CHAPTER II

INSTITUTIONS OF LEGISLATURE AND JUDICIARY: A HISTORICAL PERSPECTIVE

The state is the most universal and most powerful of all social institutions. It provides environment for the self realization and self development to the individual. In fact, human life would have become chaos without it. There have been many theories on its origin, nature and functions but the essential elements for state remain same in each theory. One of them is Government that is a mechanism through which sovereign will of the state finds concrete expression. For the manifestation of these expressions, Government functions in three dimensions – law making, law implementing and adjudicating. These organs of Government function in their specialized areas with coordination and control.

These institutions are the result of the constitutional history of a state. In order to trace out the origin, growth and mutual relationship of the legislature and judicial institutions in India, one has to take an overview of the Ancient, Mediaeval and British periods.

Though there is no systematic literature on the political system in the early period, usually called the age of the Vedas and the Brahmanas, there are scattered passages in the vedic literature, which throw considerable light, sometimes dim, sometimes clear, on the theory and practice of government in the contemporary times. Tribal republicanism, monarchy, and village democracy were some of the forms of political organisation that have been tried in the past. In all these, princes, sultans and generals, shop keepers and farmers played their roles.

In contemporary times, mainly the functions of the state are divided into two categories, constituent and ministrant. Under the
constituent class fall those functions of the state which are absolutely necessary for the society, viz., defence against foreign aggression, protection of persons and property, preservation of peace and order and adjudication. Under the latter class fall those activities of the state which it undertakes to promote the welfare of the people, to increase their wealth by a co-operative effort, and to add to their amenities of life. Education, postal services, trade regulations, roads and communications, development of mines and forest, care of the poor and invalid etc. would come under the ministrant function of the state. The modern tendency of the state is to increase its ministrant functions. The available evidence shows that for a long time the state in ancient India confined itself only to the constituent functions. The vedic state protected citizens from foreign aggression. It also maintained internal order by enforcing respect for the traditional law. The evidence of Mahabharata and the Arthasastra shows that the sphere of the state activity was very extensively extended between the Vedic and Mauryan age. The activity of the state, as envisaged by the Mahabharata and the Arthasastra, relates to all the aspects of human life, social, economic and religious.

The Rigveda, one amongst the four vedas, describes the structure of the society and social and political institutions existing in vedic age. In this period, justice, religion and law were closely interconnected and there was no clear cut demarcation in the above fields. Ancient India was divided into various independent states and in each state the king was the supreme authority. The King, with the assistance of his chief priest (purahita) and military commander (senani), carried on the administration of his kingdom. Each state was divided into provinces and these into divisions and districts which differed in terminology as well as in area. For each province or district separate governors, according to their status, were appointed with different designations. Most often, they were related to the king and in
certain places their appointment was hereditary. District officers were entrusted with the judicial and administrative functions.

The King in ancient India was the supreme head of the legislative, executive and judicial branches. The members of the council of ministers could give advice to the King, but final decisions were left to the King. The average state of the Rigvedic period consisted of only a few square miles like the city state of ancient Greece. It had a capital, not much larger than the few dozen villages comprised in it. Villages had their own popular assemblies known as Sabhas and the capital had the central Assembly for the whole state, which was called a Samiti. Sabha and Samiti enjoyed a high prestige in the vedic age. They are in one place described as the twin daughters of Prajapati, the creator. The institutions Sabha and Samiti mentioned in rigveda, may be said to have contained rudiments of a modern parliament. These two institutions were differentiated from each other in their status and functions. The Samiti was the general assembly or house of the people and the Sabha, a smaller and selected body of elders, broadly corresponding to the Upper House in modern legislatures. Some of the salient features in the functioning of modern parliamentary democracy like free discussion and decision by the vote of majority are known to have existed. The decision by the majority was regarded as "inviolable, not be overridden, because where the many meet in an assembly and speak there with one voice, that voice or vote of majority is not to be violated by others."

Members of these institutions were men of substance and exercised considerable influence over the administration. Their status must have been high in society, they must have gone to the meetings in their full grandeur, riding their horses or carriages. It is likely that the Samiti or the popular assembly of the vedic age functioned as a constitutional check upon the king, there is evidence to show that a
king could hardly maintain his position, if this assembly was not in agreement with him. Legislation in the modern sense of the term was not the function of the Sabha and Samiti in ancient India, laws, if secular, were sanctioned by custom and if religious, by the sacred texts. Neither the king nor the samiti nor the central assembly, it was felt, had any jurisdiction in the matter. The king was the supreme judicial functionary in ancient India from the post-vedic period, but in actual practice considerable powers were delegated to the local popular courts and panchayats.

The entire judicial administration functioned under the supervision of the king and the court’s derived their authority from him. The king was the dispenser of justice as a last resort, in case, justice was denied to a person by the king’s tribunals. In the king’s court the king was advised by learned Brahmins, the Chief Justice and other judges, ministers, elders and representatives of the trading community. Next to the king was the court of the Chief Justice (Pradvivaka). Apart from the Chief Justice, the court consisted of a board of judges to assist him. All the judges were from the three upper castes, preferably Brahmins.

In villages, the local villages councils or Kulani, similar to modern panchayats, consisted of a board of five or more members to dispense justice to villagers. It was concerned with all matters relating to endowments, irrigation, cultivable land, punishment of crime, etc. At a higher level in towns and districts, the courts were president over by the government officers under the authority of the king to administer justice. The link between the village assembly and the official administration was the headman of the village. In each village, a local headman was holding hereditary office and was required to maintain order and administer justice. He was also a member of the village council. He acted both as the leader of the village and the mediator with the government. Due to the prevailing institution of
the joint family system, family courts were also established. Puga assemblies made up of groups of families in the same village decided civil disputes amongst family members.

The sabha and samiti, however, gradually disappeared in the post-vedic period, not because democracy became more and more unsuitable to the indian temperament, but because the state became bigger and bigger in size, rendering the meetings of a central assembly more and more impracticable. The members would have spend several weeks in reaching the capital in order to attend the assembly meetings, and an equally long time in returning to their homes. The principle of representation was also unknown in those days both in the East and in the West.12

But according to Manu and Yajnavalkya later in times, the king due to his inability to attend personally to the judicial functions except in special circumstances used to dispute the learned Brahmins to take his place and do the justice but in all probability justice was done in his name even in such cases.

The judicial organisation and legal procedures of the Mauryan period were based on the Arthashastra’s concept of law. The Arthashastra of Kautilya is a detailed code and makes legal provisions to safeguard the life and property of the citizen and to protect citizens against encroachment, defamation, assault and attempts on their lives and property, as well as assaults on the liberty of a person and atrocities on the part of government officials.

The Arthasastra of Kautilya reveals that during the Mauryan period there were two types of judicial courts: (i) the Dharmasthiya or the civil courts, and (ii) the Kantakasodhana or criminal courts.19 Apart from the two important courts, a large number of popular courts also functioned, and the Arthashastra speaks of many cases which fell under the jurisdiction of the unofficial courts. Kautilya refers to courts in different territorial divisions and sub divisions of
the kingdom such as sangrahana (10 villages); dronamukha (400 villages) and sthaniya (800 villages), but does not indicate whether there was any gradation of judges or courts, whether judges of the same rank presided over all the courts in longer or smaller administrative units\textsuperscript{13}.

The law provided for almost all types of crimes to be punished. Yajnavalkya speaks of four classes of punishments inflicted upon the criminals, namely:

a) Censure
b) Rebuke
c) Pecuniary
d) Corporal punishments including banishment, branding, cutting of limbs, etc\textsuperscript{14}.

The institutions of the sabha and samiti of the vedic age did not disappear without leaving their successors in the body politic of the later period. They were known as Paura-Janapadas and figure frequently in literature and sometimes in inscriptions. The Janapada appears to have been concerned with matters mainly constitutional and political. In all constitutional matters, the paura always appearing with Janapada. The Paura had thus a double character, as a local self-administration of the capital and a constitutional assembly. The latter function they some times discharged, as one shall see, by themselves, especially in provincial capitals\textsuperscript{15}.

