
UNIT 9 GOVERNANCE: ROLE OF THE LEGISLATURE AND THE JUDICIARY

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9.0 LEARNING OUTCOME

After studying this Unit you should be able to:

- Highlight the crucial role of the legislature and the judiciary in governance
- Appreciate the significance of judicial activism; and
- Examine the relationship between the legislature and the judiciary

9.1 INTRODUCTION

Today, ‘governance’ occupies centre stage in the development discourse; also ‘governance’, in terms of plurality of agencies and institutions working in tandem, is considered as a crucial element in public administration of a country. The principles of governance whether enshrined in the ancient Indian treatises or spelt out in the Directive Principles of the State Policy veer around the pivotal theme of all-round welfare of the citizens.

In India, during the freedom struggle, ‘swaraj and good governance’ were considered synonymous. After independence, India’s Constitution enshrined the aspirations of the people and the ideals of the freedom struggle. The founding fathers of the Constitution resolved to keep people’s rights, equality, social justice and all-round well being as the core of governance.

In order to operationalise these issues, governance requires a moral determination that is central to the concerns of all human beings. And, thus, the role of legislature and judiciary becomes important in order to improve the quality of governance. The legislature and the judiciary are the two important organs of the State which not only

have key responsibilities, but also have to perform a major role in making justice accessible to all.

This Unit shall familiarise you with important aspects of role of legislature and judiciary in the process of governance, and the significance of judicial activism. You shall also be able to comprehend the nature of relationship between the legislature and the judiciary.

9.2 ROLE OF THE LEGISLATURE IN GOVERNANCE

Legislature is a general term, which subsumes various other specific names like parliament, congress, national assembly. It is called by different names in different countries. For example, Diet in Japan, Cortes in Spain, Jatiya Sangshad in Bangladesh, etc. In case of India, the legislature of the union is called Parliament.

The Indian Parliament is constituted on the basis of the principle of bicameralism, i.e., the legislature having two Houses or Chambers. Since a federal form of government was adopted in India, there was almost unanimity among the framers for achieving a balance between the direct representation of people and the representation of units as such, by setting up two Houses, one representing the people as a whole and other the federated units.

Popular democracy and representative institutions are neither entirely alien to the Indian soil nor of recent origin. Modern parliamentary institutions in India had an organic growth after the advent of the British. The British rulers felt the necessity of establishing closer contacts with public after the war of independence (1857). The Indian Councils Act of 1861 was a first small step in this direction. This was followed by the Indian Councils Acts of 1892 and Government of India Acts of 1909, 1919 and 1935. But these British Indian experiments suffered from two basic limitations. First, these bodies were elected (earlier mostly nominated) on an extremely limited franchise based on property and education. Second, they lacked legislative autonomy from the executive power of the Governors – General and Governors (Singh, 1995).

With the Constitution of India coming into force on 26 January, 1950, a full fledged parliamentary system of government was established. The Constituent Assembly became the Provisional Parliament of India and functioned as such till a new Parliament was constituted under the provisions of the new Constitution. The first elected Parliament came into being in May, 1952, after the first general election held during 1952.

In a parliamentary democracy, sovereignty of the people rests in and is upheld through legislature. It is this role as the custodian of the people's sovereignty, which makes legislature the most important organ of the State. The Indian legislature, i.e., the Parliament, occupies a pre-eminent and pivotal position in the country's constitutional set-up. Over the years, it has carved out for itself a unique place in the esteem and affection of the people as the forum through which they articulate and realise their aspirations and ventilate their grievances and seek solutions to their problems. It is the supreme representative body of the people (Kashyap, 1988).

The importance of legislature has been highlighted by Lord Bryce (1921) in his work, "Modern Democracies". He recognised that legislatures constituted an indispensable

part of the machinery of government in democracies, but felt that because of party caucuses and growth of pressure groups the “dignity and moral influence of representative legislatures” have been declining.

Even K.R. Narayanan (1992), former President of India, has accepted that Parliament and the State Legislatures are supreme institutions. To quote him: “Parliament and Legislatures constitute the head and front of the body-politic in India. They are the institutional embodiment of the audacious experiment in democracy – launched by the founding fathers of our republic...”.

Michael Ameller has emphasised that “in a democratic set up, parliament lays down basic principles which the executive has to apply and which the judiciary has to use as its frame of reference” (37th Commonwealth Parliamentary Conference Commemorative Volume). Thus, it can be said that among the three organs of the State – executive, legislature and judiciary – the legislature takes precedence over the other two organs, the executive and the judiciary.

The Indian Constitution as you all are aware, provides for a bicameral Parliament, which consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of People (Lok Sabha). The President is an integral part of the Parliament. The President was made a part of the Parliament in conformity with the principles and traditions of parliamentary government. Although the President himself is not a member of the legislature, his participation in the legislative process is ensured by making him a part of Parliament. Secondly, since he is the chief executive and the executive power is co-extensive with the legislative power, it has become necessary to make him an integral part of the legislature.

