

# Comparison with other countries

Pigeon hole - US - committee  
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 Article 9 - Japan  
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## British Constitution

	British	Indian
Written nature	<u>Unwritten</u>	Written and the lengthiest
Evolution	Product of wisdom and chance from <u>thousand years of development</u> , never framed by any body	Open to evolution and is <u>amended</u> from time to time
Flexibility	Passed, amended and repealed by a <u>simple majority</u>	Both <u>flexible</u> as well as <u>rigid</u>
Unitary Vs Federal features	Unitary, British parliament is <u>sovereign</u> , executive organs of the state are subordinate to the parliament	Federal, all powers of the provincial governments are <u>derived from the constitution</u> i.e. <u>constitution is supreme</u> in India
Parliamentary executive	The executive in British has <u>individual legal responsibility</u>	whereas in India there is <u>no legal responsibility</u> .
Sovereignty of Parliament	British parliament is sovereign and can <u>make, amend or repeal any law</u>	Parliament is <u>not sovereign</u> , the <u>basic structure doctrine</u> is applicable with the judiciary having the right to judicial review
Rule of Law	<u>All the three principles of RoL as followed in Britain given by Dicey:</u> <ol style="list-style-type: none"> <li>1. <u>Protection from arbitrary arrest and the opportunity to defend oneself</u></li> <li>2. <u>Equality before law</u></li> <li>3. <u>The Constitution is the result of rights of the individuals protected by the courts in British Constitution whereas in India, the Constitution is the source of the individual rights.</u></li> </ol>	The <u>first two principles</u> are followed in India but the third is not followed.  Moreover, in the context of second principle, " <u>The procedure established by law</u> " has been replaced by the " <u>Due Process of Law</u> " in the <u>Maneka Gandhi Case 1980</u>
Executive	Executive is known as <u>the crown</u> . The Crown, as an institution, consists of the following:	Executive in India is formed of the following:

	<ul style="list-style-type: none"> <li>• King,</li> <li>• Prime Minister,</li> <li>• Council of Ministers (CoM),</li> <li>• Permanent Executive, the Civil Servants,</li> <li>• Privy Council.</li> </ul>	<ul style="list-style-type: none"> <li>• President</li> <li>• Vice-President</li> <li>• Council of Minister with PM as the head</li> </ul>
Nature of the Monarchy	<u>Constitutional Monarchy</u>	<u>Democracy</u>
Prime Minister	It is a convention in Britain that the PM will always be a member of the <u>Lower House (House of Commons)</u> only.	The PM can be a member of <u>either House</u> of Parliament, i.e. Lok Sabha or Rajya Sabha.
Rajya Sabha and the House of Lords	Only a <u>delaying chamber</u>	Rajya Sabha has <u>equal power</u> with Lok Sabha as far as the <u>amendment of the Constitution</u> is concerned.

### American Constitution:

	American	Indian
Length of the constitution	<u>Shortest and the first written constitution</u>	<u>Longest written constt in the world</u>
Flexibility	<u>Rigid and has only 7 Articles and 27 amendments</u>	Mix of <u>rigidity and flexibility</u> with more tint towards the flexible side  Original constitution: <ul style="list-style-type: none"> <li>• <u>395 Articles</u></li> <li>• <u>22 parts</u></li> <li>• <u>8 schedules</u></li> </ul> Now: <ul style="list-style-type: none"> <li>• <u>470 articles</u></li> <li>• <u>25 parts</u></li> </ul>