The states of fairly big size emerged into existence during the post vedic period and the power of the king was on the increase. Now, the king controlled both the treasury and the military forces, though there were commander-in-chief and treasures under him. Ministers were selected by the king and held office during his pleasure. The king presided over the council of ministers and its decisions had to receive royal assent. Taxation was to a great extent determined by the customary law, but the king could increase or decrease its incidence.
Theoretically the king had no legislative power, but he could supplement the provisions of the customary law by his own ordinances, obedience to which was obligatory. Ordinances of kings like Ashoka and Kuamrapala are well known. The Dharmasatra literature is particularly emphatic in pointing out that it is the king's duty to enforce the dharma, as determined by the sacred texts and accepted customs, and not to enunciate it on the authority of himself or any state organisation. The Dharmasastra as well as the Nitisasstra are promulgated by the creator, it is the kings duty to enforce the rules laid down in them, and not to introduce any changes on his own authority.

Manusmriti invests the king with the power to pass administrate orders which were to be obeyed by the subjects. Sukra states that the king should publish his ordinances at important places by pasting them on the wall for the information of the public. At the time when these powers were granted, samitis or popular assemblies had already disappeared from the scene, and so they came to be exercised by the king in consultation with his ministers. This resulted in the considerable enlargement of the royal powers and the curtailment of the rights of the people, since they were not effectively represented at the central government by a popular assembly, when kings came to be invested with these new semi-legislative powers. Lastly, it is said that during the Ancient Period. The king was originally a president of the counsel of peers or elders and his powers were not extensive. There were two popular bodies in the Rigvedic age, sabha and samiti, which exercised considerable control over the king. After that in post vedic period, the powers of the king was increased and now he became the supreme authority in executive, legislative and judicial fields. There was no separation of powers between legislative and judicial bodies of the state. They functioned with mutual corporation with each other under the authority of Monarch or
The glorious Hindu period was subject to intermittent invasions by the Muslims and the beginning was made by Mohammud - bin - Quasim in 712 A.D. He came to India as invader and returned thereafter. The real penetration into India was made by Qutub - uddin Aibek who, in reality, established himself firmly in India after waging series of wars and finally established his supremacy in the whole India. The Muslims, thereafter, continued to rule over India for centuries till the year 1857 when the last Mughal King Bahadur Shah Zafar was dethroned by the Britishers and the English established themselves as the next rulers to India. During the period when the Muslims ruled over India, many significant changes were introduced by them in the Indian legal system from time to time. The Islamic jurisprudence was imported into India by Muslim Sultans and later on adopted by the Mughals with certain modifications to suit the circumstances of the age and to satisfy the needs of the people of the time. The Muslim rulers while ruling over India also regarded themselves as the servants of the god. They faithfully and to the best of their ability performed the functions of the state as delegates of the power of god. The administration of the sultanate was headed by the Sultan and his Chief Minister. The sultanate was divided into administrative divisions from the province to the village level. The sultanate was divided into provinces, the province was composed of districts, each district was further divided into parganahs and pargahans into village.

The sultan or king was represented in each province by a Governor, under whom a number of departmental heads were appointed. In each district, the fauzdar was the principal executive and police officer, who represented the Governor. The Kotwal was the immediate commanding officer in the cities and shiqahdar was in the parganahs. The parganah was the smallest administrative unit having
its own officials—the executive officer, officer recording produce, the treasurer and two registrars.

The sultan or king was regarded as the final authority in all matters like ancient monarchy. There was no clear cut difference in legislative and judicial fields. The law was commandment of god and the sovereigns in the Muslim states were regarded as his servants on earth who were responsible for seeing that his laws were duly obeyed. Therefore, the Muslim rulers while ruling over India also regarded themselves as the servants of god. They faithfully and to the best of their ability performed the functions of the state as delegates of the power of god. The king as the representative of the people discharged his duties either personally or through officers appointed for this purpose.

The king as the representative of the people discharged his duties either personally or through officers appointed for this purpose. Qazi was the most important person in the entire system of judicial administration. The king alone had the power to appoint a person as qazi and he occupied the office during the pleasure of his crown. He was invested with both civil and criminal judicial powers, even the king was bound by the verdict of qazi and he even enjoyed the powers to declare king's orders invalid.\(^{18}\)

The judicial system under the sultan or king was organised based on administrative divisions of the kingdom. A systematic classification and gradation of the courts existed at the seat of the capital, in provinces, districts, parganas and villages.\(^ {19}\) The powers and jurisdiction of each court was clearly defined.

In 1526 A.D. Babar established the mughal government after defeating the last Lodhi Sultan of Delhi. The dynasty continued to rule upto 1850 and nominally upto 1857, when thereafter the queen of England took over the control. The political system under the Mughals was practically the same as under the sultanate period. The Emperor
like Sultan was the source of all power and exercised effective control over the Legislative and judicial organs of the state. The emperor was the head of the central administration and was assisted by a council of ministers, holding charge of independent departments. The Prime Minister wielded great power with regard to judicial administration. The emperor created a separate department of justice, which was called Mahukma-e-Adalat, to regulate and see that justice was administered properly. On the basis of the administrative divisions, at the official headquarters in each province, district, pargana and village, separate courts were established to decide civil, criminal and revenue cases.

A systematic judicial procedure was followed by the courts during the Muslim period. In civil cases, the plaintiff or his duly authorised agent was required to file a plaint for his claim before a court of law having appropriate jurisdiction in the matter. In criminal cases, a complaint was presented before the court either personally or through representative. A public prosecutor known as Mohtasib was attached to every criminal court. Litigants were represented before the courts by professional legal experts. They were popularly known as vakils. Though there was no institution of lawyers like the "Bar Association" as it exists today, still the lawyers played a prominent role in the administration of justice. A systematic gradation of court, with well defined powers of the presiding judges, existed all over the empire.

**Central Court**: At Delhi, which was the capital of the Mughal Emperors in India, three important courts were established.

**The Emperor's Court**: The Emperor's Court, presided over by the Emperor, was the highest court of the empire. The Court had jurisdiction to hear original, civil and criminal cases. The important cases decided by this court related to the offences against state, against law and order, i.e., rebellion, disloyal, conduct, debasing the
The Chief Court of the Empire: This was the court of the chief justice of the Empire. The Jurisdiction of this court was to decide disputes and cases relating to family law, inheritance, etc. In his judicial functions, the Chief Justice was assisted by one or two Qazis of eminence.

The Chief Revenue Court: The Chief revenue court was the highest revenue court of the empire. The Diwan was incharge of revenue, finance and agriculture. As a court he decided appeals from the judgments of the provincial revenue courts.

Provincial Courts: In each province at the provincial headquarters, five courts were established, namely, Adalat Nazim, Subah Adalat Qazi-e-Subah, Governor's Bence, Diwan-e-Subah and Sadre Subah.

District Courts: In each district, at the district headquarter, six courts were established, namely, Qazi, Dadbaks, Mir Adls, Faujdars, Sadr Amils, Kotwals.

Town Courts: At each pargana headquarter two courts were established, namely, Qazi-e-Pargana and Kotwal. The court of Qazi-e-pargana had only originally jurisdiction in all cannon and civil law cases. An appeal lay to district court from its decision. Petty criminal cases were filed before the kotwal.

Village Courts: A pargana was divided into a group of village. For each group of village, there was a village assembly or panchayat, a body of five leading men to look after the executive and judicial affairs. It had the power to inflict punishment for small offences and to decide petty disputes. The decision of the panchayat was final and binding. The Islamic law of Shara was followed by all the Sultans and Mughal Emperor. The Shara is based on the principles enunciated by the Koran. Islam provides that the state belongs to God, therefore, it was primary duty of any Muslim ruler to punish the criminals and
maintain rule of law. There were three types of punishments, as recognised by the Muslim law e.g. hadd, tazir and qisas\textsuperscript{21}.

In the legislative sphere, the emperor was an autocrat and had unlimited freedom in making laws. Although he had a council of ministers, he was not bound to consult them and his word was law. The only restriction was that he had to follow the guidelines set forth in the scriptures and Islamic traditions. However, a powerful emperor could often violate these as well. The great mughal kings can best be described as benevolent despots, who ruled fairly and justly. Most of them did involve their ministers in decision making.

In the last, one can say that like the post vedic period, the muslim sultan or king was the supreme power in legislative and judicial functions. The legislative and judicial bodies had no right to interfere in the domains of each other. The king was the final authority in formation of laws and in judicial sphere, there were three separate agencies, all working at the same time and independent of each other. There were the courts of religious law, common law and political cases respectively, the qazi for the first, the Governors and all grades of subordinate local authorities as well as tribal heads and caste panchayats for the second and the emperor or his agents for the third and the last.