Following the British principles of supremacy of law and parliamentary sovereignty, the Indian Parliament is constituted as the supreme legislative body although it cannot be compared with its British counterpart as entirely equal in its powers. It is a multi-functional institution performing a variety of roles or functions. These roles are discussed below.

Legislative Role

The primary function of parliament is law-making. Historically, it was the function of making laws that made the legislature a distinctly separate department of government. Though the legislature has taken up additional functions as a result of the complexities of modern government, yet law-making still remains its most important activity.

With regard to the law-making power of the legislature, we see that the lower House, i.e., the Lok Sabha has a key role especially with regard to money bill. In case of money bills, Rajya Sabha’s power is almost negligible and has only an advisory role. These bills can be introduced only in the Lok Sabha and once it is passed by the House, it goes to the Rajya Sabha for consideration. The Rajya Sabha is given fourteen days time to take action on the bill. The Rajya Sabha can either pass it or can amend or reject it. If the bill is passed by the Rajya Sabha, then it goes to the President for his assent. If it is amended or rejected, then it goes back to the Lok Sabha where it is reconsidered and voted by a simple majority and sent to the President.

In case of ordinary bills, both the houses have equal powers. These bills can be introduced either in the Lok Sabha or the Rajya Sabha. The Rajya Sabha may amend or reject a bill that is passed by the Lok Sabha. If the Lok Sabha disagrees with the

action of the Rajya Sabha, then the matter is placed before a joint sitting of both the Houses and passed by a simple majority. Since the strength of Lok Sabha is more as compared to that of Rajya Sabha, the will of the Lok Sabha prevails in matters of conflict. A bill passed in a joint sitting goes straight to the President for his assent.

With regard to constitutional amendment too, both the Houses have co-equal powers. The Constitution cannot be amended unless the Rajya Sabha also agrees to such change. The provision of joint sitting does not apply to constitutional amendment bills.

Control over Executive

Another important role of the legislature is to control the executive. Under the Constitution, the Council of Ministers is collectively responsible to the Lok Sabha. This means that the Rajya Sabha has hardly any control over the ministers. However, the Rajya Sabha has every right to be fully informed of all matters connected with the government's activities, which are raised on its floor.

The legislature enjoys near unlimited right to call for information and to see whether the government has acted in conformity with its obligation. The legislature's control over executive is meant to galvanise, not supplant executive initiatives; to promote, not impair administrative will for action. Actually, it is meant to help the administration by calling its attention to lapses and shortcomings, which otherwise it may itself remain unaware of.

There are numerous procedures by which the legislature controls the executive. The debate on the motion of thanks on the President's address, the budget, and motions for consideration of governmental policy in particular areas, are some of the methods. Parliamentary questions to ministers, adjournment motions, calling attention notices, are some of the other procedures, which enable members to draw attention to specific grievances or issue and elicit government response thereon. The legislature has a right to pass a no-confidence or censure motion against the government. But this right does not belong to Rajya Sabha. In order to check administrative lapses or shortcomings in the working of particular departments or organisations, there are motions for short duration discussion, private members' resolutions, motions for modification of statutory instruments and report of departments and public undertakings.

Parliamentary control over public finance – the power to levy or modify taxes and the voting of supplies and grants – is one of the most important checks against the executive assuming arbitrary powers. No taxes can be legally levied and no expenditure incurred from the public exchequer without specific parliamentary authorisation by law.

Parliament as Leadership Training Centre

Parliament plays an important role in leadership recruitment and development and in doing so, it makes an important contribution to the political system. Kashyap (1988) views, "Parliament as the recruiting and training ground for Ministers". Parliament is like a political battle field where the weak and the faltering are exposed and those who are strong find the challenge stimulating and flourish. Normally, those who have talent, ambition and grit are chosen for top ministerial berths and other higher positions in public life. The members of parliament while serving as members of different committees acquire considerable knowledge in various fields and make good ministers. The performance of various members in the parliament and in various

committees help the Prime Minister in selecting ministers. As a result, continuity in leadership is ensured.

Parliament's Role in Social Engineering

Parliament's role in social engineering is equally important. In a developing country like India, many policies are to be made in order to change its condition on several fronts. If this change is brought about through a process of consensual politics, only then the new policies and the change resultant can be smooth and meaningful. The parliament provides a place for interaction of diverse forces and varied interests in the polity are brought together under a common platform where they can have face to face discussion and dialogue. In this way, the new changes are brought about and a new value-culture is born. Thus we see that the parliament performs a significant role as an integrator and a mediator in bringing about change in the society.

Representational Role

Parliament is a body, which represents the people. Its members are drawn from every part of the country and represent varied interests. As such it is the forum through which the needs and aspirations of the masses and even their anxieties and frustrations are articulated. It provides a platform to the masses to express themselves on the problems which arise in the society and get the government explain its position on these problems and the course of action which it proposes to take. In the words of Kashyap (*op.cit*), "Parliament represents the changing moods and needs of the people. It is not only a microcosm and mirror of the people, but also a barometer of their mood and pulse"

The parliament as a people's institution and its members as peoples' representatives, have always championed the cause of the masses. The parliament has all along been a highly alert body, which reacts quickly to any kind of situations, and its members are vigilant and zealous in raising matters of public importance in the House. In the present day, when government's actions and policies are impinging upon the lives and interests of private individuals, Parliament's role as a redresser of public grievances becomes important.

