

Role of Legislature and Judiciary in present Indian scenario

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Introduction

"The importance of the judiciary in political construction is rather profound than prominent"

India is a largest democratic country in the earth. There are three pillars of democracy – Legislative, Judiciary and Executive. The smooth functioning of democracy fully depends upon these factors which have been enshrined in our constitution and act as separate entities. The system of judicial controls has been going on in a very satisfying manner ever since India became free in 1947. Justice in this country can be delayed but it is never denied. Everybody is free to approach the courts whenever he or she feels that he or she is being deprived of his or her rights as a citizen of India. The entire process proved that none amongst the top leaders of the country could be labeled beyond doubt. In a situation like this, a big, powerful lobby is likely to work in the direction of suppression of the process of natural justice or bring a bad name to the judiciary or the judicial process. A provision has been made for providing legal assistance to those who are too poor to pay and fees to the lawyers. Justice has thus been brought within the reach of one and all.

It is feared that some vested interests may succeed in throttling the judiciary in some subtle manner. Many corrupt leaders, politicians and officers continue to be brought before the court on various charges. Many a time it is seen

that some undesirable elements try to misuse the legal process to either circumvent justice or to delay the process in such a way that delayed justice only amounts to the denial of justice. The judicial system of the country is certainly vested with remedies for such situations but many a time the sufferers are not aware of these remedies. In spite of several constraints, the judiciary continues to play its role to the best of its ability.

The law of the land must be allowed to prevail. This is possible only if the judiciary is made stronger. Quick and efficient administration of justice must be ensured to one and all. There is no doubt that politicians and bureaucrats have failed in their duty to give this country a clean, honest government answerable to the masses. It is judiciary alone that can assert itself and call a spade a spade without fear or favour. India lives only if its judicial system lives ; India dies if its judicial system is stifled. No power, however big, should be allowed to circumvent the judicial process. Free and fair justice is the soul of this country. Judiciary is the only hope of the country.

Legislature

The legislature is that organ of the government which passes the laws of the government. Legislature may be of two types :- Unicameral or Bicameral. A system in which there is only one House of the Legislature, it is called Unicameralism, while if there are two Houses of the Legislature, it is known as Bicameralism. Most national Legislatures are bicameral is having two Houses. The term 'legislature' is a generic term meaning a body which legislates. Combining the two views, we can say Legislature or Parliament is that branch of government which performs the function of lawmaking through deliberations. The term 'Legg means law and 'lature' the place and etymologically Legislature means a place for

law-making. Another term, which is used as a synonym of Legislature, is 'Parliament.'

It is the agency which has the responsibility to formulate the will of the state and vest it with legal authority and force. In simple words, the legislature is that organ of the government which formulates laws. Legislature enjoys a very special and important in every democratic state. This word stands derived from the French word 'Parley' which means to 'talk' or to discuss and deliberate. In this way, we can say 'Parliament' means the place where deliberations are held. It is the assembly of the elected representatives of the people and represents national public opinion and power of the people.

Judiciary

The branch of government that is endowed with the authority to interpret and apply the law, adjudicate legal disputes, and otherwise administer justice.

Role of Judiciary in India

The Judiciary in India performs various important role and functions which do not remain confined within the traditional jurisdiction of Civil and Criminal. In case of violation of law, a suit is filed against the offender. The judges, by way of interpreting the existing laws, make new laws. The Supreme Court, decides constitutional questions. Superintendence over lower courts is another function of the judiciary. The Supreme Court of India enjoys limited power of judicial review in invalidating laws made by Parliament or State Legislatures. The judge hears both sides and decides whether there has been a break of the law. The Supreme Court sometimes gives advices to the executive and the legislature on constitutional points, if sought for. The Judiciary acts as a protector of rights of the

citizens guaranteed by the law of the land and the constitution. The judges perform certain executive functions. Appointments of officers and servants, maintenance of records, administration of staff etc. are performed by the judiciary. The court can declare any law which transgresses a fundamental right as invalid. In India the judiciary has the power to issue writs in the name of habeas corpus, prohibition, mandamus, quo warranto and certiorari. The Judiciary is regarded as the guardian of the constitution.

Importance of the Judiciary

The importance of the judiciary in a democratic society can hardly be exaggerated. Judiciary is a part of the democratic process. In many states the judiciary enjoys the power of judicial review by virtue of which the judiciary decides the constitutional validity of the laws enacted or of the decree issued. The primary it is a matter of no importance whether in his opinion the law is good or bad; his study is apply it. he is primarily an interpreter of law. It can invalidate such laws and decrees which are not constitutional. Judiciary is that branch of government that interprets laws, punishes their breach and thereby protects individual's liberties and rights against violation by fellow individuals and by state officials and organs. Judiciary not only administers justice, it protects the rights of the citizens and it acts as the interpreter and guardian of the constitution. The judiciary performs various functions in a modern democratic state.

Conclusion

In India, the relationship between Legislative and Judiciary has generated intense debate among jurists & political analysts. Has the over-active judiciary through its various pronouncements overstepped or it is simply trying to fill the gaps where

the legislatures have failed to deliver? The issue in this regard came on July 10, 2013 when the Apex Court ruled that MPs & MLAs on conviction of certain offences will be immediately disqualified from holding membership of the House without being given 3 months of the appeal, as was the case before. The ruling invited sharp criticism from political parties & jurists. Former Supreme Court Judge Markandeya Katju expressed reservation over it saying that it should be viewed as judiciary can't make laws. Making the laws is the work of legislature. Because the court struck down Section 8(4) of the Representation of the Peoples Act 1951 which protects convicted lawmakers against disqualification on a ground of pendency of appeal against their conviction of certain offences: A person convicted any offences and sentenced to imprisonment for varying terms under Section 8(1),(2),(3) shall be disqualified for a further period of 6 years since release. But the Section 8(4) of the RP Act gives protection to MPs & MLAs as they can continue in office even after conviction if an appeal is filed within 3 months. Here if the judiciary is favoured then the power of the people will be distorted & will flout the Provisions of the constitution & if the legislature is favoured then criminalization of politics will be observed.

On the other hand, the judiciary in modern states is playing a vital role in the process of law making. The judiciary adds flesh & blood to the dry bones of law by their interpretations & judgment. The executive have also some important functions e.g. conducting fair & transparent election process, proper work which leads to proper judiciary activities by which the gap of the constitution can be fulfilled.

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