

Judiciary: Functions, Importance and an Essential Quality of Judiciary

The Judiciary is the third organ of the government. It has the responsibility to apply the laws to specific cases and settle all disputes. The real 'meaning of law' is what the judges decide during the course of giving their judgments in various cases. From the citizen's point of view, Judiciary is the most important organ of the government because it acts as their protector against the possible excesses of legislative and executive organs. Role of Judiciary as the guardian-protector of the constitution and the fundamental rights of the people makes it more respectable than other two organs.

There are various levels of judiciary in India – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a strict hierarchy of importance, in line with the order of the courts in which they sit, with the Supreme Court of India at the top, followed by High Courts of respective states with district judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.

The **Supreme Court of India** is the highest judicial forum and final court of appeal under the Constitution of India, the highest constitutional court, with the power of constitutional review. Consisting of the Chief Justice of India and 30 sanctioned other judges, it has extensive powers in the form of original, appellate and advisory jurisdictions.

As the final court of appeal of the country, it takes up appeals primarily against verdicts of the high courts of various states of the Union and other courts and tribunals. It safeguards fundamental rights of citizens and settles disputes between various governments in the country. As an advisory court, it hears matters which may specifically be referred to it under the constitution by the President of India.

The law declared by the Supreme Court becomes binding on all courts within India and also by the union and state governments. Per Article 142, it is the duty of the president to enforce the decrees (order or mandate) of the Supreme Court.

Functions of Judiciary and Its Importance:

1. To Give Justice to the people:

The first and foremost function of the judiciary is to give justice to the people, whenever they may approach it. It awards punishment to those who after trial are found guilty of violating the laws of the state or the rights of the people.

The aggrieved (hurt or pained) citizens can go to the courts for seeking redress (rectify & correct) and compensation. They can do so either when they fear any harm to their rights or after they have suffered any loss. The judiciary fixes the quantity and quality of punishment to be given to the criminals. It decides all cases involving grant of compensations to the citizens.

2. Interpretation and Application of Laws:

One of the major functions of the judiciary is to interpret (explain or clarify) and apply laws to specific cases. In the course of deciding the disputes that come before it, the judges interpret and apply laws. Every law needs a proper interpretation for getting applied to every specific case. This function is performed by the judges. The law means what the judges interpret it to mean.

3. Role in Law-making:

The judiciary also plays a role in law-making. The decisions given by the courts really determine the meaning, nature and scope of the laws passed by the legislature. The interpretation of laws by the judiciary amounts to law-making as it is these interpretations which really define the laws.

Moreover, 'the judgments delivered by the higher courts, which are the Courts of Records, are binding upon lower courts. The latter can decide the cases before them on the basis of the decisions made by the higher courts. Judicial decisions constitute a source of law.

4. Equity (fairness) Legislation (law enactment):

Where a law is silent or ambiguous, or appears to be inconsistent with some other law of the land, the judges depend upon their sense of justice, fairness, impartiality, honesty and wisdom for deciding the cases. Such decisions always involve law-making. It is usually termed as equity legislation.

5. Protection of Rights:

The judiciary has the supreme responsibility to safeguard the rights of the people. A citizen has the right to seek the protection of the judiciary in case his rights are violated or threatened to be violated by the government or by private organizations or fellow citizens. In all such cases, it becomes the responsibility of the judiciary to protect his rights of the people.

6. Guardian of the Constitution:

The judiciary acts as the guardian of the Constitution. The Constitution is the supreme law of the land and it is the responsibility of the judiciary to interpret and protect it. For this purpose the judiciary can conduct judicial review over any law for determining as to whether or not it is in accordance with the letter and spirit of the constitution. In case any law is found ultra vires (unconstitutional), it is rejected by the judiciary and it becomes invalid for future. This power of the court is called the power of judicial review.

7. Power to get its Decisions and Judgments enforced:

The judiciary has the power not only to deliver judgments and decide disputes, but also to get these enforced. It can direct the executive to carry out its decisions. It can summon any person and directly know the truth from him.

In case any person is held:

(i) Guilty of not following any decision of the court, or

(ii) Of acting against the direction of the court, or

(iii) Misleading the court, or

(iv) Of not appearing before the court in a case being heard by it, the Court has the power to punish the person for the contempt of court.

8. Special Role in a Federation:

In a federal system, the judiciary has to perform an additionally important role as the guardian of the constitution and the arbiter of disputes between the centre and states. It acts as an independent and impartial umpire between the central government and state governments as well as among the states. All legal centre-state disputes are settled by the judiciary.