Educative Role

The system of universal adult franchise gives the opportunity to the parliament, of imparting education to the masses about the concepts and ideology of democracy. During elections, the candidates and their supporters are compelled to visit every village, which is a tremendous task of political education. The electoral process, the working of the parliament and other aspects of democracy educate the masses to become political and understand and evaluate the performance of political parties and leadership so that it functions as an effective tool of governance.

Special Powers of Rajya Sabha

Apart from the above role and functions of the parliament, which are performed by both the Houses, the Constitution has assigned some special powers to the Rajya Sabha. These powers are exercised by the Rajya Sabha alone reflecting its status as the Council of States. Article 249 of the Constitution, provides that the Rajya Sabha with the support of two-thirds of its members sitting and voting, is empowered to declare that, in the national interest, parliament should make laws with respect to a matter that is included in the state list. Similarly, under Article 312, the Rajya Sabha is given the power to decide by a resolution supported by a two-thirds majority the

question of setting up of an All India Service. Thus, with regard to both these powers, the Lok Sabha comes into picture only after the Rajya Sabha has acted and the Lok Sabha does not share the power of the Rajya Sabha in deciding as to what action is necessary under both the contingencies.

Thus, we see that the two Houses of Parliament, though constituted on different principles and have each certain exclusive powers and functions, are nevertheless coordinate chambers. The two Houses enjoy co-equal power and status in all spheres except in financial matters and in regard to the responsibility of the Council of Ministers, which are exclusively in the domain of the Lok Sabha. Similarly, the powers mentioned under Articles 249 and 312 are exclusively in the domain of the Rajya Sabha. Rajya Sabha has equal powers with Lok Sabha in important matters like the impeachment of the President, removal of the Vice-President, constitutional amendments, and removal of the judges of the Supreme Court and the High Court. Besides, every Presidential ordinance, proclamation of emergency and proclamation of the failure of constitutional machinery in a state must be placed before both the House.

Besides the traditional role of the legislature, the recent works have looked at legislature in a broader context, particularly in relation to the citizens and the political system. According to one of these new perceptions, legislature is one of the agencies that mobilises consent of the people and gets acceptance of its policies. This is so because the electoral commitments made during election commit not only the government i.e. the party in power but also the voters. They constitute a set of expectations about the future course of government policy and these expectations lay the foundation of consent and acceptance, for relevant government programmes in future promoting good governance (Hye, 2001).

Legislature has a key role in responding to the aspirations of the people and commitment of public functions in the implementation of approved policies and programmes.

9.3 ROLE OF THE JUDICIARY IN GOVERNANCE

Within the framework of parliamentary democracy and federalism, judiciary plays an important role in the governance of the country. The judiciary is an indispensable part of governance and an efficient and independent judiciary is the greatest guarantee of well being of society. Indeed, the Indian judiciary was seen to be an arm of the social revolution, upholding the equality and dignity of men that the people of India suffered long during the colonial days, but it has not been gained as yet (Gehlot, 1999).

Historically speaking, the Indian judicial system has had a glorious past. Most of our freedom fighters have been from legal profession. The presence of leaders like Mahatma Gandhi, Moti Lal Nehru, Dr. Rajendra Prasad, Sardar Patel, K.M. Munshi, M.A. Jinnah, Gopal Krishna Gokhale, Bal Gangadhar Tilak, in the struggle for independence, all of whom belong to the legal profession, showed that they were aware of the need for a strong judicial system in India. The framers of the Indian Constitution conceived of a judicial system, which was free from the control of the executive as well as the legislature. India opted for a single judicial system and by creating a single judiciary with the Supreme Court at the top, the framers of the Constitution obviously intended to introduce certain judicial reforms.

In the governance of a democracy, judiciary plays a very important role, which is second to none. The Constitution accords a place of pride to the judiciary by conferring the power of judicial review of legislative and administrative actions and entrusting it with the task of enforcement of the fundamental rights guaranteed under the Constitution. In fact, the judiciary assumes a significant and special importance by virtue of its very task of sitting on judgement on the actions of the other two organs and power of interpreting the constitutional provisions.

Judiciary – the organisation for giving justice to the society, occupies a position of pre-eminence among the three organs of the State. Justice is considered, as a logical requirement of any society for it is a part of human nature to expect justice and be intolerant to injustice. Justice enjoins upon every body to preserve the basic order of society and prohibits every one to disturb it.

