JUDGES.
3. SUPREME COURT – AS A GUARDIAN OF FR ? IS JUDICIAL ACTIVISM UNFETTERED?

**Fundamental rights ; Supreme Court and High Courts: (a) Appointments and transfer. (b) Powers, functions and jurisdiction.**

**NJAC TUSSLE – UPDATES.**

The Supreme Court hinted that the frost between the highest judiciary and the Centre over the Memorandum of Procedure (MoP) is *thawing and differences would be settled by February-end*. “We will finalise the MoP maybe within this month,” Chief Justice of India J.S. Khehar said.

WHAT WAS THE ISSUE? A clause in the draft MoP that the government would have the authority to reject a candidate recommended by the Supreme Court collegium.

**SC ISSUE CONTEMPT HC JUDGES : FIRST TIME IN INDIAN HISTORY + TRANSFER OF JUDGES.**

1. PUNISHING THE JUDGE : For the first time in the history of Independent India, it issued a contempt of court notice against a sitting High Court judge for allegedly disgracing the judicial institution and impeding the course of justice administration.
2. NATURE : The Supreme Court sent out a strong message that *it will not hesitate to act against one of its own* for the sake of upholding justice.
3. AGAINST WHOM? Calcutta High Court judge, Justice C.S. Karnan, should face contempt action for his “scurrilous” letters against sitting and retired High Court and Supreme Court judges.

WHAT HAPPENED > In February 2016, as a Madras High Court judge, Justice Karnan stayed his own transfer order and questioned the Chief Justice of India's comment that the transfer was recommended for reasons of "better administration."

SOURCE : Article 222 (1) of the Constitution deals with the transfer of a High Court judge to another High Court. It says that the "*President may, after consultation with the Chief Justice of India, transfer a judge from one High Court to any other High Court.*"

TRANSFER CANNOT BE DONE FOR PUNISHING JUDGE :

- In its *Union of India versus Sankal Chand Sheth judgment of 1977*, the Supreme Court had held that neither the **President nor the Chief Justice of India** had the power to punish a judge for misconduct.

In the *Sankal Chand Sheth case*, the Supreme Court quotes Dr. B.R. Ambedkar on judges' transfer in the Constituent Assembly. Dr. Ambedkar had said that a judge may be shifted from one High Court to another to strengthen the High Court by importing better talents which may not be locally available.

- The Supreme Court, in the *Second Judges Case of 1993*, had held in a majority judgment that **prior consent of the judge was not necessary** under Article 222 for transferring him out, provided it was done with the full and effective consultation with the Chief Justice of India. The transfer should be done in **public interest and not as a punishment.**

HOW> "The power of transfer can be exercised only in public interest, that is, for promoting better administration of justice throughout the country," the Supreme Court had held in 1993. It had held that "any transfer in accordance with the recommendations of the Chief Justice of India cannot be treated **as punitive or an erosion in the independence of the judiciary.**"

### **SUPREME COURT – AS A GUARDIAN OF FR ? IS JUDICIAL ACTIVISM UNFETTERED?**

67 years ago , Indian constitution was made as a simple, radical document with its guarantee of universal adult suffrage, transformed colonial subjects into free and independent citizens, who were to use their own reason in governing themselves.

FR AND RESTRICTIONS : Constitution framers did know how easily power is used to crush free thought, open discussion, and civil rights. Therefore, they trusted the Indian people, they did not trust their rulers. Guaranteed to all citizens fundamental rights, including the fundamental right to the freedom of speech and expression, **subject only to specified restrictions.**

WHO CAN IMPOSE SUCH RESTRICTIONS ? restrictions upon a fundamental right could be imposed only by law i.e, elected legislature after deliberations can bring some restriction for attaining the public goal. This could then be challenged before independent courts.

TWIN SAFEGUARDS : a) Only a law made by legislature can prescribe restriction. b) this law can be judicially reviewed for its constitutional validity.

There is always stress and need to maintain balance : State and citizen, between rights and public goals, between legislatures and courts. In recent months, however, that balance is once again under stress.

This time the problem is not the law or executive acts, but the supreme court which redefining its own role under the Constitution, transforming itself from the guardian of civil rights to a **great, overarching moral and political censor.** Given that there is nobody to guard the guardians, it is a role that vests great power — without any accompanying responsibility — in the Court. And it is a role that runs contrary to the very spirit of our Constitution, and specifically to its structuring principle of autonomous, thinking citizens.

1. Recently, the High Court of Bombay found that certain scenes in the film Jolly LLB 2 “defame” the legal profession. Despite the fact that the film had been cleared by the Censor Board, the Court set up an entirely fresh committee to “review” the film, and ordered four “cuts” to be made.
2. Supreme Court acting upon a “public interest litigation”, and without any basis in existing law, in November 2016, the Court passed an “interim order” compelling all cinema halls to play the anthem.
3. The Supreme Court passed yet more interim orders, in a case involving sex-determination tests under the authority of the Pre-Conception and Pre-Natal Diagnostic Techniques Act of 1994, which prohibits advertisements regarding pre-

natal sex determination. It directed search engines such as Google to constitute in-house committees to “block” access to such websites, and (in continuation of previous orders) to do so by blocking search “keywords”.

FUTURE : Today, the Court wants Google to block access to search results involving the word “gender selection”. What will it be tomorrow? “Secession”? “Terrorism”? Or just about anything that the courts, in their wisdom, feel that Indian citizens cannot be trusted to read about?

MISUSE OF PIL : All of them were brought to the Court as “public interest litigation”. There is a tragic irony here: public interest litigation began as a movement to democratise access to courts. It discarded traditional rules of evidence, and vested vast powers in courts to “do justice”. In 2017, the very dilution of rules and the existence of vast powers have become weapons in the hands of courts to cut down rights.

Instead of our elected representatives making laws, **which the Court then tests for constitutionality, the Court has now begun to make its own laws limiting, restricting, and suffocating speech.** And this is only the tip of the iceberg: the Supreme Court is currently hearing petitions seeking to ban pornography, order a keyword-block for rape videos, and ban racy pictures on condom packets.

CONCLUSION :

1. In 2017, the Supreme Court has reduced us to passive subjects instead of active, thinking citizens.
2. The Supreme Court tells us what we can watch and what we can't watch. The Supreme Court tells us what we can search on the Internet, and what we can't search. The Supreme Court tells us that we must be patriotic, and how, where, and when, we must be patriotic. This transformation of role of SC is an unpleasant shock.

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2. IS LAW SYLLABUS VOLUMINOUS ? Law is, as any another optional subjects, will have its pros and cons. Its syllabus is vast. No doubt about that. But still UPSC do not want you to mug up case laws or sections in the legislations.
3. IS LAW OPTIONAL RISKY TO OPT FOR UPSC? Not at all. Do not believe in myth that law optional is rare. Doubt it ? See for yourself at ANNUAL REPORT OF UPSC 2014-15.
4. I AM NOT FROM LAW BACKGROUND. SHOULD I CHOOSE LAW ? Law is a Technical subject. Law for UPSC is NOT TECHNICAL as it seems.
5. WHY? Because you are not expected to argue as a legal counsel for your client before the supreme court of India. You are ONLY expected to know the General principles of Law. Also, Ignorance of the law excuses no one.
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