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madison

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		<ul style="list-style-type: none"> <li>12 schedules</li> </ul>
Evolution	<p>It was finalized in a convention held on <u>September 17, 1787</u>, which required its ratification by a minimum of <u>nine States</u>, for it to be enforced. Came into operation on 13th September 1788 after ratification by 11 states</p>	<p>It was adopted by her <u>Constituent Assembly</u> on <u>26th November 1949</u>, and came into effect on 26th January 1950.</p>
Duality	<u>Dual constitution and dual citizenship</u>	<u>One single constitution and one single citizenship</u>
Federation	<p><u>Dual Federation (USA)</u> – both the Centre and state are completely independent. They are complete governments</p>	<p><u>Cooperative Federation (India)</u> – Interdependence of Centre and state govt. Neither of them is independent of the other. Centre usually has the role of big brother</p>
	<u>Centrifugal federalism</u>	<u>Centripetal federalism</u>
	<u>Symmetrical federalism</u> – all states are given <u>equal representation</u> in Senate	<u>Asymmetrical federalism</u> – <ol style="list-style-type: none"> <li>States have been given representation in <u>Rajya Sabha</u> on the basis of their population.</li> <li><u>Articles 370, 371</u> provide special provisions to few states.</li> </ol>
	<p>USA is a <u>Legislative federation</u>. This means that <u>States have dominance in law making</u>.</p>	<p>India is an <u>Executive federation</u>. This means that <u>states are important at the executive level only</u>.</p>
	<u>USA is an indestructible union of indestructible states</u>	<u>India is an indestructible union of destructible states</u>
	<p><u>USA constitution provides a role to states</u> in ratifying the <u>international treaties through the Senate</u></p>	<u>There is no such provision for states in the Indian Constitution</u>
Form of Government	<u>Presidential form of government</u>	<u>Parliamentary form of government:</u>

	<ul style="list-style-type: none"> <li>• <u>Direct Election</u></li> <li>• <u>Not accountable to the House of Congress</u></li> <li>• <u>Fixed Term of 4 years</u></li> <li>• <u>Can be appointed for only two terms</u></li> <li>• <u>Reasons for impeachment:</u> <ul style="list-style-type: none"> <li>◦ <u>Treason, Bribery, High crimes of misdemeanor</u></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <u>President - Executive head</u></li> <li>• <u>President runs the government with the aid and advise of the PM and the CoM</u></li> <li>• <u>Term - 5 years</u></li> <li>• <u>Can be elected any number of times</u></li> <li>• <u>Impeachment by the legislature is the only similarity between the two</u></li> <li>• <u>Reasons for impeachment:</u> <ul style="list-style-type: none"> <li>• <u>Violation of constitution</u></li> </ul> </li> </ul>
Vice President	<u>Ex Officio chairperson of the Senate and has casting vote</u>	Similar to US, the <u>only difference</u> is that Vice president holds the office of the president <u>only till the new president is appointed</u>
Committee system	<u>Pigeon Holing a bill</u> means when the bill gets killed at the committee stage itself without even the first reading	The bill is referred to the committee <u>only after the first reading</u>
Separation of Powers	<p>Strict <u>Sanct SoP</u></p> <ul style="list-style-type: none"> <li>• <u>All the three branches of the government have separate functions</u></li> <li>• <u>The term of Legislature and Executive are fixed and do not depend on each other.</u></li> <li>• <u>None of the member of the Legislature can be a member of the Executive.</u></li> </ul> <p><u>The Houses of Congress enact the law; the President executes the law; and the Supreme Court interprets the law.</u></p>	<p>Theoretical, with <u>SoP applicable only to the Executive and Judiciary</u></p> <ul style="list-style-type: none"> <li>• <u>President is a part of the Union Executive.</u></li> <li>• <u>Yet, it is the Prime Minister and the Council Ministers who are the real executive</u></li> <li>• <u>The Prime Minister, in his capacity as the leader of the ruling party can enact a law, which his administration executes.</u></li> </ul>
Fundamental Rights	<u>Bill of Rights</u>	<u>Fundamental Rights</u>
Distribution	<u>No elaborate mechanism</u>	<u>Seventh schedule with center, state and concurrent</u>

7th sch X

of legislative powers	Certain <u>Federal issues</u> are specified are under the <u>union government</u> , rest are with the <u>state government</u>	list and residuary powers with the <u>union government</u>
Judicial Appointments	Judicial Committee, President and the public all are involved and the appointments are made by a very transparent process	Collegium system which is subject to criticism

