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Judiciary in India

The administration of justice is an important aspect of government from ancient times to the modern times. But how and in what manner this function of judiciary was performed is a long story in the growth of not only the government but also of judiciary. Government consisted mainly of three branches namely

- a. the legislature
- b. the executive
- c. the judiciary

However this distinction was not clear as there were different forms or patterns of government. This is clear from the various stages through which the modern government emerged. Originally there was a monarchy followed by aristocracy, oligarchy and tyranny. These forms of government varied from time to time and every such form of government existed in different countries at different points of time. So these three functions of the government in 20th century were not performed by the respective bodies. Infact one and the same person or agency performed. But as changes took place in the form and nature of governance, duties of government these functions had also been distinguished and they happened to be entrusted to the respective bodies. In this way, the judiciary as one of the important organs of the government came to be reorganised as the same was called for to discharge its duties by itself. The 20th century witnessed several developments in the political system and the nature of government. One important feature of this is the emergence of democracy as a system of government. In this system much importance is attached to the judiciary. Infact political thinkers of modern times, insisted that the executive functions, legislative

functions and judicial functions be entrusted to the respective persons or bodies. They should not interfere with the duties and responsibilities of the rest. This theory is known in political science as the separation of powers. It was advocated by Montesquieu a French writer in his book called “The Spirit of Laws” published in the year 1748. Since then it has become popular with modern government. It was given due recognition by the Americans when they drafted the constitution. In course of time, many other countries European and Asian incorporated this principle in their constitutions. This ultimately led to the recognition of the need for and importance of the judiciary.

JUDICIAL REVIEW

Judicial Review is an important contribution of the U.S.A. to political science. The power of the Judiciary to declare law unconstitutional is called judicial review. In England the judiciary has no power to sit in judgement on the law passed by parliament. But in countries like U.S.A., Canada, India, Australia, if the legislature passes a law which is against the constitution, the judiciary can declare such law as ultra vires.

The Supreme Court enjoys the power of judicial review. The Supreme Court of India has judicial review power with regard to:

- (a) disputes between the centre and the states.
- (b) to interpret and clarify a provision of the constitution above which there are some doubts and differences of opinion.
- (c) protecting the fundamental rights.
- (d) those laws passed by the legislature which are not in accordance with the constitution.

In India, the Supreme Court and High Courts enjoy this power. The following are the merits and demerits of Judicial Review

Merits

1. Judges are competent to make judicial review by virtue of their knowledge and experience.
2. It enables the federal judiciary to act as the guardian of the constitution.
3. The courts are independent and less biased than legislatures.
4. It protects the fundamental rights of the people in particular the rights of the minorities.
5. It is necessary to preserve a free and limited government.
6. It enables the judiciary to guard against legislative haste and rashness.

De-merits

1. It may violate the spirit of separation of powers.
2. By giving the power of judicial review to the courts the smooth functioning of the representative system of government is affected as the courts infringe upon the legislative and executive functions.
3. Judicial review delays the operation and implementation of important and pressing social policies so necessary for the needs of a dynamic society.
4. Almost all problems coming before the judges involves issues of political, economic and social importance and legislation on them. Thus it makes the judiciary a super legislature.

5. Issues brought before the courts are decided by a majority of single judge (in the U.S.A. five to four majority). It shows how the judges are sharply divided amongst themselves and their judgement vitally affects the nation as a whole.

6. Judges may over look the challenges of the changing times and may refuse to move forward. They may become conservative.

7. Judges may follow blindly only the letter of the law totally ignoring its spirit. They may develop hard attitude.

Judicial review has been accepted as an important doctrine in the working of the judiciary.

JUDICIAL ACTIVISM

The judiciary is one of the important pillars of democracy. It has more onerous responsibilities than two other important estates, the executive and the legislature. It is the judiciary and the institution of justice that helps the orderly functioning of parliamentary democracy and the exercise of powers by the various wings of administrative machinery.