Independence of Judiciary

The promotion of good governance through judiciary depends on its independence to a great extent. An independent, unbiased and able judiciary is the first requirement of justice. Independence of the judiciary means independence from the government in power since judges have to provide justice not only between citizens but also between a citizen and the State. The Indian Constitution makes provision for an independent and impartial judiciary. Justice Chandrachud opines that the independence of judiciary is the “cardinal feature” and observed that the “judiciary which is to act as a bastion of the rights and freedom of the people is given certain constitutional guarantees to safeguard the independence of judiciary” (Kumar and Bhatia, 1999). Justice Bhagwati observed that the independence of judiciary is a fighting faith of our Constitution. Fearless justice is a cardinal creed of our founding document.

In order to ensure the independence and impartiality of the judiciary, certain provisions are provided in the Constitution. One such provision is the appointment of judges. The Constitutional provisions regarding the appointment of a judge is that only those persons can be appointed as a judge of the Supreme Court, who are citizens of India and (a) has been judge of a High Court or of two or more courts in succession at least for five years; or (b) has been an advocate of a High Court or of two or more such courts in succession at least for ten years; or (c) is a distinguished jurist, in the opinion of the President. These provisions show that no ordinary person can become a judge. In other words, highly qualified persons can become a judge of the Supreme Court. In the lower courts, appointments are made on the basis of written examinations. Those who clear the examinations are appointed. Here too, we see that the appointments are strictly made on the basis of merit.

Secondly, they are provided security of tenure. Once appointed, they can stay in office till they attain the age of 65 and 62 (Supreme Court and High Court respectively). They can be removed from their post only on the ground of proved misbehaviour or incapacity through a process of impeachment. This impeachment process is so tough that till date no judge has been removed from the post. Once, the proceedings were initiated against Justice Ramaswamy for financial irregularities but the resolution could not be passed for want of required support in the House.

Thirdly, in case of Supreme Court judges, they have been prohibited from practising law before any court of authority within the territory of India after retirement.

Fourthly, they are paid handsome salary and are entitled to a free house and certain other allowances and privileges. Neither the salary, allowances and privileges, nor

their rights in respect of leave of absence or pension can be varied to their disadvantage after their appointment. During a grave financial emergency, the salaries of the judges may be reduced.

Fifthly, all the actions and decisions of the judges in their official capacity are immune from criticism. Besides, the conduct of a judge may not be discussed in the parliament except when a resolution for his removal is before it.

Finally, the Supreme Court has been authorised to have its own establishment and to have complete control over it. It is further authorised to make appointments of officers and servants of the court and determine their service conditions.

All these provisions were made in order to ensure the independence and impartiality of the judges. As Ambedkar said in the Assembly, it was the intention of the framers to create a judiciary and to give it ample independence so that it could act without fear or favour of the executive or anybody else (Pylee, 2001).

Speaking on the Draft Constitution with regard to the judges of the Supreme Court, the then Prime Minister, Jawaharlal Nehru opined the same. He observed: "It is important that these judges should be not only first rate but should be acknowledged to be first rate in the country, and of the highest integrity, if necessary, people who can stand up against the Executive and whoever may come in their way" (Varma, 1996).

A similar view regarding the independence of judiciary, was expressed by H.R.Gokhale, the then Law Minister. While speaking in Parliament, he observed that the government is very keen and will see to it that India will have a strong and independent judiciary, and the judges will function according to their oath without fear, ill-will, affection or favour (Varma, *op.cit*).

Role and Functions of the Supreme Court

The constitutional task assigned to the judiciary is in no way less than that of the other two functionaries – legislature and executive. Indeed, it is the role of the judiciary to carry out the constitutional message, and it is its responsibility to keep a vigilant watch over the functioning of democracy in accordance with the Constitution. Sir Alladi Krishnaswami Ayyar remarked in the Constituent Assembly that, "The Supreme Court under the Constitution has wide powers, more than the highest court, in any other federation. The criticism, if at all, can only be that the powers of the Supreme Court are not wide enough, but that they are too wide" (Constituent Assembly Debates, 1949). The various roles and functions of the Supreme Court are discussed below.

Original Jurisdiction (Article 131)

This refers to the cases that directly originate in the Supreme Court. It has original exclusive jurisdiction in any dispute between (a) the Government of India and one or more States; or (b) the Government of India and any State or States on one side and one or more other States on the other; or (c) two or more States.

Appellate Jurisdiction (Articles 132 to 136)

This refers to the power of reviewing and revising the orders of lower courts and tribunals. This jurisdiction extends to both the civil and the criminal appeals from the High Courts under certification from these courts or, in its absence, permitted by the

Supreme Court itself. Normally, these appeals are in cases involving substantial question of law of general importance or interpretation of the Constitution or death penalty awarded by a High Court.

Advisory Jurisdiction

Under Article 143, the Supreme Court has been vested with the power of advisory jurisdiction. Whenever the President consults the Supreme Court, on any matter of public importance, it gives opinion to the President. The Supreme Court may also decline to give its opinion to the President. The advice is not binding on the President.

Supreme Court as a Court of Record

According to Article 129, the Supreme Court shall be a Court of record and shall have all powers of such a Court, including the power to punish for contempt of itself. As a Court of record it has the power to punish those who are adjudged as guilty of contempt of court.