**British Period :**

The Britishers who came to India for trade, finally made it a valuable part of their empire. For more than two hundred years, their presence in the Indian sub-continent made several changes so far as the political administrative structure is concerned. In the early years of the British Raj, status quo, remained the primary concern, which in later years was consciously changed and designed to suit the interests of the Empire. The first charter of 1601, granted by Queen Elizabeth, conferred upon the company not only the power to make reasonable
laws but also the authority to execute and administer them and impose pains and penalties for disobedience. Charles II's charter of 1661 empowered the governor and council of each factory to judge all persons belonging to the said governor and company or that should live under them in all causes, whether civil or criminal, according to the laws of kingdom, and to execute judgment accordingly.

The charter of 1683 gave the company full power to make peace and war, and also provided for establishing a court of judicature to be held at such place or places as the company might direct. The charter of 1726 authorised the governors-in-council of the three presidencies to make laws, ordinance and regulations within their respective jurisdiction.

Further the crown by letters patent established Mayor's courts on the English pattern at Madras, Bombay, and Fort William (Calcutta), each consisting of a Mayor and Nine Aldermen who had the power to hear all civil suits, actions and pleas between two parties. These were declared to be courts of record from whose decisions an appeal lay to the governor and council in the United Kingdom. In 1753 by letters patent, courts of request were established at each of the three presidency towns for the determination of suits in which the amount involved did not exceed Rs. 20.

**The Regulating Act, 1773:**

Under the Regulating Act of 1773 the governments of Madras and Bombay were required to send copies of their Acts and orders to the governor of Bengal. However, it is not quite clear whether the governor of Bengal possessed the right to modify these Acts and orders or not.

Further the act established at Fort William a Supreme Court of judicature consisting of a Chief Justice and three other judges who were Barristers of not less than five years standing and were
appointed by the crown\textsuperscript{23}.

The Regulating Act specifically laid down that the Supreme Court would be incompetent to exercise its jurisdiction in criminal matters over the governor-general or any of the compilers. The court had no power to arrest or imprison any of them in any action. The court was not given jurisdiction over all the native Indians residing in Calcutta and within the territory of Bengal, Bihar and Orissa. It was vested with the jurisdiction over all British subjects, their servants and the persons employed by the company. By the issue of the prerogative writs in the nature of mandamus, certiorari, procedendo or error, it could effectively control all the court's subordinate to it as well as other authorities created by the company for the purpose of administration of justice in the company’s territory in Bengal, Bihar and Orissa. For its proper function, it was authorised to make rules for its procedure subject to the provision that the king-in-council could approve, reject or modify these rules. It was given the power to make rules relating to condition and circumstances under which an appeal could be preferred to king-in-council. The charter made the provision that in civil cases an appeal could be made with permission of the supreme court was given full powers and absolute discretion to allow or deny the permission.

The Act of Settlement, 1781 made provision which were more favourable to the governor-general and the council and many limitations were imposed on the jurisdiction of the Supreme Court by providing that the governor-general and the council shall not jointly and severally be subject to the jurisdiction of the Supreme Court for any act done by them in their official capacity. Further restrictions were put by the Act on the jurisdiction of the supreme court to entertain any matter concerning revenues or concerning any acts done in the collection of revenue thereby giving full protection to the government in revenue matters\textsuperscript{24}.  

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Soon after that The Pitt’s India Act, 1784 made better provision for the trial of British subjects and servants of the company for the offences committed by them, in India. A special court consisting of three judges, four peers and six members of the House of commons was created for the trial of such persons. The Governments of Fort William, Bombay and Madras were empowered to arrest and detain in custody any person suspected of carrying on, mediately or immediately, any illicit correspondence, dangerous to the peace or safety of the settlement or of the British possessions of India.

In 1807, through another act, the Governor-in-councils of Madras and Bombay were given the authority to make regulations. Thus one of the main features of the early period was that the legislative powers were in the main exercised by the Executive Government. Further, each presidency enjoyed independent legislative powers and quite often the laws enacted by them also differed.

The Charter Act of 1833:

The Act was the first measure which made a beginning towards the creation of central legislature. It not only separated the legislative and the executive functions, but also concentrated all the legislative powers in the governor-general in council. The presidencies of Bombay and Madras were deprived of all their legislative powers and their powers were concentrated in the government of Bengal, which was henceforth to be known as the government of India. The Act also provided for the appointment of a law member in governor general's council who was to examine and advise on all the legislative measures. The law member was not a full-fledged member of the Executive council and merely performed legislative duties.

In the judicial sphere, the act determined the constitution of the privy council as a court of appeal. The right to appeal to the king in council was first granted in connection with the judgments of the
Mayor’s courts established by the crown’s charter in 1726. As originally constituted in 1833, the judicial committee of privy council consisted of the Lord president, the Lord chancellor, and such of the councilor as held or had held certain high judicial offices. Under the Act of 1883, four members formed the quorum but by a later act, this number was reduced to three.

The Charter Act of 1853:

The Act of 1853 took further steps to extent the legislature and judiciary in India. It not only made the law member a full member of the Executive council but also enlarged the Executive council by adding six new members. These additional members were known as legislative councillors. Four, out of these six members were to be appointed by the provincial governments from amongst experienced civil servants. While the other two legislative members were the Chief Justice of the Supreme Court of Calcutta and an ordinary judge of the Supreme Court. The Governor General continued to act as the President of the council and retained veto power over the legislative proposals. The proceedings of the legislative sessions were made public. The Act laid down that no measure concerning and province would be considered unless a representative from that province was present.

In actual practice, the legislative members did not confine their activities to the legislative field alone and tended to interfere with the executive work. After that under the Act of 1858, all the Indian territories then in possession of the company became vested in the crown and were to be governed directly by and in the name of the crown, acting through a Principal Secretary of state. The Act of 1858 was however, largely confined to the improvement of the administrative machinery by which the Indian Government was to be superintended and controlled in England. It did not alter in any
substantial way the system of Government that prevailed in India.

**Indian Councils Act of 1861:**

The Act was an important landmark in the constitutional history of India. It was important for two main reasons. First, it enabled the Governor-General to associate representatives of the Indian people with the work of legislation by nominating them to his expanded council. Secondly, it decentralised the legislative powers of the Governor-General's Council and vested them in the Governments of Bombay and Madras.

The Act assigned purely legislative functions to the council and expressly forbade it from transacting any other business. It was authorised to make laws and regulations for all persons whether British or native, foreigners or others, and for all places and things whatever within the said territories, for all servants of the government of India within the Dominions of Princes and states with Her majesty. The Governor-general was given the power to veto the bills passed by the central legislature. In case of emergency, he could also issue ordinances which had the same force as any other law. However, these ordinances were to remain in force for six months only. Such ordinances could be repeated earlier. Again, all the Acts passed by the legislative council were subject to the approval of the governor general. It also preserved the right of the crown to disallow the Acts.

Further the Indian High Courts Act, 1861 empowered the crown to establish, by letters patent, three High Courts at Madras, Bombay and Fort William. The jurisdiction and powers, exercised by the chartered supreme courts and the Sudder Dewany and Nizamat Adawlut Adawluts were transferred to the High Court.

Each of the High Courts to be established under the act was to have and exercise all such civil, criminal, admiralty and vice-admiralty and matrimonial jurisdiction, original and appellate, and all such
powers and authority for and in relation to the administration of justice in the presidency for which it was established, as her Majesty might grant and direct by letters patent, subject, however, to prescribed directions and limitations as to the exercise of original, civil and criminal jurisdiction beyond the limits of the presidency town concerned.

**The Indian councils Act, 1892:**

The Act of 1892 marked the next milestone in the development of the political system of India. It increased the number of the additional members of the governor-general's council. The strength of the additional members was not be less than ten nor more than sixteen. The exact number was left to be determined by the governor-general. These members were to be nominated by the governor-general-in council with the approval of the secretary of state in council. The proportion of the non official members was also increased. The governor-general in council was empowered to make rules authorizing the discussion of the annual financial statement and the asking of questions with regard to matters of public interest.

The rules made by the Governor General in Council were subject to the sanction of the Secretary of State in Council\textsuperscript{28}.