9. Running of the Judicial Administration:

The judiciary is not a department of the government. It is independent of both the legislature and the executive. It is a separate and independent organ with its own organization and officials. It has the power to decide the nature of judicial organization in the state. It frames and enforces its own rules.

These govern the recruitment and working of the magistrates and other persons working in the courts. It makes and enforces rules for the orderly and efficient conduct of judicial administration.

10. Advisory Functions:

Very often the courts are given the responsibility to give advisory opinions to the rulers on any legal matter. For example, the President of India the power to refer to the Supreme Court any question of law or fact which is of public importance.

11. To Conduct Judicial Inquiries:

Judges are very often called upon to head Enquiry Commissions constituted to enquire into some serious incidents resulting from the alleged errors or omissions on the part of government or some public servants. Commissions of enquiry headed by a single judge are also sometimes constituted for investigating important and complicated issues and problems.

12. Miscellaneous Functions:

Besides the above major functions, the judiciary also performs several other functions. Some such functions are the appointment of certain local officials of the court, choosing of clerical and other employees. Cases relating to grant of licenses, patents, and copy rights, the appointment of guardians and trustees, the admission of wills, to appoint trustees to look after the property of the minors, to settle the issues of successions of property and rights, issue of administering the estates of deceased persons, the appointment of receivers, naturalization of aliens, marriage and divorce cases, election petitions and the like.

Through all these functions, the Judiciary plays an important role in each state. It also plays a role in the evolution of Constitution through the exercise of its right to interpret and safeguard it against all legislative and executive excesses.

Importance of Independent Judiciary:

In the life of the citizens of a state, Judiciary is a source of confidence and fearlessness. The common man depends upon judiciary for getting justice. Without a security of rights and freedom guaranteed by the judiciary, they cannot really hope to carry out their jobs and enjoy their living. They are more dependent upon judiciary than the legislature and the executive. Without judicial protection, their lives can become miserable. From citizens point of view Judiciary is the most important organ of the government.

Garner highlights this view when he observes, “A society without legislature is conceivable, and indeed, legislative organs did not make their appearance in the state until modern times, but a civilized state without a judicial organ and machinery is hardly conceivable.”

Judiciary enjoys a big importance in the eyes of the people because it acts as:

- (1) The dispenser of Justice.
- (2) Protector of the rights of the people.
- (3) Guardian protector of the Constitution of the State.
- (4) Arbiter of center-state disputes.
- (5) Safeguard against Legislative and executive excesses.
- (6) Check against arbitrary exercise of powers by the power-holders.
- (7) Guardian of Rule of Law and Justice.

An independent judiciary is always considered to be the most essential part of every democratic government worth its name. A government without judiciary is almost inconceivable. A government without independent judiciary is always held to be an authoritarian government.

Independence of Judiciary: An Essential Quality:

The chief quality which helps the judiciary to faithfully administer justice and to perform its functions efficiently is judicial independence. It is only when the judiciary works independently

without any interference of the other two organs of the government that it can carry out its high responsibilities.

“The independence of judiciary,” writes Dr. P. Sharan, “is a corner stone of every democratic government and upon it is built the structure of civil liberty.” Judiciary can perform its functions only when it is free to administer justice according to law. Without being well-organized and independent it can never serve its purpose. Therefore, Judiciary must be organized in such a way as can enable the judges to give their judgments without any fear or favour.

Organization of Judiciary must be based on the following features:

- (1) Appointment of only highly qualified and experienced judges.
- (2) The Judiciary must have prevented the executive and legislature from committing excesses.
- (3) The ability of the judiciary to maintain and independently run the judicial administration.
- (4) The Judiciary must be made the guardian protector of the Constitution,
- (5) The Judiciary must ensure full, fair and less- expensive opportunities to the people for defending their rights and getting justice.
- (6) The method of appointment of judges must be fair, systematic, effective and transparent.
- (7) Method of removal of judges should be difficult and no single should have the power to remove the judges.
- (8) Judges must be paid high salaries, necessary allowances, good service conditions, and appropriate retirement benefits.

By incorporating all these features in the judicial system, a well organised and independent judiciary can be secured.

Judicial Review and Judicial Activism

Judicial Review refers to the power of judiciary to review and determine the validity of a law or an order. On the other hand, Judicial Activism refers to the use of judicial power to articulate and enforce what is beneficial for the society in general and people at large or judicial activism means the power of the Supreme Court and the high court but not the sub-ordinate courts to declare the laws as unconstitutional and void.

Judicial Review:

India has an independent judiciary with extensive jurisdiction over the acts of legislature and executive. Judicial review can be defined as the doctrine under which legislative and executive actions are subject to review by judiciary. It is generally considered as a basic structure of independent judiciary (Indira Gandhi vs. Rajnarain case).