Appeal by Special Leave

This power has been conferred upon the Supreme Court by Article 136. It may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

Writ Jurisdiction

The Supreme Court is the guardian of the individual liberties and fundamental rights. It has the power to declare a law passed by any legislature null and void if it encroaches upon the fundamental rights guaranteed to the people by the Constitution. For the enforcement of fundamental rights, it can issue writs in the nature of Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo-Warranto.

Judicial Review

Besides the above mentioned powers, the Supreme Court has the power of judicial review. It implies the power to review and determine validity of a law or an order. It refers to “the power of a court to inquire whether a law, executive order or other official action conflicts with the written Constitution, and if the court concludes that it does, to declare it unconstitutional and void”. Singh (1994) opines that “judicial review in India is based on the assumption that the Constitution is the supreme law of the land, and all governmental organs, which owe their origin to the Constitution and derive their powers from its provisions, must function within the framework of the Constitution, and must not do anything which is inconsistent with the provisions of the Constitution”.

However, the Indian Constitution does not in so many words assign the power of judicial review to the court. There are several specific provisions in the Constitution, which guarantee judicial review of legislation such as Articles 13, 32, 131-136, 143, 226, 145, 246, 251, 254 and 372. Apart from these Articles, the power of judicial review is derived from the position of Supreme Court as the guardian of the Constitution.

The court can challenge the constitutional validity of a law on the following grounds:

- i) The subject matter of the legislation is not within the competence of the legislature which has passed it;
- ii) It is repugnant to the provisions of the Constitution; or
- iii) It infringes one of the fundamental rights.

The power of judicial review, in general, flows from the powers of the courts to interpret the Constitution. As such it has the final say in the interpretation of the Constitution and by such interpretation, the Supreme Court has extended its power of judicial review to almost all the provisions of the Constitution.

9.4 JUDICIAL ACTIVISM

Judicial activism is gaining prominence in the present days. In the form of Public Interest Litigation (PIL), citizens are getting access to justice.

9.4.1 Nature and Meaning

Judiciary has become the centre of controversy, in the recent past, on account of the sudden rise in the level of judicial intervention. The area of judicial intervention has been steadily expanding through the device of public interest litigation. The judiciary has shed its pro-status-quo approach and taken upon itself the duty to enforce the basic rights of the poor and vulnerable sections of society, by progressive interpretation and positive action. In the words of Justice Krishna Iyer, “by way of judicial activism, the judiciary is trying to reach where either the government has failed or has been indifferent”.

The Supreme Court has developed new methods of dispensing justice to the masses through the public interest litigation. Former Chief Justice P.N. Bhagwati, under whose leadership public interest litigation attained a new dimension comments that “the supreme court has developed several new commitments. It has carried forward participative justice. It has laid just standards of procedure. It has made justice more accessible to citizens”.

The term ‘judicial activism’ is intended to refer to, and cover, the action of the court in excess of, and beyond the power of judicial review. From one angle it is said to be an act in excess of, or without, jurisdiction. The Constitution does not confer any authority or jurisdiction for ‘activism’ as such on the Court (Misra, 2001).

Judicial activism refers to the interference of the judiciary in the legislative and executive fields. It mainly occurs due to the non-activity of the other organs of the government. Judicial activism is a way through which relief is provided to the disadvantaged and aggrieved citizens. Judicial activism is providing a base for policy making in competition with the legislature and executive. Judicial activism is the rendering of decisions, which are in tune with the temper and tempo of the times. In short, judicial activism means that instead of judicial restraint, the Supreme Court and other lower courts become activists and compel the authority to act and sometimes also direct the government regarding policies and also matters of administration.

If we look into the causes of judicial activism we see that in present times, judicial activism has arisen mainly due to the failure of the executive and legislatures to act. Secondly, it has arisen also due to the fact that there is a doubt that the legislature and

executive have failed to deliver the goods. Thirdly, it occurs because the entire system has been plagued by ineffectiveness and inactiveness. The violation of basic human rights has also led to judicial activism. Finally, due to the misuse and abuse of some of the provisions of the Constitution, judicial activism has gained significance.

Kashyap (2003), opines that besides the above mentioned factors, there are some other situations that lead to judicial activism. These are:

- i) When the legislature fails to discharge its responsibilities.
- ii) In case of a hung parliament where the government is very weak and instable.
- iii) When the governments fail to protect the basic rights of the citizens or provide an honest, efficient and just system of law and administration,
- iv) When the party in power misuses the courts of law for ulterior motives as was done during the emergency period, and
- v) Finally, the court may on its own try to expand its jurisdiction and confer on themselves more functions and powers.

9.4.2 Areas of Judicial Activism

During the past decade, many instances of judicial activism have gained prominence. The areas in which judiciary has become active are health, child labour, political corruption, environment, education, etc. Through various cases relating to Bandhua Mukti Morcha, Bihar Undertrials, Punjab Police, Bombay Pavement Dwellers, Bihar Care Home cases, the judiciary has shown its firm commitment to participatory justice, just standards of procedures, immediate access to justice, and preventing arbitrary state action. Some of the examples of judicial activism are given below.