### Chinese Constitution:

	Chinese	Indian
<u>Preamble</u>	<p>The five principles of <u>Panchsheel</u> have been recognized even in the constitution:</p> <ul style="list-style-type: none"> <li>• Respect and Preservation of the territorial integrity of all nations</li> <li>• Avoidance of aggression</li> <li>• Non-interference in the internal affairs of other countries</li> <li>• Promotion of international cooperation</li> <li>• Peaceful coexistence</li> </ul>	<p>Preamble shows the nature of Indian constitution as inspired by the Nehru's "<u>Objectives Resolution</u>"</p> <p>The preamble basically gives idea of the following things/objects:</p> <ul style="list-style-type: none"> <li>• Source of the Constitution</li> <li>• Nature of Indian State</li> <li>• Statement of its objectives</li> <li>• Date of its adoption</li> </ul>
Basic Principles	<u>Socialist State</u>	<u>Socialist + Democratic State</u>
<u>Unitary</u>	<p>Unitary Multi-national state</p> <p><u>People</u> are declared as fountain of power and authority and they will exercise it through National People's Congress.</p> <p>Decentralization is there to increase the people's participation</p>	<u>Federal Structure</u> with a unitary tint
<u>Democratic Centralism</u>	Keeping in view <u>democratic norms</u> , <u>elective</u>	<u>Democratic federalism</u>



	principle has been introduced at all levels <u>not only within the governmental institutions but also within the Party organization</u> . All the citizens have been secured the <u>right to vote on the basis of adult suffrage</u> .	
Party System	<u>One Party System</u>	Multi Party System
Legislature	The National People's Congress (NPC) <u>comprises the legislative branch</u>	<u>Coalition System</u>
	<u>Unicameral</u>	<u>Bicameral</u>
	Congressmen are elected by regional Congresses, <u>by autonomous regions</u> , by <u>Municipalities</u> working under the central government and by People's Liberation Army, each according to <u>its quota</u> .	<u>Direct Election</u> to the Lok Sabha and the <u>Indirect Election</u> to the Rajya Sabha by the electoral college
	Mode of election is based on <u>secret ballot</u>	Lok Sabha - <u>Secret Ballot</u> Rajya Sabha - <u>Open Ballot</u>
Duration	<u>5 years but can be extended and can be shortened</u>	
	Sessions are held <u>once a year in Beijing</u>	Sessions with <u>not more than 6 months</u> time period between them
	The NPC is the supreme law-making body. The <u>acts of the Congress cannot be</u> <u>challenged in the Supreme Court</u> .	Parliament is <u>supreme law making body</u> but the legislative powers are <u>federally divided based on the 7th schedule</u>
	The Chinese constitution has prescribed certain <u>duties for the citizens which are legally enforceable</u>	Fundamental <u>Duties</u> in Indian constitution are <u>not enforceable</u>

#### French Constitution:


	France (Laboratory of Political Experiment)	Indian
Form of government	<u>Unitary and semi-presidential</u> Ideals: Liberty, Equality, Fraternity	<u>Federal and prime</u>

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		ministerial
Supreme Law-making body	On some matters, it is <u>parliament</u> and on others it is the <u>president</u> which makes the law	<u>Parliament</u>
	Only democratic constitution based on the <u>principle of supremacy of executive</u>	
President	President is most powerful	
	French PM, unlike that in India and Britain, is <u>assistant to the President</u>	
Separation of powers between PM and president	There is a <u>division of functions</u> , rather than division of power between the two positions <ul style="list-style-type: none"> <li>The French President deals with <u>foreign policy and national concerns</u></li> <li>The PM, on the other hand, deals with <u>day to day routine functions of the Government and local domestic issues</u></li> </ul>	
	Concept of <u>'Cohabitation'</u> <ul style="list-style-type: none"> <li>A situation where the <u>President and the PM belong to different political parties</u></li> </ul>	
	<u>PM may choose his cabinet colleagues</u>	
	Cabinet is <u>presided over by the President</u> , but the <u>ministers shall not be the members of the parliament</u>	
	The <u>Lower House</u> can pass the ' <u>Censure Motion</u> ' against the PM and his CoM, which would imply that <u>they must resign</u>	
Term of President	The <u>President</u> is elected for a fixed term of <u>5 years</u> <u>directly</u> by the people and <u>2 ballot system</u> (after the 1962 amendment). <u>Not more than 2 consecutive terms</u>	
Impeachment of President	Removal of the president is the same as that of the <u>US</u> but a <u>committee called High Court of Justice</u> is formed to deal with the case	
Emergency Powers	These powers are with the <u>president</u>	
The Legislature	<u>Bicameral. Subordinate to the Executive</u> <ul style="list-style-type: none"> <li><u>Parliament</u> can make laws only on the matters enumerated in the <u>Constitution</u>. <u>On all other matters, the government can</u></li> </ul>	