“Judicial activism” is inspired by the public, who knock the doors of justice and thus judicial activism is basically citizens activism. By exercising the right to freedom of expression and assuring the representation of the common citizen, the press has raised same particular issues, conducted risky investigation and exposed serious omissions, sometimes going to court with public interest litigation. The lions share of citizens

activism is that of the press, the fourth estate. When the administration fails to respond the citizen looks to the press for communication and turn to the judiciary for a remedy.

Since the judiciary is part and parcel of the society as a whole and the persons who man the administration of justice are none other than the same persons from the community, it is difficult to imagine better standards and higher moral values only in the judiciary. The people as a whole should therefore have overall control, in accordance with democratic principles. Hence an enlightened and conscious citizen should ponder over the need to reform every system, including the judiciary, to be more useful to the public in general and the democratic institutions in particular. The delayed dispensation of justice is one of the main maladies confronting the fabric of our republic. If by delay justice is denied, it is conversely hurried if hurried. With its defective structure and unquestionable power devoid of any accountability, the judiciary as for that matter, any system can play havoc with the setup. Our constitutional frame work provides for a fairly good amount of independence to the judiciary to act as watchdog, over the other two estates. To retain such independence the judiciary is rightly enjoying an enormous amount of power too. The Supreme Court in India unlike in the U.S.A has vast powers in controlling administrative discretion. Judicial activism, particularly on public interest litigation, has revolutionised constitutional jurisprudence. Persons belonging to the executive and legislative have criticised the judiciary for weakening those wings and making them feel insecure. They described the situation as judicial tyranny and judicial grabbing or judiciacracy.

Various phenomena reflect the denigration of justice system. Charges of corruption, links between some advocates and some judges, the brokerage system, chasing

litigation, bias, political appointments of public prosecutors and government pleaders are some of them. As the purview of the judicial review is expanding by leaps and bounds, every action of the two estates is coming in for judicial scrutiny. In a way, this situation is helping to increase the powers of the judiciary. Citizens should be enlightened about the defects of the judiciary and the media should play the role of catalyst in reforming the administration of justice, to make it more useful to society and for judicial activism to help the development of law.

INDEPENDENCE OF JUDICIARY

Justice is considered to be one of the divine attributes and a judge is described as a blindfolded person who holds the scales of justice which he administers even handed. It means judges should be impartial.

The need for independence of the judiciary has acquired an added dimension under modern conditions of the welfare state. The more modern government interferes, administers and regulates the more urgent is the need to preserve a check on the way. These activities affect individuals and groups. The factors which ensure independence of judiciary and enable judges to fearlessly discharge their duties are the following. Dr.Garner says, "If the judges lack wisdom, probity and freedom of decision, the high purpose for which the judiciary is established cannot be realised". If the judiciary is independent only when the system of the appointment of the judges is good, if they have the security of service and interference and control. Conditions or factors which make the judiciary independent, are the following:

SUPREME COURT OF INDIA

- ❑ Stands at the apex of the judicial system of India
- ❑ Consists of Chief Justice and 30 other judges

Appointment:

Senior most judge of the Supreme Court is appointed as the Chief Justice of India.

Qualification:

- ❑ Must be a Citizen of India
- ❑ Has been a judge of High Court for five years or an advocate of High Court for ten years minimum. or in President's view a distinguished jurist of the country.

Terms and Salary:

- ❑ The Chief Justice and other Judges hold office till 65 years of age.

Resignation & Removal:

A judge of the Supreme Court can be removed from his Office by an order of the President. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal. The address must be supported by a special majority of each House of Parliament (ie, a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two—proved misbehaviour or incapacity.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:

1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.

2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the Speaker/Chairman is to constitute a three member committee to investigate into the charges.
4. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
5. If the committee finds the judge to be guilty of mis behaviour or suffering from an incapacity, the House can take up the consideration of the motion.
6. After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
7. Finally, the president passes an order removing the judge.