Health

The Supreme Court, in 1995, declared that health is the basic right of the people. Accordingly, the doctors were brought under Consumer Law. In 1996, it was decided that refusal on the part of the hospitals and doctors for admitting serious patients, is a punishable offence. This was again reiterated recently by the Supreme Court.

In 1996, when Delhi witnessed dengue menace, the Delhi High Court expressed its dissatisfaction with the arrangements in the government hospitals. It directed the centre and the Delhi government to increase the number of beds and medical staff in their casualty emergency wards of their hospitals. The Delhi High Court issued a suo-moto notice to the Delhi government to explain its efforts in combating dengue-menace.

In another direction, the Delhi High Court, asked the Municipal Corporation of Delhi to take punitive action against private property owners in whose premises stagnant water, breeding medium for dengue mosquitoes, were found.

Environment

The Supreme Court, in 1996, ordered that no construction of any type shall be permitted now onwards within a radius of 5 kilometers of the Badhkal Lake and Suraj Kund (in Haryana).

The Supreme Court has also initiated strict enforcement of environmental laws leading to closure of a large number of industries. In Delhi, nearly 39,000 industries in residential areas were reallocated.

In another case, the Supreme Court ordered that the ridge area of Delhi should be cleared of all encroachments and greenery restored. It criticised the Union Ministry's Land and Development Office for its bad job over the years and passed a series of orders to union and city governments to enforce the ridge's status as a notified forest with more accountability.

Child Labour

Despite the various legislations banning employment of child workers, the system continues. In December 1996, the Supreme Court while disposing of a Public Interest Litigation, directed setting up of a Child Labour Rehabilitation Worker Fund in which employers of child workers were asked to pay a compensation of Rs. 20,000 per child worker and suggested a number of measures to rehabilitate working children in a phased manner.

Education

Considering that imparting of education is essential in nature, the Supreme Court declared that no professional institution could charge capitation fees from students seeking admission. The court strove to regulate counselling sessions in medical and engineering institutions. The Delhi High Court has made it mandatory for public schools to earmark certain seats to the economically and socially backward sections of the society.

Corruption

In a country hit by rampant corruption and constant erosion of democratic norms, the Supreme Court orders and judgements since 1990s came like a breath of fresh air. There are a number of examples, which show how the judiciary has tackled many corruption cases with courage, creativity and circumspection.

The court levied a fine of Rs. 50 lakhs on the former Petroleum Minister Satish Sharma for the illegal and arbitrary allotment of 15 Petrol Pumps from discretionary quota.

The court in 1995 imposed exemplary damages of Rs. 60 lakhs on former Housing and Urban Development Minister, Shiela Kaul, for her action in allotting 52 shops and stalls in a prime location in Delhi to her grandsons and close friends.

Judicial recourse was resorted to in Hawala Case (1995-96), for payment against political favours. Justice Varma's legal innovation for in-camera sessions led to the arrest of Jain brothers (S.K. Jain and N.K. Jain). The law finally began to its course three years after Jain diaries came in the possession of CBI.

The court also monitored the various cases against the former Prime Minister Late P.V. Narasimha Rao i.e. Laku Bhai Pathak fraud case, Jharkand Mukti Morcha bribe case, St. Kits forgery case, fodder scam and others.

Regulation of Traffic

In order to ensure safe and regulated traffic, the Supreme Court came out with a series of rulings to keep more than fifteen years old vehicles off the road; to make pollution check compulsory for all private vehicles; to make seat belts mandatory, initially for front seats and lately for back seats occupants. Apart from these, the Delhi High Court, in 2001, issued the directive to Delhi Traffic Police to close all “right-turns” on the city’s Ring Road.

Political Front

In 2002, the Supreme Court directed the Election Commission to ensure, disclosure from the candidates contesting elections, such personal details as pending and previous criminal cases that carry a sentence of two or more years, convictions on acquittals, wealth and income of self, spouse and dependents. The Election Commission directed the contestants to furnish the said details during 14th Lok Sabha elections.

The judiciary made the President’s Rule under Article 356 justiciable. In *Sunder Lal Patwa vs. Union of India* case, the Madhya Pradesh High Court declared the President’s rule imposed in the state in the aftermath of Babri Masjid demolition as invalid and ordered the restoration of state assembly and the Government. In *S.R. Bommai* case, the Court asserted that the question of majority support of the government should be settled on the floor of the legislative Assembly.

In a landmark judgement, the Supreme Court ruled that tapping of a citizen’s telephone is an invasion on his right to privacy guaranteed under Articles 21 and 19(i)(a) of the Constitution. It directed that telephone tapping order shall be issued by Union Home Minister and Home Secretaries of the state governments and this order, unless renewed, shall cease to have effect at the end of two months. The Supreme Court also issued notices to union and state governments to stop political interference in police administration.

