Chapter – 1  
FUNCTIONAL DISTRIBUTION OF GOVERNMENTAL WORK IN THE CONSTITUTION OF INDIA - THE THREE BRANCHES OF GOVERNMENT AND THE PARLIAMENTARY SET UP

FUNCTIONAL DISTRIBUTION; UNION VS. STATES:
The Government of India (Bharat Sarkar), officially referred to as the Union Government, and commonly as Central Government, was established by the Constitution of India, and was the governing authority of a federal union of 28 states and 7 union territories, collectively called the Republic of India. Modeled after the British Westminster System, the constitution of India provides that the country would be a federal parliamentary multi-party representative democratic republic. Like the United States, India has a federal form of government, however, the central government in India has greater power in relation to its states, and its central government is patterned after the British parliamentary system. Each of the regional administrative divisions has an elected government headed by a chief minister. A Governor is appointed by the President of India, as the representative head of the federal authority in each state. Locally, the Panchayati Raj system has several administrative functions in rural areas whereas for urban areas, there are local governments to perform these functions, and are known as Municipalities, Municipal Corporations, Notified Area committees etc.

Thus, the form, structure, functions and the organs of the government are related to the type of the political system adopted and the nature of the distribution of powers among the units of government and organs of the state. The form of government in India is the quasi-federal form, with federal structure and strong unitary spirit. In the federal form of government, division in Indian administration occurs; the power is divided between a central
authority and constitutional political units such as the states and the provinces. The two levels of government are interdependent and share sovereignty. The federal system also provides that the constitution is the supreme power of the land. However, though a federal structure and a clear division of powers exist in India with an independent judiciary, yet there is a strong bias towards making the central government more powerful than the state governments.\(^5\)

Hence, based on the distribution of powers between the central government and the state government there are three lists - Union list, State list and Concurrent list (powers entertained by both centre and state).\(^6\)

The polity of India can turn into a complete unitary character during emergency on the ground of failure of constitutional machinery in a state or states. The relations between Union and States are the foundation of the Indian federal system. There is autonomy in the legislative, executive as well as the judicial powers for the states of India. Both the Union and the States are moreover subject to the limits imposed by the Constitution. The Fundamental rights cannot be violated by either the Union or the States. However, they can be curtailed or the parliament can impose some sorts of limits for the betterment of society.\(^7\)

The division of the powers between the Union and the States can be traced by the three lists laid down in the Indian Constitution. This scheme of distribution of powers is derived from the Australian constitution. These lists clearly divide the powers vested in the State and the Union. In the division of powers between Union and States, the first is the Union list that consists of subjects on which the central government or the Parliament can make laws. The subjects included in the list are of national importance, such as; defence, foreign affairs, atomic energy, banking, post and telegraph etc. The central government has the power of making laws on these subjects at all times. There are 97 subjects in this list on which the central government can make laws. The State list contains 66 subjects which largely pertain to local or state importance. The state governments have the authority to make laws on these subjects. A few of these
subjects include police, local governments, trade, commerce, agriculture etc. However, during national and state emergency, the power to make laws on these subjects is transferred to the Parliament. Concurrent list, according to the division of powers in the Indian Constitution contains 47 subjects on which both the Parliament and the state legislatures can make laws. Some of the subjects included in this list are; criminal and civil procedure, marriage and divorce, education, economic planning, trade unions etc. Yet, in case of conflict between a law made by the central government and a law made by the state legislatures on any subject enumerated in the concurrent list, the law made by the Parliament would prevail. There are certain changes regarding the subjects included in the three lists. Education was shifted from the state list to the concurrent list by the 42nd Amendment Act of 1976.