**The Indian Councils Act, 1909:**

The Morley Minto reforms of 1909 further expanded the size of the central legislature. The maximum number of members of the Indian Legislative Council was raised from 16 to 60 and the size of the legislative councils in the presidencies was also more than doubled\textsuperscript{29}.

In short, the Act granted to the legislative council all legislative powers with the exception that they could not vote grants or move no-confidence against the government. In actual practice, the presence of the official majority, narrow franchise and strict restrictions on the
authority of the legislative council, rendered it ineffectiveness and it could not assume a democratic character. Infact, the framers of the Act never intended to introduce responsible government in the country. Their main intention was to associate the Indian public opinion with the administration of the country.

**Government of India Act, 1919:**

The act for the first time provided a bi-cameral legislature and brought India in line with western democracies. The two houses of the Central Legislature envisaged by the Act of 1919 were the council of states and the central legislative assembly. The council of states was the upper house consisted of 60 members. Out of these, 34 members were to be elected and the rest were to be nominated; of the 26 nominated members not more than 20 were to be officials. Out of the thirty-four elected members 19 were to be elected by the general constituencies and the remaining members were to be returned by communal and special constituencies. The members of the council were to hold office for five years, even though there was provision for the renewal of the membership every year. The president of the council was to nominated by the Governor General. The Governor possessed the right to address the House. He could also summon, prologue or dissolve the House. The act intended the council of the States to be a brake on the elected majority in the assembly and therefore tried to make it conservative by prescribing very high property qualifications for the voters.

The Act fixed the term of the legislative assembly at three years. However, the Governor General could dissolve it earlier. He could also extend its duration under special circumstances. The Governor General could summon, prologue and dissolve the Assembly. All the decisions were taken by the assembly by majority, with the presiding officer enjoying a casting vote in case of tie. Seats were allotted to the
various provinces on the basis of their importance rather than population.

In case of deadlock between the two houses of the General Legislature, the Governor-General could summon a joint sitting of the two houses. At such a meeting, all the decisions were taken by majority vote. After the bill was passed by the General Legislature, it was presented to the Governor General for his signatures, who could either accord his assent or withhold the same. He could also return it to the General Legislature for reconsideration or reserve it for King’s approval.

The central legislature was given very extensive powers. It was authorised to legislate for the whole of British India both with regard to Indian subjects as well as servants of the Government. It could repeal or amend laws which were in force in British India. But the act also put serious restrictions on the legislative powers of the Central Legislature. It could not pass laws abolishing any High Court in India or empowering any court lower than the High Court to pass death sentence on European born British Subjects or their children without prior sanction of the secretary of state in council.

The members of both the houses of central legislature were given the right to ask questions and supplementary questions. They could also move resolutions and motions of adjournments. In the financial sphere, however, the legislature was not given complete control over budget. It could discuss the financial statement though it could not vote it. Further, certain items could not be discussed by either house unless the Governor General otherwise directed. In case of emergence the Governor General could authorise any expenditure which he considered necessary for the safety or tranquility of British India or any part thereof.
The Government of India Act, 1935:

The Act of 1935 provided for a federal legislature consisting of the governor general and two houses known as the council of States and the federal assembly. The council of states was the upper house and consisted of 260 members. Out of these 104 members represented the Indian states while the rest 156 represented British India. The representative members of the states were appointed by the princes of various states. Of the 156 members representing British India 150 were directly elected and the six nominated by the Governor General in his discretion. Out of the elected members 10 seats were reserved for the Anglo-Indians, Indian Christians and European Communities and the balance of seats were allotted to the various provinces. The term of the council of states was nine years, but one third of the members retired every three years. Thus the council was a permanent house.

The federal assembly, which was the lower house, consisted of 375 members. Out of these, 250 members represented the British Indian Provinces and 125 represented the Indian states. Of the 250 members representing the British Indian provinces, four seats were assigned to commerce, industry and labour while the remaining 246 seats were allocated among the various provinces. The elected members were returned by the provincial legislative assemblies on the basis of proportional representation with single transferable vote. The term of the federal assembly was five years, but the Governor General enjoyed the right to summon and prorogue the two houses, but he could dissolve only the popular House. The Governor could also summon joint session of the two houses to resolve the difference between the two houses. At such joint session, the decisions were taken by majority vote.

The act granted very restricted powers to the federal legislature. It specifically debarred it from making laws affecting the sovereign or
the Royal Family, or succession to the throne, law of British Nationality, the law of prize courts, the Army Act, the Air Force Act etc. Likewise, it could not make any law concerning amendment in the provisions of the Government of India Act 1935 or Orders-in-Council issued by the Governor-General in his discretion. It was also not to enact any law which discriminated against British interests in commercial and other spheres. Certain laws relating to vital subjects could be enacted by the federal legislature with the prior consent of the Governor-General. The grant of certain special legislative powers to the governor-general also resulted in the curtailment of federal assembly's power. The Governor General could promulgate ordinance when the federal legislature was not in session. These ordinances had the same force and effect as a law passed by the federal legislature. Even when the federal legislature was in session, the governor-general could promulgate ordinance for the satisfactory discharge of functions falling within his discretion or individual judgment. The governor general could also enact acts for the same purpose without the concurrence of the federal legislature. In the financial sphere also the powers of the federal legislature were greatly circumscribed. Almost 80 percent of the budget was not subject to the vote of the federal legislature.

The federal legislature also did not enjoy any control over executive specially in the field of reserved subjects like defense, external affairs, ecclesiastical affairs, and tribal areas. It was given some control over the council of ministers but even this was not quite effective.

The Act of 1935 provided for the establishment of the federal court, the forerunner of the supreme court of India. The court was to consist of a Chief Justice and six other judges to be appointed by the King. The number of the judges could be increased by the King, on an address, presented by the federal legislature through the Governor-
general. The judges were to hold office till they attained the age of 65 years. They could relinquish office earlier if they so choose. The legislature was also not authorised to discuss the conduct of the judges.

The Court was given both original as well as appellate jurisdiction. The original jurisdiction of the Federal Court extended to disputes between the Federation and the Units involving any question of law or fact on which the existence of legal right depended. The Federal Court enjoyed appellate jurisdiction and could hear appeals from the High Courts of provinces and federated states if they certified that the case was fit for an appeal and involved a substantial question of law concerning the interpretation of the constitution, Act or an Order-in-council, or an instrument of accession. It may be noted that in case of states, the appeal could be taken to the federal court only in accordance with the terms of the instrument of accession with the prior approval of the ruler of the state concerned. The federal court was also vested with certain advisory powers. The governor-general could seek its advice on any matter involving a point of law. However, the Act did not clearly specify whether he was bound to accept such advice or not. In addition, the governor-general could assign any other function to the Federal Court.

It may be noted that the Federal Court established by the Act of 1935, despite the extensive powers enjoyed by it, was not a supreme court, in so far as appeals against its decisions could be taken to the judicial committee of the privy council in two type of cases viz (i) cases involving the interpretation of the constitution or an order-in-council or the instrument of accession of any special leave of the Federal Court of his majesty-in-council. Further, it did not enjoy any jurisdiction over appeals from the High Courts in the criminal cases unless they involved question of interpretation of the constitution.

As the above provisions contemplated under the Act of 1935
could not come into forces. The federal legislature and high courts continued to work according to the provisions of the Act of 1919 with certain modifications till the new constitution come into force. The Indian Independence Act, 1947 provided for the continuance of the Government of India Act, 1935 as adopted and subject to any law of the Dominion Legislature as the constitution of India till the new constitution came into force. In exercise of the power conferred by the Act, the Governor-General passed the India (Provisional Constitution) Order, 1947 which made numerous omissions, adaptations and modifications in the Act of 1935 with effect from 15th August, 1947.

Thus the Act of 1935, as adopted and amended, continued to be the constitution of India till 26th January 1950 when the present constitution, as framed by constituent assembly, came into force, though some of its provisions because operative from 26th November 1949 when it was adopted and enacted by the Assembly.