During August 2002, former Prime Minister Vajpayee hastily cancelled the allotments of 3,760 petrol pump because of alleged irregularities in allotments and this resulted in public outcry. The Supreme Court struck down the cancellation of petrol pump dealerships and formed the two- judge committee to scrutinize nearly 413 tainted allotments.

9.4.3 Public Interest Litigation: An Innovative Step Towards Judicial Activism

Public interest litigation means a suit filed in a court of law for the protection of public interest such as pollution, terrorism, road safety etc. Judicial activism in India acquired importance due to public interest litigation. It is not defined in any statute or act. It has been interpreted by judges to consider the intent of public at large. The court has to be satisfied that the person who has resorted to PIL has sufficient interest in the matter.

In India, PIL initially was resorted to towards improving the lot of the disadvantaged sections of the society who due to poverty and ignorance were not in a position to seek justice from the courts. After the Constitution (Twenty fifth Amendment Act, 1971), primacy was given to Directive Principles of State Policy by making them enforceable. The demand on the courts to improve administration by taking up PIL cases, for ensuring compliance with statutory and constitutional provisions has also increased.

PIL as we have discussed, is filed for a variety of cases such as maintenance of ecological balance, making municipal authorities comply with statutory obligations of provision of civic amenities, violation of fundamental rights etc. It has provided an opportunity to citizens, social groups, consumer rights activists etc., easier access to law and introduced a public interest perspective. Justices P.N. Bhagwati and V.R. Krishna Iyer have played a key role in promoting this avenue of approaching the apex court of the country, seeking legal remedies in areas where public interests are at stake.

PIL has been considered a boon, as it is an inexpensive legal remedy due to nominal costs involved in filing the litigation. But there are some problems also in the PIL cases. There has been an increase in the number of frivolous cases being filed due to low court fees. Genuine cases got receded to the background and privately motivated interests started gaining predominance in PIL cases. In view of this, the supreme court has framed certain guidelines governing the PIL.

Presently the court entertains only writ petitions filled by an aggrieved person or public spirited individual or a social action group for enforcement of the constitutional or the legal rights of a person in custody or of a class of persons who due to reasons of poverty, disability, socially or economically disadvantaged position are finding it difficult to approach the court for redress.

PIL, is an extraordinary remedy available at a cheaper cost. As Justice Bhagwati observed in the case of Asiatic workers case, 'now for the first time the portals of the court are being thrown open to the poor and the downtrodden. The courts must shed their character as upholders of the established order and the status quo. The time has come now when the courts must become the courts for the poor and the struggling masses of this country'.

9.4.4 Judicial Activism: An Appraisal

From the above discussion, it becomes clear that the judiciary has intervened in almost all the areas. There are many examples of judicial activism. These examples clearly depict the wide range in which the judiciary has directed the government to act and compelled the authorities to perform their responsibilities. By judicial activism, the courts are maintaining and preserving the character of the Constitution as guardian of citizens' rights

The judiciary, however, has been criticised for overacting and overstepping in the name of PIL and judicial activism. The process is being misused as such by vested interests, political opponents, lawyer politicians and publicity hunters. Further there have been cases when the judiciary, in the words of Sawant, "has out stepped its brief". For example the court direction to the Parliament to frame Common Civil Code, fixing the percentage of seats for all Indian students for medical courses in all universities etc. But such cases have been few (Awasthy, 1999).

The popularity of judicial activism has justified its existence. In most of the cases, the courts have acted in a correct manner and restored the law and the Constitution. Kashyap (1997) rightly says, "in the ultimate analysis, judgements of the courts have also to be implemented and given effect only by the administration which functions under the political executive. Judiciary has, in fact to be very cautious to ensure that a situation is not reached where its directives are no more fully respected or obeyed. For, if that happens, the last bastion of democracy will also stand demolished and people will lose whatever remains of their faith in the polity".

9.5 RELATIONSHIP BETWEEN THE LEGISLATURE AND THE JUDICIARY

In a parliamentary system, legislature assumes a pivotal role, as the executive is also a part of the legislature. It comes out of the legislature, remains responsible to it and exercises powers of governance only on its behalf. Under the provisions of the Constitution, the parliament is not sovereign and the judiciary (Supreme Court) is not supreme except in its own domain. The parliament and the judiciary come into contact with each other in many ways. Their interface and interrelationship, therefore, assumes greater significance.

In a democratic set up, parliament, no doubt, is the repository of the will of the people and it is the supreme representative institution in the country possessing great powers. Pandit Nehru believed in the primacy of parliament in the Indian polity, and once said that “no Supreme Court and no judiciary can sit on judgement over the will of the Parliament representing the entire will of the community” (Constituent Assembly Debates, 1949). In these words, we see a clear hint about the possible relationship between the parliament and the judiciary. Pandit Nehru further added “but we must respect the judiciary, the Supreme Court and other High Courts in the land”.