	<p>make laws by <u>simple order or decree</u>.</p> <ul style="list-style-type: none"> <li>If the <u>assembly doesn't agree</u> to a particular bill, it can be given for referendum by the President.</li> </ul>	
Amendment	Rigid Process, President initiates any amendment on <u>recommendation of the PM</u> . It shall be passed by <u>both the houses</u> and also approved by a <u>referendum</u>	
<u>The Community</u>	Association between the <u>French Republic</u> and its <u>overseas territories</u> and departments. Members of the community have <u>equal status</u>	
<u>Constitutional Council</u>	It functions as a <u>judicial watchdog</u> and ensures that the <u>executive decrees</u> and <u>parliamentary laws</u> conform to the provisions of the <u>constitution</u> .	

#### Germany Constitution:

	Germany	India
Nature	Germany is a <u>federation</u> and the <u>residuary powers</u> in Germany lie with the <u>states</u> .	India is a federation but the <u>residuary powers</u> in India lie with the <u>centre</u> .
PM	<u>Chancellor = PM</u> Germany is called as <u>Chancellor's Democracy</u>	
<u>Constructive Vote of No Confidence</u>	<p>The motion of <u>no-confidence</u> against the Chancellor is <u>permitted only</u> when those bringing the notion can <u>prove that they are in a position to form an alternative government</u>.</p> <p>This is also to deal with the problems of <u>Hung Assembly (Coalition Government)</u></p>	
Parliament	<u>Bundestag = Lower House</u> <ul style="list-style-type: none"> <li>Members are <u>elected for a four-year term</u></li> <li>The method of election is known as <u>Mixed Member Proportional Representation (MMPR)</u></li> </ul>	



	<ul style="list-style-type: none"> <li>○ <u>Half of the members are elected</u> directly from 299 constituencies using the FPTP system</li> <li>○ The <u>other half</u> – another 299 - are elected from the list of the <u>parties on the basis of each Land.</u></li> </ul> <p><u>Bundesrat = Upper House</u></p> <ul style="list-style-type: none"> <li>•</li> </ul>	
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### Japanese Constitution:

	Japan	India
Form	<u>Parliamentary</u>	
	<u>constitutional Monarchy</u> <ul style="list-style-type: none"> <li>• King is more like a '<u>Rubber stamp</u>' authority while PM is head of the Cabinet</li> </ul>	
Election of PM	PM is <u>elected by both</u> the Houses of Japanese Parliament ( <u>called Diet</u> ).	
	It is <u>not enough</u> for a person to be a leader of the majority party. He has to be <u>elected by both</u> the houses of the Parliament.	
	<p>A significant feature of Japanese Constitution is contained in <u>Article 9.</u></p> <ul style="list-style-type: none"> <li>• Herein, Japan formally <u>renounces</u> the policy of war for the settlement of international disputes. However, it can <u>keep</u> forces for <u>self-defence.</u></li> </ul>	

### Canadian Constitution:

	Canada	India
<b>Form</b>	<p><u>Constitutional monarchy</u> (The <u>Constitution Act 1867</u>)</p> <p>Canadian Monarchy (which Canada shares with Great Britain and some other former British colonies). <u>The British Queen is the formal head of the state.</u></p>	
<b>Features of Parliamentary government</b>	<p>The Act established a <u>federal Parliament</u>, consisting of the <u>Monarchy</u> and <u>two legislative chambers</u>, the <u>House of Commons</u> (or Lower House) and the <u>Senate</u> (or Upper House).</p>	
	<p>Members are elected by the <u>first-past-the-post system</u> (as in Britain) in each of the country's electoral districts, which are colloquially known as <u>ridings</u> (known as '<u>constituencies</u>' in Britain).</p>	
<u>4yr</u>	<p>The maximum term of MPs is <u>four years</u>, but it is <u>common</u> for a general election to be <u>called earlier</u>.</p>	
<b>Federation</b>	<p>Canada is a federation with a <u>strong Centre</u>, wherein <u>residuary powers</u> lie with the <u>Centre</u>.</p> <p>Over the years there has been a <u>shift towards giving greater powers to the states</u>.</p>	<b>Same</b>
<b>Judiciary</b>	<p>The <u>Supreme Court</u> of Canada is the <u>highest court</u> and <u>final authority</u> on civil, <u>criminal</u> and <u>constitutional</u> matters.</p> <p>The court's nine members are appointed by the <u>Governor-General</u> on the advice of the <u>Prime Minister</u> and the Minister of</p>	<u>11 to NJAC</u>