Thus, it is quite clear that parliament and judiciary in their modern connotation owe their origin and growth to India’s British connection for some two centuries. It would, however, be wrong to presume that the British institutions as such were at any stage transplanted in India. The Parliament and Supreme Court of India as one know them today had an organic growth on the Indian soil. But as for as the relationship between these two organs is concerned one can say that during the British India, Governor-General and his council was the highest authority in legislative and judicial fields. The legislature and judiciary both discharged their duties as per the rules and acts which were passed at different times. But there seems to be no confrontation between them on constitutional matters of that time because they had not enjoyed the power of amendment of the constitution or law and power of judicial review of legislative actions.
The Indian Independence Act of 1947 and the institutions of legislature and judiciary:

The Indian Independence Act, 1947 declared the Constituent Assembly of India to be a fully sovereign body and on the midnight of 14-15 August 1947, the assembly assumed full powers of the governance of the country. Section 8 of the Act conferred on the constituent assembly full legislative power. It has, however, soon felt that it would be desirable to maintain distinction between the constitution making function of the constituent assembly and its ordinary function as a legislature. The house having agreed, a committee under the chairmanship of G.V. Mavalankar was appointed on 20 August, 1947 to consider the matter. On 29 August 1947, after considering the Mavalankar Committee Report, the constituent assembly resolved that the business of the assembly as a constitution making body should be clearly distinguished from its function as the dominion legislature and that a provision should be made for the election of a speaker to preside over the assembly while functioning in the latter capacity.

The constituent assembly as a distinct body met for its first sitting in the assembly chamber on 17 November 1947, with the president of the constituent assembly in the chair. Only one nomination, that of G.V. Mavalankar, was received for the office of the speaker and he was declared as duly elected. On 26 January, 1950 with the coming into force of the republican constitution of independent India, a full fledged parliamentary system of government with a modern institutional framework and all its other ramifications was established. The constituent assembly became the provisional parliament of India and functioned as such until after the first general elections based on adult franchise. The parliament was constituted under the provisions of the new constitution.

The Independence Act of 1947 marked the end of foreign rule
and ushered India into the era of self rule. Thereafter, the constituent assembly of India considered the institution of federal court at a very easy stage and almost simultaneously with the appointment of the union constitution committee. An ad-hoc committee was constituted to consider and report on the constitution and powers of the Federal court to be named as the Supreme Court of India. The committee submitted its report on May 21, 1947. Its recommendations were largely based on the government of India Act, 1935. Under the new constitution, the jurisdiction of the Privy Council as the ultimate appellate authority, was to be abolished. Therefore, the committee proposed that a similar jurisdiction should be conferred on the Supreme Court. The proposals of the Union constitution committee were discussed in the constituent assembly on July 29, 1947 and finally accepted the committee's report together with Alladi Krishna Swami Ayyar's suggestion regarding the procedure for the removal of judges. These Decisions were incorporated in the draft constitution prepared by constitutional Advisors in October 1947. And a new constitutional era in the legal history of India began on January 26, 1950 when the constitution of India came into force. Under Article 124, it provided for the establishment of a Supreme Court of India. The constitution of free India, while adopting the Federal structure, provides for integrated judicial system in a single hierarchical structure with the Supreme Court at the top, High Courts at the state level and other subordinate courts under the High Court. Each of the states in the first schedule of the constitution has a High Court within the meaning of Article 215 which defines a 'High Court'. All the High Courts organically form integral parts of a single system although their territorial jurisdictions are defined. No High Court can claim superiority over the other. The Supreme Court of India is the final appellate court in India and as such, decisions of High Court or any judge thereof may be reversed by the Supreme Court in exercise of its
appellate jurisdiction under Articles 132, 133, 134, 135 and 136.

The Parliament of India:

As is natural in a parliamentary democracy, the parliament of India occupies a place of primacy in the governance of the country. It consists of the president and the two houses: the lower house is designated as the house of the people or Lok Sabha and the upper house as the council of states or Rajya Sabha. Of the three constituents of parliament, only the Lok Sabha is subject to dissolution. The Rajya Sabha is a permanent or continuing house and there must always be a President or a person performing the functions of the President.

The President:

The President of India is elected by an electoral college, consisting of the elected members of both houses of parliament and the state legislature assemblies in accord with the system of proportional representation by means of single transferable vote by secret ballot. Though the President of India is a constituent part of parliament, he does not sit or participate in the discussions in either of the two houses. There are certain constitutional functions which he has to perform with respect to the parliament. He has power to summon and prorogue the parliament and he can dissolve the Lok Sabha. The constitution however, imposes a restriction on his power. He is bound to summon parliament within six months from the last sitting of the former session. His assent is essential for a bill passed by both houses to become a law. If there is a conflict between the two houses of parliament over an ordinary bill, he can call a joint sitting of both houses, to resolve the deadlock. Not only that, when both the houses of parliament are not in session and he is satisfied that circumstances exist which render it necessary for him to take
immediate action, the president can promulgate ordinances having the same force and effect as a law passed by the parliament\(^{41}\). At the commencement of each session the president addresses either house of parliament or a joint session of parliament. In his address to the joint session of parliament he outlines the general policy and programme of the government. He is also empowered to send message to either house of parliament.\(^{42}\) He also nominates 12 members to the Rajya Sabha from amongst person having special knowledge or practical experience in respect of such matters as literature, science, art and social service.\(^{43}\)

He is authorised by the Constitution to nominate two Anglo-Indians to the Lok Sabha, if he is of opinion that the Anglo-Indians community is not adequately represented in that House\(^{44}\).

**The Rajya Sabha :**

The Rajya Sabha or the council of states is the upper house of the union parliament. The maximum strength of Rajya Sabha is fixed at 250 members of which 12 members are nominated by the president\(^{45}\). The nominated members do not participate in the election of the president of India. The seats in the house are allotted among the various states and the Union Territories on the basis of population as specified in the fourth schedule of the Constitution. The representatives of states are elected by the members of the legislative assemblies in accordance with the system of proportional representation by means of a single transferable vote.\(^{46}\) The representatives from the union territories are chosen in such a manner as parliament may by law determine.

Rajya Sabha is a continuing body and is not subject to dissolution.\(^{47}\) Its members are elected for a period of six years but one third of its members retire after every two years. The rational system ensures continuity of Rajya Sabha while still enabling each state
legislative assembly to elect periodically a few members to the house so that the prevailing party strength and contemporary views and attitudes in the state are reflected therein. The vice president, who is elected by the member of both houses of parliament, is the ex-officio chairman of the Rajya Sabha, whereas the Deputy Chairman is elected by the members of the Rajya Sabha from amongst themselves. The Chairman presides over the sitting of the House and in the absence the Deputy Chairman presides. If both are absent then such person as may be determined by the rule of procedure of the council and if no such person is present such other person as may be determined by the council shall act as chairman.\textsuperscript{48}

\textbf{Lok Sabha :}

The Lok Sabha is the popular chamber and is elected directly by the people. The maximum number of its membership is fixed 550, of whom not more than 530 are elected by the voters in the states, and not more than 20 represent the union territories.\textsuperscript{49} Members from the states are elected by the system of direct election from territorial constituencies on the basis of adult suffrage. The representatives of the union territories shall be elected in the manner prescribed by parliament by law. Every citizen of India, male of female who is not less than (18) years of age and is not disqualified on the grounds of non-residence, unsoundness of mind, crime or corrupt or illegal practice, is entitled to vote in the election of the Lok Sabha.\textsuperscript{50} The president may nominate not more than two members of the Anglo-Indian community if in his opinion that community is not adequately represented in the Lok Sabha.\textsuperscript{51}

The total elective membership is distributed among the states in such a manner that the ratio between the number of seats allotted to each state and the population of the state is, as far as possible the same for all states.\textsuperscript{52} Upto the year 2026, for purposes of Article 81
(2), the 1971 census figures will be used to ascertain the population of state. This means that the allocation of seats to the states in the Lok Sabha has been frozen at the level of 1971. No revision is to be made therein until the first census is taken after the year 2026. Seats in the Lok Sabha are reserved for the Schedule Castes and Scheduled Tribes statewise on the basis of population ratios. At present, the Lok Sabha consists of 545 members.

The term of the Lok Sabha is five years from the date appointed for its first meeting. The president may, however, dissolve it even earlier. But while a proclamation of emergency is in operation, the life of the house of people may be extended by law of parliament for one year at a time. The Lok Sabha, whose life has been so extended, cannot continue beyond a period the six months after the proclamation of emergency has ceased to operate.