The founding fathers of the Constitution tried to strike a balance between parliamentary supremacy (as prevalent in Britain) and judicial supremacy (as prevalent in United States of America), and arrived at middle course. We are governed by the rule of law and judicial review of administrative action is an essential part of rule of law.

The parliament is expected to keep in view the judicial pronouncements and rulings. This assumes importance due to three reasons. Firstly, the power of the judiciary to interpret the parliamentary legislature, to give meaning to the words used in a statute and to fill in the gaps, secondly, the judicial power to declare a statute unconstitutional and thirdly, the power of the courts to invalidate constitutional amendments.

The system of governance in India has witnessed phases of close contact between the legislature and the judiciary, the legislature swearing by the principle of parliamentary sovereignty and the judiciary seeking to assert its independence and power of judicial review. In the initial years, (1950-1964) when there was dominance of the Congress Party, both at the centre and in the states, the judiciary had pursued ‘harmonious construction’ and adopted the attitude of judicial restraint. It gave a strict and literal interpretation of the Constitution. Hence confrontation between the legislature and the judiciary was avoided. In A.K. Gopalan case, the judiciary accepted the principle of judicial subordination to legislative wisdom. In this case, Justice Das observed that “the parliament and state legislatures are supreme in their respective fields. The judiciary will not question the wisdom or policy or legislative authority in enacting the particular law, however harsh, unreasonable, or archaic the provisions of that law may be.”

The judiciary also accepted the power of legislature with regard to amending the Constitution as supreme.

During the second phase (1967-1977), a series of changes in the political system brought about recurrent conflicts between the two. In the Golak Nath case, we

witnessed open conflict between the judiciary and the legislature. The legislature asserted its supremacy and the judiciary asserted its power of judicial review. It resulted in a series of constitutional amendments in which the legislature tried to limit the power of judicial review. In the Golak Nath case, the court declared that the parliament has no right to take away or abridge the fundamental rights. It cannot even do so by amendment of the Constitution.

The court further held the nationalisation of banks and the President's order derecognising the princes and abolishing their privy purses as unconstitutional. These judgements were criticised by the legislature and the ruling elite as detrimental to the socio-economic progress of the country. The confrontation between the two was further witnessed in the Keshavananda Bharti case, Maneka Gandhi case, Minerva Mills case etc.

During the emergency, the authority of the judiciary was undermined and was made subservient to the legislature and the executive. The judges whose judgements were not liked by the executive were transferred or denied promotion or even reverted. The 42nd Constitutional Amendment Act was also passed putting new limitations on the judiciary. However, after the emergency, the 44th Constitutional Amendment Act was passed which restored the position of judiciary.

Thus, the 1980s saw the emergence of judiciary as a powerful factor in the governance of Indian polity. The judiciary was no longer exercising judicial restraint.

During the present times (i.e. the era of coalition government), the judiciary is seen becoming more and more active and assertive. It has become so active and expanded its area of jurisdiction so much that the decade of 1990s, can easily be described as the decade of judicial activism. In a coalition government, the legislature as well as the executive is so weak that the judiciary automatically becomes powerful and supreme.

9.6 CONCLUSION

Thus to conclude, it can be said that the judiciary is an indispensable part of 'good governance' in terms of maintenance of rule of law and upholding of social justice. An efficient and independent judiciary is the greatest guarantee of well-being of society. At the same time, supremacy of the legislature is an established fact in a parliamentary democracy. Hence, the need of the hour is to strike a balance between parliamentary supremacy and judicial independence. Both should function in a spirit of mutual respect and trust instead of in a mentality of superiority of one over the other. Governance requires a moral determination that is central to the concerns of all human beings. In such a scenario, the role of legislature and judiciary becomes important in order to improve the quality of governance. In a democracy, judiciary as well as the legislature plays a very important role. The system of governance in India has witnessed phases of close contact between the legislature and the judiciary, the former swearing by the principle of parliamentary sovereignty, while the latter seeking to assert its independence and power of judicial review. Both should function in a spirit of mutual respect and trust as integral tools of governance.

9.7 KEY CONCEPTS

Certiorari

It is a writ issued by a superior court for transferring the records of proceedings of a case from an inferior court or quasi-judicial authority to the superior court for determining the legality of the proceedings

Habeas Corpus

It literally means to have the body of. It is an order issued by the court against a person who has detained another to produce the latter before the court and submit to its orders.

Mandamus

It literally means command. This writ makes a person perform an act, which is a part of public duty. The person is commanded to perform the act.

Prohibition

It is a judicial writ issued by a superior court to an inferior court preventing it from usurping jurisdiction, which is not vested with it. While mandamus commands activity, prohibition commands inactivity.

Quo Warranto

This literally means ‘on what authority’. When any person acts in a ‘public office’ in which he/she is not entitled to act, the court by the issue of this writ, will enquire into the legality of the claims of the person to that office.

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9.9 ACTIVITIES

1. Make an assessment of the role of legislature in the governance process.
2. Go through newspapers and magazines and attempt to list the areas in which public interest litigation has been most commonly resorted to in our country.