	<u>Justice.</u>	
<b>Rights</b>	<u>Canadian Charter of Rights and Freedoms</u> is a bill of rights entrenched in the Constitution of Canada	

### Australian Constitution:

	<b>Australia</b>	<b>India</b>
<b>System of Government</b>	Follows the <u>liberal democratic tradition</u>	
<b>Federation</b>	Australian federation is <u>modeled on the US federation</u> . For example, <u>residuary powers</u> are  with the states, <u>Governors</u> of the states are elected by the <u>people</u> and formally appointed  by the <u>British Queen.</u>	
	In Australia, there has been a growth of <u>Cooperative Federalism.</u>	
<b>Form of government</b>	the Commonwealth of Australia was created in <u>1901</u> , when the <u>former British colonies</u> —now the six states—agreed to federate.	
<b>Separation of powers</b>	SoP is there but the members of the <u>legislature must also be members of the executive.</u>	
<b><u>Parliament</u></b>	Consists of <u>two chambers</u> : the House of Representatives and the Senate.	
	Ministers are bound by the principle of <u>Cabinet solidarity</u> , which closely mirrors the British model of Cabinet government responsible to the Parliament.	
	Although, Australia is an independent nation, <u>Queen Elizabeth II of Great Britain</u>	

	<p>is also formally the Queen of Australia.</p> <p>The <u>Queen appoints a Governor-General</u> (on the <u>advice of the elected Australian Government</u>) to represent her. The Governor-General has <u>wide powers</u>, but by convention acts only on the <u>advice of the ministers</u> on virtually all matters.</p>	
Nature of Constitution	<u>Written</u>	
Procedure of amendment	<p>The Australian Constitution can be amended only with the approval of the <u>electorate through a national referendum in which all adults on the electoral roll must participate.</u></p> <p>After getting <u>passed by both the houses of the Parliament</u>, the bill has to follow the <u>Triple Majority rule:</u></p> <ul style="list-style-type: none"> <li>• a <u>national majority of electors</u> as well as</li> <li>• a <u>majority of electors</u> in a majority of the <u>states</u> (at least four of the six).</li> <li>• Where <u>any state or states are particularly affected by the subject of the referendum</u>, a <u>majority of voters in those states</u> must also agree to the change.</li> </ul> <p>Generally it is <u>rigid to amend</u></p>	
Parliament	Senators are elected for <u>six-year terms</u> , and in an ordinary general election <u>only half the senators face the voters.</u>	
Nature of elections	A national general election must be held within <u>three years of the first meeting</u> of a new federal Parliament.	



# All citizen compulsory to vote <sup>Teg</sup> Australia

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	The average life of Parliaments is about <u>two-and-a-half years</u> .	
<b>Voting</b>	For all <u>citizens</u> over the age of 18 it is <u>compulsory to vote</u> in the election of both federal and state governments, and <u>failure to do so may result in fine or prosecution</u> .	
<b>Relations between levels of government</b>	State parliaments are subject to the <u>national Constitution</u> as well as their <u>state constitutions</u> . A <u>federal law overrides</u> any state law not consistent with it.	

## Switzerland's constitution:

	Switzerland	India
	<u>Spirit of Republicanism</u>	
	Switzerland is known for its <u>direct democracy</u> . It is hailed as a <u>Dynamic Constitution</u> (features like <u>protection of individual, welfare state et al</u> )	
<b>Executive</b>	<u>Executive vested in the Federal Council</u>	<u>Executive vested in the President</u>
<b>Election of president</b>	Federal Council <u>elected by Federal Assembly</u>	President <u>elected by electoral college</u>
<b>Party system</b>	<u>Absent</u>	<b>Party government</b>
<b>International treaties</b>	<u>Cantons can conclude treaties</u>	<u>States cannot conclude treaties</u>
<b>Judiciary</b>	<u>Judiciary cannot rule invalid a federal law</u>	<u>Supremacy of Judiciary</u>
<b>Direct democracy</b>	<u>Referendum possible</u>	<u>No referendum</u>



Q.4) How is Indian judicial system different from that of the USA? Should India move towards a more federal judicial system? Discuss.