However, judicial review can be classified into three categories-reviews of legislative actions, review of judicial decisions, and review of administrative action. Therefore, it is also the duty of judges to ensure that balance of power is maintained, protect human rights, fundamental rights and citizens' rights of life and liberty.

i) Judicial review of legislative actions

Judicial review of legislative actions means the power to ensure that the law passed by legislature is in accordance with provisions contained in the constitution and in particular part 3 of constitution (principle of reading down).

ii) judicial review of decisions

In case of judicial review of decisions, for instance, when a statute is challenged on the ground that it has been passed by legislature without authority or rights, it is for the courts to decide whether the law passed by legislature is valid or not. Also no legislature in our country has the power to ask instrumentalities of the state to disobey or disregard the decision given by the courts.

iii) Judicial review of administrative action

Judicial review of administrative action is a mechanism of enforcing constitutional discipline over administrative agencies while exercising their powers. Judicial review of judicial actions

can be visualized in Golaknath case, banks nationalization case, privy purses abolition case, Minerva mills etc.

As courts have wide powers of judicial review, these powers have to be exercised with great caution and control. The limitations of these powers are: It is only permissible to the extent of finding whether the procedure in reaching the decision has been correctly followed but not the decision itself.

It is delegated to our superior courts only i.e. supreme court and high court Cannot interfere in policy matters and political questions unless absolutely necessary. Law once passed may become unconstitutional with passage of the same with changed situation, this may create vacuum in legal system. Hence it can be said that directions given by court would be binding only till legislation is enacted i.e. it is temporary in nature. Can interpret and invalidate a law but it cannot itself make laws.

However, there are also cases in India when executive has ordered judiciary to review policies. For example, in ministry of health vs. treatment action campaign, the government itself gave direction to review its policy regarding distribution of antiretroviral drugs and plan an effective and comprehensive national program to prevent mother to child transmission of HIV.

Judicial Activism:

It can be defined as a philosophy of judicial decision making where by judges allow their personal views regarding a public policy instead of constitutionalism. Some cases of activism in India are Golaknath case in which Supreme Court declared that fundamental rights enshrined in part 3 are immutable and cannot be amendable Kesavananda Bharati where by SC introduced doctrine of basic structure i.e. Parliament has power to amend without altering basic structure of constitution. SC has assumed a supervisory role in CBI investigation of 2 G scam In invoking terror laws against Hasan Ali Khan.

Moreover, the concept of Judicial Activism also faced certain criticisms. Firstly, it is often said that in the name of activism, judiciary often rewrites with personal opinions. Secondly, the theory of separation of powers is overthrown (dissolve or displace). However, its importance lies with position accorded to institution as a place of hope for aggrieved persons.

There is only a thin line of separation between review and activism. While judicial review means to decide if the law / act is consistent with the constitution. On the other hand judicial activism is more of a behavioral concept of the judge concerned. It is majorly based on public interest, speedy disposal of cases etc.

With the power of judicial review, the courts act as a custodian of the fundamental rights. Thus, the power of judicial review is recognized as the part of the basic constitution of India. The activist role of the judiciary is implicit in the said power. With the growing functions of the modern state judicial intervention in the process of making administrative decisions and executive them has also increased. In addition, judicial activism keeping in view the ideals of democracy is in fact necessary to ensure that unheard voices are not buried by more influential and vocal voices.

Distinguish between judicial review and judicial activism in India

The interpretational and observer role of the Judiciary over the Legislature is called Judicial Review (JR). The judiciary is the final authority for the interpretation of constitution in India. The Judiciary can prevent it by declaring the act or action ultra-virus, if the Legislature transgresses the powers given to it by the constitution. This power is called JR.

While Judicial Activism (JA) is the concept how actively and quickly the judiciary performs the act of JR. the readiness that the courts have achieved in exercising its power to uphold the values of the constitution have been generally come to the extent that JR has gradually acquired the form of Judicial Activism (JA) in India.

JA is the extent and the vigour and the readiness with which courts exercise their power of JR. So, there is a marked difference between both of them. Courts have actively performed an interventionist role and that we have witnessed the phenomenon of JA. The courts have overthrown or at least liberalized the concept of locust stand to allow any public spirited person or organisation to bring to the notice of the court any matter of injustice and violation of constitutional rights of any downtrodden and unprivileged classes of society.

The court has expanded the scope and amplitude of Article 21 to cover many basic rights under it, so that giving them the status of fundamental rights, they can be enforced against the state

also, even by PIL. Another factor which contributed to the JA was the expansive judicial interpretation placed on the expression life in Article.