It is interesting to know that no judge of the Supreme Court has been impeached so far. The first and the only case of impeachment is that of Justice V Ramaswami of the Supreme Court (1991–1993). Though the enquiry Committee found him guilty of misbehaviour, he could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting

SEAT OF SUPREME COURT

The Constitution declares Delhi as the seat of the Supreme Court. But, it also authorises the chief justice of India to appoint other place or places as seat of the Supreme Court. He can take decision in this regard only with the approval of the President. This provision is only optional and not compulsory. This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as a seat of the Supreme Court.

SUBORDINATE COURTS

CONSTITUTIONAL PROVISIONS

Articles 233 to 237 in Part VI of the Constitution make the following provisions to regulate the organization of subordinate courts and to ensure their independence from the executive

1. Appointment of District Judges The appointment, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court.

A person to be appointed as district judge should have the following qualifications:

- (a) He should not already be in the service of the Central or the state government.
- (b) He should have been an advocate or a pleader for seven years.
- (c) He should be recommended by the high court for appointment.

2. Appointment of other Judges Appointment of persons (other than district judges) to the judicial service of a state are made by the governor of the state after consultation with the State Public Service Commission and the high court

3. Control over Subordinate Courts The control over district courts and other subordinate courts including the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court.



LOK ADALATS

Lok Adalat is a forum where the cases (or disputes) which are pending in a court or which are at pre-litigation stage (not yet brought before a court) are compromised or settled in an amicable manner.

Meaning

The Supreme Court has explained the meaning of the institution of Lok Adalat in the following way

The 'Lok Adalat' is an old form of adjudicating system prevailed in ancient India and it's validity has not been taken away even in the modern days too. The word 'Lok Adalat' means 'People's Court'. This system is based on Gandhian principles. It is one of the components of ADR (Alternative Dispute Resolution) system. As the Indian courts are overburdened with the backlog of cases and the regular courts are to decide the cases involving a lengthy, expensive and tedious procedure. The court takes years together to settle even petty cases. Lok Adalat, therefore, provides alternative resolution or devise for expeditious and inexpensive justice.

In Lok Adalat proceedings, there are no victors and vanquished and, thus, no rancour.

The experiment of 'Lok Adalat' as an alternate mode of dispute settlement has come to be accepted in India, as a viable, economic, efficient and informal one. The Lok Adalat is another alternative in judicial justice. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of settling disputes, which are pending in courts and also those, which have not yet reached courts by negotiation, conciliation and by adopting persuasive, common sense and human approach to the problems of the disputants, with the assistance of specially trained and experienced members of a team of conciliators.

Rule of law/Due process of law

Rule of Law

The concept of 'equality before law' is an element of the concept of 'Rule of Law', propounded by A.V. Dicey, the British jurist. His concept has the following three elements or aspects:

- (i) Absence of arbitrary power, that is, no man can be punished except for a breach of law.
- (ii) Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts
- (iii) The primacy of the rights of the individual, that is, the constitution is the result of the rights of the individual as defined and enforced by the courts of law rather than the constitution being the source of the individual rights. The first and the second elements

are applicable to the Indian System and not the third one. In the Indian System, the constitution is the source of the individual rights.

The Supreme Court held that the 'Rule of Law' as embodied in Article 14 is a 'basic feature' of the constitution. Hence, it cannot be destroyed even by an amendment.

Due process of law

The American Constitution provides for 'due process of law' against that of 'procedure established by law' which is contained in the Indian Constitution. The difference between the two is: "The due process of law gives wide scope to the Supreme Court to grant protection to the rights of its citizens. It can declare laws violative of these rights void not only on substantive grounds of being unlawful, but also on procedural grounds of being unreasonable. Our Supreme Court, while determining the constitutionality of a law, however examines only the substantive question i.e., whether the law is within the powers of the authority concerned or not. It is not expected to go into the question of its reasonableness, suitability or policy implications"