However, constitution makers provided a scheme of distribution of powers between the centre and states in such a manner that the central government became stronger in relation to states and then residuary powers were also placed with the central government.
A LIST OF STATES AND UNION TERRITORIES IS GIVEN BELOW FOR READY REFERENCE:

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UNION TERRITORIES:

1. Andaman and Nicobar Islands
2. Chandigarh
3. The Government of NCT of Delhi
4. Dadra and Nagar Haveli
5. Daman and Diu
6. Lakshadweep
7. Puducherry

Source: http://india.gov.in/knowindia/state_uts.ph

FUNCTIONAL DISTRIBUTION AMONG THE THREE BRANCHES OF GOVERNMENT

The governments in the union and each of the individual states are functionally divided into three distinct but interrelated branches known in common parlance as executive, legislative and judicial. The legal system as applicable to the federal and individual state governments is based on the English Common and Statutory Law. India accepts International Court of Justice’s jurisdiction with several reservations. The federal (union) executive branch is headed by the President, who is the Head of State and can exercise his or her powers either directly or through officers subordinate to him in accordance with the relevant provisions of the constitution. The legislative branch or the Parliament consists of the lower house, the Lok Sabha, and the upper house, the Rajya Sabha, as well as the president. The Judicial branch has the Supreme Court at its apex, 21 High Courts, and numerous civil, criminal and family courts at the district level.

As in the British parliamentary model, the leadership of the executive is drawn from and responsible to the legislative body. Although Article 50 pertaining to
the Directive Principles of the State Policy stipulates the separation of the judiciary from the executive, the executive still controls judicial appointments and many of the conditions of its work.\textsuperscript{17} In addition, one of the more dramatic institutional battles in the Indian polity has been the struggle between elements wanting to assert legislative power to amend the constitution and those favoring the judiciary’s efforts to preserve the constitution’s basic structure. Let us examine the structural functional areas of these three core branches of the Government of India separately in detail.

**INDIAN EXECUTIVE**

The Constitution of India envisages the Indian Executive to be a major branch of government in the parliamentary form that is established in India. The President, Vice President, Council of Ministers, Governor and Attorney General of India are some of the prominent functionaries who play prominent roles in the executive branch.\textsuperscript{18} Any minister holding a portfolio in the Council of Ministers must be a member of either house of parliament, or should become one before the expiry of six consecutive months since his or her appointment.

**President of India:** The government exercises its broad administrative powers in the name of the President of India, who is the supreme commander of the Armed Forces,\textsuperscript{19} the head of state and chief guardian of the Constitution and the Republic. According to the Indian Constitution, the President of India is elected by the Electoral College. The Electoral College consists of the members of both the Houses of Parliament namely; Lok Sabha and Rajya Sabha and the elected members of legislative assemblies of the States; and the elected members of the legislative assemblies of the Union territories.\textsuperscript{20} Historically, the President of the Republic has been a person revered by the people for his position above ordinary politics.

The election of the President of India does not require the direct involvement of the citizens of the nation since he is elected by the representatives of the people. Article 55(3) of the Constitution of India states that single transferable vote is applied in the proportional representation process through which the
President of India is elected. Although the President of India exercises his executive powers in an indirect way, yet he has been conferred with the highest rank in the executive branch of Indian government. The President of India is the ultimate authority who signs the bills of Parliament after the passing of the same in parliament. Also, every year the first session of the Parliament is addressed by the President of the nation. Both the houses of the Parliament can be called upon by the President of India in a joint sitting as and when required.

The President appoints the Prime Minister, who is the designated leader of the political party or coalition of parties, commanding parliamentary majority. The President then appoints subordinate ministers on the advice of the Prime Minister. In reality, the President has no discretion on the question of whom to appoint as Prime Minister except when no political party or coalition of parties gains a majority in the Lok Sabha. Once the Prime Minister has been appointed, the President has no discretion on any other matter whatsoever, including the appointment of ministers. But all central government decisions are nominally taken in his/her name. Thus, President's true role is mostly ceremonial. He is the Supreme Commander of the nation's armed forces, has the authority to dissolve the Parliament and call fresh elections, declare a state of emergency, and dismiss governments in the states, but all upon the counsel of the Prime Minister and the elected government.