The Lok Sabha elects two of its members as speaker and Deputy Speaker. The speaker presides over its sittings and controls its working. He upholds the dignity and privileges of the house. The constitution of India contains certain provisions for maintaining independence and impartiality of the speaker. He cannot be removed from his office except by a resolution passed by a special majority. When the office of speaker is vacant the Deputy Speaker performs the duties of the speaker.

I. Powers of Parliament

(i) Legislative Powers:

(a) The Union Parliament has power to make laws on the subjects enumerated in the Union List. There are 97 subjects in that list.

(b) Parliament can make laws on the subjects included in the Concurrent List. There are 47 subjects in this list. If Parliament and the Legislature of a State both make laws with respect to
one of the matters enumerated in the Concurrent List, the law made by Parliament prevails.

(c) If the Council of States declares by a resolution supported by not less than two-thirds of the members present and voting that it is expedient in national interest that Parliament should make law with respect to any matter given in the State List specified in the resolution, Parliament can make laws with respect to that matter.

(d) If the Legislatures of two or more states authorize Parliament to make laws on any of the subjects included in the State List, Parliament can do so.

(e) While a Proclamation of Emergency is in operation Parliament has the power to legislate for the whole or any part of the country in respect to any matter given in the State List.

(f) If there is a breakdown of the constitutional machinery in a State and the President has by a Proclamation made a declaration to that effect, the State Legislature stands suspended and Parliament makes laws even on the subjects enumerated in the State List.

(g) Parliament has the power to make law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any international conference, association or other body.

(h) Residuary power is vested in Parliament. It has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(ii) **Financial Powers**:

Parliament controls the National Finances. No taxes can be raised, money borrowed or spent without the permission and authority of Parliament and in the manner prescribed by it.
Parliament, however, has no control over the expenditure charged upon the Consolidated Fund of India. But it can by law declare any expenditure to be charged on the Consolidated Fund.

(iii) **Control over the Executive and Administration**\(^{58}\): 
Parliament controls the executive. Members of the Council of Ministers are members of Parliament. The council is collectively responsible to the Lok Sabha. It remains in office only so long as it enjoys the support of the majority in that House. Parliament also controls general administration and the working of various Ministries by seeking information by means of questions, supplementaries, and by moving motions of adjournment, censure, no-confidence etc.

(iv) **Constituent Powers**\(^{59}\): 
Parliament may in exercise of its constituent powers amend by way of addition, variation or repeal any provision of the Constitution in accordance with the procedure laid down in Article 368 of the Constitution.

(v) **Electoral Powers**\(^{60}\): 
Elected members of both Houses of Parliament participate in the election of the President. The Vice-President of India is elected by an Electoral College consisting of the members of both Houses of Parliament.

(vi) **Power to remove President and other officers**: 
The Constitution provides that the President\(^{61}\), for violation of the Constitution, may be removed from his office by impeachment. The charge can be preferred by either House. When the charge is preferred by one House, the other House investigates it, and if the
charge has been sustained, the President stands removed from his office.

The Vice-President of India can be removed from his office by the Council of States by a resolution passed by a two-thirds majority of all the then members of the Council and agreed to by the Lok Sabha.

A Judge of the Supreme Court or a High Court may be removed from his office by the President on an address passed by both Houses of Parliament.

(vii) **Power to Admit and Create New States etc.**

Parliament can by law admit into the Union, or establish new States. It can form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State. Parliament can increase the area of any State, diminish the area of any State, alter the boundaries of the any State and alter the name of any State.

(viii) **Judicial Powers:**

Parliament may by law confer on the Supreme Court power to issue directions, order or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for any purpose other than those mentioned in the Constitution.

Parliament by law may confer on the Supreme Court any further powers as are not inconsistent with the Constitution but as appear to be necessary or desirable for the purpose of enabling that Court to exercise its jurisdiction more effectively.

Parliament can extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from any Union Territory.

Parliament can establish a common High Court for two or more,
States or two or more States and a Union Territory.

(ix) **Power to Create and Abolish Legislative Councils**:

Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(x) **Other Important Powers**:

(a) Parliament can make such provisions as it thinks fit for the discharge of the functions of the President in any contingency not provided for in the Constitution.

(b) Parliament can by law regulate any matter relating to or connected with the election of President or Vice-President.

(c) Parliament has power to determine by law the salaries and allowances of Ministers from time to time.

(d) Parliament determines the manner in which representatives of the Union Territories in the Rajya Sabha are to be chosen.

(e) Parliament can while a Proclamation of Emergency is in operation, extend the period of the House of the People for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(f) Parliament has power to make rules for regulating its procedure and the conduct of business. It can also regulate its procedure in financial matters so as to complete financial business in time.

(g) Parliament has the power to regulate the recruitment and conditions of service of persons appointed to the secretarial staff of either House.

(h) Parliament can by law provide for the creation of one or more
all-India services common to the Union and the States, if the Council of States declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary and expedient in the national interest to do so.

The Supreme Court of India: Highest Court after Independence.

The Supreme Court of India acts as protector of the constitution and guardian of fundamental rights of people. It also has been called upon to safeguard civil and minority rights and plays the role of guardian of social revolution.

I. Composition of the Supreme Court:

1. Strength of the Court:

According to Article 124 (1), initially the strength of the court was fixed at one chief justice and seven other judges. But Parliament has been empowered to increase the number of other judges beyond seven. This number has been increased to 10, 17, 25, 30 by the enactment of the Supreme Court number of judges Act 1956, 1977, 1986 and 2008 respectively.

2. Appointment of Judges:

According Indian constitution, the president of India appoints the judges of the Supreme Court after consultation with the Chief Justice of the Supreme Court.

3. Qualifications for Appointment as Judge:

A person shall be qualified for appointment as a judge of the Supreme Court if:

(i) He is a citizen of India.
(ii) He has been for at least five years, a judge of a High Court or of two or more such courts in succession, or
(iii) He has been for at least ten years, an advocate of a High Court or of two or more such courts, or
(iv) He is in the opinion of the president, a distinguished jurist.

4. **Tenure of Judges**

   Regarding the age of the judge of the Supreme Court the Constitution reads: It shall be determined by such authority and in such manner as the president may, by law provide. At present every judge of the Supreme Court, including the Chief Justice of India, holds office till he attains the age of 65. Article 124 (2) further provides that a judge may, however, can resign his office by writing to the president. It is also provided in this article that a judge of the Supreme Court can be removed from his office by the president on the grounds of proved misbehavior or incapacity. Article 126 of the Indian constitution provides that if the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other judges of the court, as the President may appoint for the purpose.

5. **Impeachment of a Judge**

   According to Indian Constitution, a judge of the Supreme Court shall be removed from office by both Houses in the same session for proved misbehaviour or incapacity. The address must be supported by a majority of the total membership of each House, and also by a majority of not less than two third of the members of each House present and voting.

   After the inauguration of the Constitution for the first time, this procedure was initiated against Shri Ramaswami in 1991-92. The
committee found the judge guilty. But in the Lok Sabha the motion could not be passed due to lack of requisite majority.

6. **Salary:**

   The salary payable to a Supreme Court judge was specified in the Constitution. But by the Fifty Fourth Constitutional Amendment, the parliament has been given power to determine the salary payable to a Supreme Court judge by law. In compliance with all the matters regarding salary and allowance are now regulated by the Supreme Court Judges Act, 1998.

7. **Appointment of Acting Chief Justice:**

   The Indian Constitution provides that if the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other judges of the court, as the President may appoint for the purpose.

8. **Retired Supreme Court Judge:**

   A Supreme Court Judge after retirement cannot work in any court or before any authority in India. But with the previous consent of the President, the Chief Justice of India may request any retired Supreme Court Judge to sit and act as a judge of the Court. If he joins office, he is entitled to such allowances as may be determined by an order of the President.

   Under Article 128 a retired High Court Judge may be appointed by the Chief Justice to sit and act as a judge of the Supreme Court.

II. **Jurisdiction and Powers:**

   The Constitution converses very broad jurisdiction on the Supreme Court. Being the highest court of India, the Supreme Court is an authoritative interpreter of the Constitution and as a protector of
Fundamental Rights of the citizens. The jurisdiction of the court may be put under the following heads:

(1) **Court of Record**\(^{76}\):

Under this Article the Supreme Court is a 'court of record'; and has all the powers of such a court including the powers to punish for it's contempt. As a court of record, it's decisions and judicial proceedings are recorded, for perpetual memory and it's citations have evidential value. On the question of contempt of court, the Supreme Court has a summary jurisdiction to punish for contempt of its authority. The Court exercises this power to punish an act which tends to interfere with the course of administration of justice.