**Approach:** Start by defining judiciary and its role. List the contrasting features of judicial system in India and USA. In next part, discuss how the SC has emerged as a more powerful authority in India. Mention arguments in favour and against a more federal judicial system for India in a tabular form. Conclude the answer by highlighting certain measures to improve judicial performance rather than changing its very character.

India and USA are both democratic, federal, constitutional republics. The principal role of judiciary in both the countries is to uphold rule of law, interpret the constitution and safeguard the rights of individuals. However, there are certain contrasting features in their judicial systems, as listed below:

Judiciary in India	Judiciary in USA
There is an <u>integrated judiciary</u> (with <u>subordinate courts under the HCs and HCs under SCs</u> ). All courts can enforce any law.	The <u>judicial system is segregated</u> . Federal laws are administered by federal courts and state laws are administered by state courts. Supreme Court of the United States (SCOTUS) is the highest court in the federal judiciary. Every state has its own supreme court, as a final appellate authority.
Indian constitution originally followed <u>'procedure established by law'</u> . (Due process of law was adopted after the Maneka Gandhi case) <u>Jury system abolished</u> . Relatively <u>narrow Judicial Review (JR)</u> , limited to upholding <u>constitutional supremacy</u> .	US judiciary follows <u>'due process of law'</u> . <u>Jury system</u> is also followed. Wider JR, leading to <u>principle of judicial supremacy</u> .
<u>Original Jurisdiction</u> of SC is confined to federal matters and writ jurisdiction.	SCOTUS enjoys <u>wider original authority</u> such as cases of naval forces, maritime activities, federal disputes etc.
SC can grant <u>Special Leave against</u> orders by any Court/tribunal (except military tribunal/court martial).	<u>SCOTUS</u> does not have such absolute powers.
Appellate jurisdiction includes constitutional, civil and criminal cases.	Appellate jurisdiction in <u>constitutional cases</u> and cases related to <u>federal laws</u> only.
SC has <u>advisory jurisdiction</u> .	No Advisory role.
Judges of SC are appointed by the President on the <u>recommendation of a collegium system</u> .	President recommends the name of judges to the senate and with the consent of the <u>senate</u> , president appoints the judges of SCOTUS.
Judges <u>hold office till the age of 65 years</u> . Constitution also provides qualification.	Judges are <u>appointed for life</u> . The constitution does not provide qualification.
<u>Both the houses involved</u> in removal of judges.	<u>Only senate takes part</u> in removal.

Due to overriding powers of the SC in an integrated judiciary, some scholars have made case for a more federal judiciary in India. However, such a system has both advantages and disadvantages as discussed below:

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Advantages	Disadvantages
1. HCs are <u>better placed to decide regional and local matters</u> as they have better understanding of regional issues. For example: in 2018, SC set a <u>window of two hours in night for bursting Diwali crackers</u> , however, Diwali is celebrated in day in many states of South India.	1. State courts are more <u>likely to be influenced by regional sentiments</u> and may not act with <u>complete neutrality</u> .
2. A federal judiciary will <u>enhance the access to justice</u> by reducing geographical barriers.	2. India has a <u>single constitution</u> with an <u>integrated judiciary</u> adjudicating <u>both the federal and state laws</u> . Introduction of <u>Federal judiciary</u> may distort <u>basic structure</u> of the constitution.
3. <u>Reduced burden on SC</u> (due to reduced appeals), enabling it to focus on constitutional matters; <u>reduced pendency</u> .	3. Without <u>sufficient number of judges</u> and <u>infrastructure</u> , a <u>decentralised judiciary</u> would be just as <u>dysfunctional</u> .
4. Centralized judiciary <u>tend to favour union</u> government.	4. <u>Fragmentation of judiciary</u> may make them <u>vulnerable to corruption</u> , <u>reducing their authority</u> .
5. Interference of SC in HC <u>dilutes the authority of HC</u> and confidence of people in HC.	