Vice President of India: The Vice President of India, as per Article 66 (1) of the Indian Constitution, is elected by both Rajya Sabha and Lok Sabha. Elected for a period of five years, the Vice President of India is both the head of Rajya Sabha as well as a prime figure of the Indian executive. In cases of resignation, death or removal of the President, the Vice President acts as the head of the nation. In such circumstances, the Vice President also exercises all the powers conferred upon the President of India by the Constitution. As per Article 65 of the Constitution, during the time period of the Vice President functioning as the President, he is subjected to all the financial benefits approved for the President.
The proportional representation system is used to elect the Vice President of India through single transferable vote. Since secret ballot method is applied to elect the Vice President hence, in case of any confusion or discrepancy, Supreme Court of India has the ultimate power to take the decision. The major functions of the Vice President of India include:

- Performing as the Chairman of Rajya Sabha.
- Functioning as the Presiding Officer in either or both the Houses of Parliament.
- Functioning as the Acting President of India under such circumstances as death, resignation or removal of the actual President.
- Offering consultation regarding various policies of the states of India.
- Visiting other countries as a goodwill ambassador.
- Keeping a track of all the issues pertaining to the central government of India.

The Vice President of India can resign from his post by writing to the President of the country. Also, a resolution unanimously passed by the Rajya Sabha members and approved by the Lok Sabha, can also remove the Vice President from his post. According to Article 67 of the Constitution of the country, the Vice President can remain in his office till the time a new Vice President is ready to take the responsibility.

**Union Cabinet:** Real national executive power is centered in the Council of Ministers, led by the Prime Minister of India, the Head of Government. Article 74(1) of the Indian Constitution clearly defines the presence of a Council of Ministers in the Executive Branch of Government of India. The Prime Minister heads the Council of Ministers and offers important piece of advice to the nation's President. The Council of Ministers, on the other hand, is selected by the Prime Minister and the formal sign of approval goes from the President. The Ministers may be of 3 types - Cabinet Minister, Minister of State
(Independent Charge) and Deputy Minister in order of seniority. Cabinet Ministers and Ministers of State with independent charge may usually attend Cabinet meetings. The Council of Ministers is directly accountable to the Lok Sabha which is one of the houses of the Indian Parliament.

**Governor:** The Constitution of India states that each state of the nation should have a Governor. The governor of every state enjoys a large number of executive and other powers. All executive actions, of the Governor of a State shall be expressed to be taken in the name of Governor. The President of India appoints the Governor for each of the state of the country. The Chief Minister, along with other members of the Council of Ministers, provides assistance to the Governor.

Continuing the same theme we shall now consider the role of ‘State Governors’ in our country as it is one of the most crucial aspects of our polity today. The governor of a state is the repository of the executive powers of the state, which are exercised by him in accordance with the provisions of the Constitution of India. There shall be council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. He has the right to be kept informed of the decisions of the state ministry.

He appoints the chief minister and on his advice, other ministers and several important state officials such as the advocate general, the chairman and members of the State Public Service Commission. Though the Governor has no powers to appoint the judges of the State High Court, but it is provided by Article 217 that he will be consulted by the president before such an appointment is made.

Among the legislative powers of the governor is the right to address the legislature and to send messages to it. He can summon the state legislature, prorogue either house or dissolve the legislative assembly. Every bill passed
by the state legislature must receive the governor's assent before it can become a law. He may give his assent to a bill or withhold it or he may reserve it for the consideration of the President.\(^{38}\)

He may also return a Bill, other than a money bill, to the legislature for reconsideration, but if it is passed a second time, the governor may not withhold his assent to it. At the same time, no money bill can be introduced in the legislative assembly except on the governor's recommendation. The Governor shall in respect of every financial year cause to be laid before the House a statement of the estimated receipts and expenditure.\(^{39}\)

The constitution authorises the governor to promulgate ordinances during the period when the state legislature is not in session. An ordinance promulgated by a governor has the same force as an Act passed by the state legislature but it ceases to be effective at the expiration of six weeks from the date when the state legislature re-assembles or before the end of the period if a resolution is passed by the legislature disapproving the said ordinance.\(^{40}\) Ordinance-making power of the governor has been often misused by state chief ministers. In the *D. C. Wadhwa case* (1987) it was brought to the notice of the Supreme Court that between 1967-1981 the governor of Bihar promulgated 256 Ordinances.\(^{41}\) Some Ordinances were kept alive for periods ranging from one to 14 years by re-promulgating them again and again. The Supreme Court considered such promulgation as an abuse of the power and a fraud on the Constitution.