(2) **Original Jurisdiction**:

In the following matters the Supreme Court has original jurisdiction.

(i) **Enforcement of Fundamental Rights**\(^{77}\):

The Supreme Court has been constituted as the guardian of the Fundamental Rights. Article 32 is in itself a Fundamental Right and, therefore; the existence of an alternative remedy is no bar to the Supreme Court entertaining a petition under Article - 32 for the enforcement of a Fundamental Right.

(ii) **In any dispute relating to the election of the President and the Vice-President**\(^{78}\):

All doubts and disputes arising in connection with the election of the President and the Vices President are decided exclusively by the Supreme Court, whose decision is final. Without candidate or elector a person can not file a petition to challenge the election of the President or the Vice-President.

If the election of a person as a President is declared void by the
Supreme Court, acts done by him in exercise and performance of the power and duties of that office before the courts decision are not invalidated.

(iii) **In Inter-state or Union-state Disputes:**

In a Federal or a Quasi-federal structure, which the Indian Constitution sets up, disputes may arise between the Government of India and one or more states or between two or more states and a forum should be provided for the resolution of such disputes and that the forum be the highest court so that the final adjudication could be achieved expeditiously.

According to Article 131, of the Indian Constitution, the Supreme Court has original jurisdiction in any dispute between:

(i) the centre and a state;
(ii) the centre and a state on one side and a state on the other side;
(iii) two or more states.

Article 131 has two limitations on the exercise of the original jurisdiction by the Supreme Court.79

(A) **Parties:**

The idea behind this condition is that, if there is a dispute between two states or between the Union and the states, it is not desirable that it should be litigated in the court of one of the disputing parties. The Supreme Court in its original jurisdiction cannot entertain suits brought by private individuals against the Government of India. Where a private individual has a claim against the Government of India, the case must go in the first instance to the local courts and from there it can go to the Supreme Court, in appeal provided that the appeal fulfills other requirements of the law. In *State of Bihar Vs Union of India case*80, the Court held that a dispute between the state of Bihar and the Hindustan Steel Ltd., a registered
company under the Indian Companies Act, did not fall within its original jurisdiction because a body like the Hindustan Steel Ltd. was not 'a state' for the purposes of Article 131.

(B) **Subject Matter:**

The dispute must involve a question whether of law or fact, on which the existence or extent of a legal right depends. It is this qualification which provides the true guide for determining whether a particular dispute falls within the purview of Article 131.

As Justice Bhagwati, J. in *State of Karnataka Vs Union of India case*\(^8^1\), while defining the scope of Article 131 has observed, "What has, therefore, to be seen in order to determine the applicability of Article 131 is, whether there is any relational legal matter involving a right, liberty, power or immunity qua the parties to the dispute. If there is, the suit would be maintainable but not otherwise". Original jurisdiction of the Supreme Court however, does not extend to the following matters:

1. According to the provision of Article 131, the Supreme Court jurisdiction does not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which is having a dispute.
2. The Parliament may by law exclude the jurisdiction of the Supreme Court, in dispute with respect to the use, distribution or control of the waters of any interstate river or river valley.\(^8^2\)
4. With respect of the adjustment of certain expenses between the Union and the State.\(^8^3\)

(3) **Appellate Jurisdiction**\(^8^4\):

The Supreme Court is the highest Court of Appeal in the Country. The Appellate jurisdiction of the Supreme Court may be
divided into following categories:

(i) **Appeal in Constitutional matters**:

An appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court. Whether in civil, criminal or other proceedings, if the High Court certifies under Art 134-A, that the case involves a substantial question of law as to the interpretation of this Constitution, where such a certificate is given to the Supreme Court on the ground that any question as aforesaid has been wrongly decided.

Under Article 132 (1), three conditions for the grant of certificate by the High Court are:

(a) The order appealed must be against a judgement, decree or final order made by the High Court in civil, criminal or other proceedings.

(b) The case 'must involve a question of law as to the interpretation of this Constitution and.

(c) If the High Court under Article 134-A, certifies that the case be heard by the Supreme Court.

Even after the certificate is granted by the High Court, the Supreme Court may refuse to hear the appeal if it is satisfied that the appeal is not competent.

(ii) **Appeal in civil cases**:

The constitution provides that an appeal shall lie with the Supreme Court from any judgement, decree or final order in a civil proceeding of a High Court only if the High Court certifies (Under Article- 134-A) that the case involves a substantial question of law of general importance and that in the opinion of the High Court, the said question needs to be decided by the Supreme Court.\(^{85}\)

The Thirtieth amendment\(^ {86}\) has removed the condition of monetary value that an appeal could go the Supreme Court only when
the amount or value in dispute was not less than Rs. 20,000. Under the Amended Article 133, now an appeal could go to the Supreme Court only if the High Court certifies under Article 134-A, that the case involves a substantial question of law of general importance. In *Kiranmal Vs Dnyanobe*87, the High Court dismissed the appeal by one word "dismissal" against the judgement of the Civil Court. The Supreme Court found that the appellant could have raised serious questions of law and facts before the High Court and therefore, held that it was a fit case which ought to have been admitted and disposed of on merits. The case was readmitted to the High Court for disposal on merits.

In an appeal under Article 133, the appellant cannot be allowed to raise new grounds, which are not raised before the Lower Court.

**(iii) Appeal in Criminal Cases**88:

Appeals are directly maintainable to the Supreme Court under clauses (a) and (b) of art 134 (1). When an accused has been sentenced to death or sentenced for life imprisonment or for a period of not less than 10 years, appeal lies with the Supreme Court as a matter of right, in the former case under clauses (a) and (b) of Article 134 (1) and in the latter case under the Supreme Court Act, 1970. In these cases the Supreme Court cannot refuse to entertain the appeal. There are two modes by which a criminal appeal from any judgement, final order or sentence in a criminal proceeding of a High Court can be brought before the Supreme Court.

(a) Without a certificate of the High Court.

(b) With a certificate of the High Court.

**(a) Without a certificate of the High Court**89:

An appeal lies with the Supreme Court without the certificate of the high Court if the high Court has an appeal reversed, an order of
acquittal of an accused person and sentenced him to death and withdrawn from trial before itself, any case from any court subordinate to it's authority and has in such trial convicted the accused person and sentenced him to death.

But, if the High Court has reversed the order of conviction and has ordered the acquittal of an accused, no appeal would lie with the Supreme Court.

(b) With a certificate:

Under the Article 134 (c), an appeal lies with the Supreme Court, if the High Court certifies (under Article 134-A) that it is a fit case for appeal to the Supreme Court. The Supreme Court has laid down entire guiding principles for the High Courts to follow in granting certificates. In Narsingh Vs State of U.P.90, the Supreme Court observed as follows:

"In the case of clause (C) of Article 134 (1), the only condition is the discretion of the High Court, but the discretion is a judicial one and must be judicially exercised along the well established lines which govern these matters. If, on the face of the order, it is apparent that the Court has misdirected itself and considered that its discretion was fettered when it was not or that it had none, then the superior court must either remit the case or exercise the discretion itself." Under Article 134(2) Parliament is empowered under clause of this article to enlarge the appellate jurisdiction of the Supreme Court in regard to criminal matters.

(iv) Appellate Jurisdiction91:

Article 135 was included in the Constitution to enable the Supreme Court to exercise jurisdiction in cases which were not converted by Article-133 and 134, in respect of matters where the Federal Court had jurisdiction to entertain appeals, etc, from the High
Courts under the previously existing law.

But the Supreme Court shall exercise its jurisdiction under Art. 135 if two conditions are satisfied (a) Articles 133 and 134 do not apply to the case. (b) It is a case in regard to which the Federal Court had the jurisdiction entertains appeals.

(v) Appeal by Special Leave:

While the constitution provides for regular appeals to the Supreme Court from decisions of the High Court under Article 132 to 134, there may still remain some cases where justice might require the interference of the Supreme Court with decisions not only of the High Court's outside the purview of Articles 132-134, but also of any other Court or tribunal within the territory of India. Such residuary power outside the ordinary law relating to appeal is conferred upon the Supreme Court by Article 136.

The Supreme Court has described the nature of its powers under Article 136, in Pritam Singh Vs The State, that the power under Article 136 should be exercised sparingly and in exceptional cases only, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this Article.

The Supreme Court will not interfere to quash the decision of a Quasi-Judicial Tribunal under its extraordinary powers conferred by Article 136. When the tribunal has either exceeded its jurisdiction or has approached the question referred to in a manner which is likely to result in injustice or has adopted a procedure which runs counter to the established rules of natural justice.

(4) Advisory Jurisdiction:

The Supreme Court has been conferred advisory jurisdiction. The President of India may seek the advisory opinion of the Supreme
Court on any question of law or fact which he considers to be of such a nature and such public importance, that it is expedient to obtain the opinion of the Supreme Court. Advisory opinion can also be sought on any issue arising out of a treaty covenant etc. The Court, is to report its opinion after such hearing as it thinks fit.

Under Article 143 (2), the President may refer to the Supreme Court, for opinion, matters arising out of pre-constitution treaties and agreements which are excluded by Article-131, proviso, from the original jurisdiction of the Supreme Court.

During last years several references have been made to the Supreme Court under Article (143 (1) but none under Article-143 (2).

These references are:
1. In reference the Delhi Laws Act, in 1951
2. In reference the Kerala education Bill in 1958.
7. In reference the Special Court Bill in 1978.

(5) **Power to Review, it's Judgements** :

The Supreme Court has expressly been given the power to review it's judgement. However this is subject to any law passed by the Parliament.96 This power is exercisable under rules made by the Court, under Article 145, on grounds mentioned in order 57, Rule 1 of
C.P.C.A. review will lie in the Supreme Court on:

I. discovery of new important matters of evidence.
II. mistake or error on the face of the record.
III. any other sufficient reason.

In a review petition, an error of substantial nature can only be reviewed. When a plea of self-defence is taken and if the court is satisfied that it is probable and there is basis for the same and if the benefit is to be given to the accused then the legality of the conviction itself is involved. The question of self defence is one of both law and fact if the court is satisfied about probability and basis of such plea such a question cab be examined.

(6) **Power to do complete Justice**

Under Article 142(1), in exercise of its jurisdiction the Supreme Court is entitled to pass any decree, or make any order as is necessary, for doing complete justice in any cause or matter pending before it.

In any case power under Article 142 is available to pass such order as may be deemed appropriate to do complete justice. Accordingly, the Court by passed the limitation imposed on it by S. 401 (3), Cr. P.C, and itself sentenced the accused.

(7) **Transfer of Cases**

For quick disposal of cases, Article 139 provides that if cases involving substantially the same questions of law are pending before the Supreme Court and a High Court, or before two or more High Courts, the Supreme Court can withdraw the cases from the High Courts and decide them itself. The application for the purpose can be made by the Attorney General or a party to any such case.

(8) **Additional Jurisdiction**

The Constitution of India also provides additional jurisdiction to
the Supreme Court under following Articles:

i. Under Article 138 (1), Parliament may confer on the Supreme Court further jurisdiction and powers with respect to any of the matters in the Union List.

ii. Under Article 138 (2), the Supreme Court shall have such jurisdiction and powers with respect to any matter as the Government of India and any State Government may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

iii. Under Article 140, Parliament may by law make provisions for conferring upon the Supreme Court such supplemental powers not inconsistent with any provision of the Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred on the Court by or under the Constitution.

(9) **All Authorities Bound by Court orders**: 

All authorities, civil and judicial, in India are under an obligation to act in aid of the Supreme Court. The Court can hold any authority in contempt of Court if it disregards or disobeys any Court's order. The Supreme Court has emphasized that there should be meticulous compliance of the directions issued by the Court.

(10) **Judgements, Orders etc. are to be Delivered in open Court**: 

All judgements, orders and opinions of the Supreme Court are to be delivered in open court. The judgements are to be delivered with the concurrence of a majority of judges who heard the case. The minority has the right to deliver separate judgements.

An enumeration of the various powers of the Indian Supreme Court reflects how impressive and formidable they are. As the final
interpretational authority of the Constitution, its powers are of far-reaching significance. If a comparison of its power is made with its counterpart in the leading constitutions of the world e.g., United Kingdom and United States of America, it is found that the Supreme Court of India has wider jurisdiction than any other Higher Courts of these countries. Like India, there is no Court in England which can set upon the Parliament and examine the validity of its laws, due to the lack of the power of judicial review. The Parliament is Supreme and the Courts have to apply whatever law has been made. There is no single form of judicial system that prevails throughout the entire U.K., House of Lords is above the judicial organization in England, and both civil and criminal cases end in the House of Lords. Whereas in U.S.A. there is no provision like Article 32 of Indian Constitution to give quick relief in matters of Fundamental Rights. The U.S. Supreme Court, unlike its Indian counterpart, does not exercise any Advisory Jurisdiction. The appellate jurisdiction of U.S. Supreme Court is also at the mercy of the Congress. Keeping these facts in view it can be concluded that the Indian Supreme Court has much more extensive jurisdiction and powers than the other apex courts of the world.

Thus, it can be said that under the scheme of Indian Constitution, Parliament being the supreme legislative body has been accorded the pre-eminent position in Indian polity. Several constitutional provisions amply demonstrate this. Reflecting the hopes and aspirations of the people, the Parliament, over the years, has truly become a people’s institution. The Constitution also accords an important place to the Judiciary, with the Supreme Court at the apex of the judicial system. Sir Alladi Krishnaswami Aiyer adverted to the unique position of the Supreme Court when he said:

“The future evolution of the Indian Constitution will thus depend to a large extent upon the work of the Supreme Court and the direction given to it by that court. From time to time, in the interpretation of the
Constitution, the Supreme Court will be confronted with apparently contradictory forces at work in the society for the time being. It cannot, in discharge of its duties, afford to ignore the social, economic and political tendencies of the times which furnish the necessary background. It has to keep the poise between the seemingly contradictory forces. On one occasion it may appear to favour individual liberty as against social control and at another time it may appear to favour social or state control. It is the great tribunal which has to draw a line between individual liberty and social control”102.

Lastly, as per the Constitutional scheme, both Parliament and Judiciary are supreme in their respective spheres.
REFERENCES:

4. The other vedas are *Yajur Veda, Sama Veda and Athurva Veda*.
18. Ibid., P. 20.


38. Article 85 (1), *The Constitution of India*.


41. Article 123, *The Constitution of India*.

42. Article 86, *The Constitution of India*.

43. Article 80 (3), *The Constitution of India*.
44. Article 33, *The Constitution of India*.
45. Article 80 (3), *The Constitution of India*.
46. Article 80, *The Constitution of India*.
47. Article 83 (1), *The Constitution of India*.
52. Article 81 (2), *The Constitution of India*.
54. Article 81 (2), *The Constitution of India*.
55. Article 93, *The Constitution of India*.
58. Article 75(3), *The Constitution of India*.
60. Article 55, *The Constitution of India*.
61. Article 61, *The Constitution of India*.
62. Article 02, *The Constitution of India*.
63. Article 32, *The Constitution of India*.
64. Article , *The Constitution of India*.
65. Article 124 (1), *The Constitution of India*.
68. Article 124 (2), *The Constitution of India*.
69. Article 126, *The Constitution of India*.
70. Article 124 (4), *The Constitution of India*.
72. Article 125 (1), *The Constitution of India*.
73. Article 126, *The Constitution of India*.
74. Article 124 (7), *The Constitution of India*.
75. Article 128, *The Constitution of India*.
76. Article 129, *The Constitution of India*.
77. Article 32, *The Constitution of India*.
78. Article 71, *The Constitution of India*.
81. AIR 1978, SC 68.
82. Article 262 (2), *The Constitution of India*.
83. Article 290, *The Constitution of India*.
84. Article 132, *The Constitution of India*.
85. Article 133, *The Constitution of India*.
87. AIR 1983, SC 461.
89. Article 134 (1), *The Constitution of India*.
90. AIR 1954, SC 457.
94. Article 143, *The Constitution of India*.
96. Article 137, *The Constitution of India*.
98. Article 139, *The Constitution of India*.
100. Article 144, *The Constitution of India*.