Finally, the governor, like the President, has the power to nominate certain members to the state legislature. He nominates some members in the State Legislative Council, if the state has bicameral legislature, from amongst people who have special knowledge or practical experience in the field of art, science, literature, cooperative movement and social services. He can also nominate one member in the State Legislative Assembly from the Anglo-Indian community if he feels that they are not adequately represented. The judicial powers of the governor includes the power of granting pardon, or reducing or commuting sentences of any person convicted of any offence against any law.
relating to matters to which the executive powers of the state extends. The Governor is also consulted for appointment of Judges of High Court.

The Governor has the power to make a report to the president whenever a situation arises in which the government of a State cannot be carried on in accordance with provisions of the Constitution, thereby inviting the president to impose ‘President's Rule’. It is important to note here that only the governor of Jammu & Kashmir has the power to impose 'Governor's Rule' under section 92 of the Constitution of that state. However, it may be noted that the president of India is not bound to act on the governor’s advice in this or any other matter.

**Attorney General of India:** The Constitution of India, under Article 76, states that the Attorney General should be appointed by the President of India. Elected by the ruling party in the Government of India, the Attorney General performs the function of the chief legal advisor. For being nominated as the Attorney General of India the concerned candidate should possess all the qualifications to take seat of the judge of the Supreme Court. During the sessions of the Parliament, the Attorney General of India has the right to participate in the same. However, he or she does not have any right to vote in the Parliament. In order to take various legal decisions in a smooth and faster way, one Solicitor General and four Additional Solicitor Generals assist the Attorney General of India. The Attorney General is also required to perform all legal functions that are delegated to him by the President of India. Apart from the President, Vice President, Prime minister, Council of Ministers, Attorney General and Cabinet Ministers, the executive branch of Government of India also include many other ministries that function under the charge of Cabinet/State Minister. Some such departments and ministries are mentioned below:
Independent Departments of Central Government

- Department of Space
- Department of Atomic Energy

Ministries of Central Government

- Ministry of Women and Child Development
- Ministry of Statistics and Programme Implementation
- Ministry of Rural Development
- Ministry of Petroleum and Natural Gas
- Ministry of Power
- Ministry of Youth Affairs and Sports
- Ministry of Human Resource Development
- Ministry of Social Justice and Empowerment
- Ministry of Micro, Small and Medium Enterprises
- Ministry of Tourism
- Ministry of Agriculture
- Ministry of Chemicals and Fertilizers
- Ministry of Food Processing Industries
- Ministry of Finance
- Ministry of Environment and Forests
- Ministry of Civil Aviation
- Ministry of Development of North Eastern Region
• Ministry of New and Renewable Energy
• Ministry of Water Resources
• Ministry of Personnel, Public Grievances and Pensions
• Ministry of Defence
• Ministry of Law and Justice
• Ministry of Housing and Urban Poverty Alleviation
• Ministry of Consumer Affairs, Food and Public Distribution
• Ministry of Communications and Information Technology
• Ministry of Urban Development
• Ministry of Parliamentary Affairs
• Ministry of Mines
• Ministry of Shipping, Road Transport and Highways
• Ministry of Corporate Affairs
• Ministry of Tribal Affairs
• Ministry of Earth Sciences
• Ministry of Overseas Indian Affairs
• Ministry of Heavy Industries and Public Enterprises
• Ministry of Labour and Employment
• Ministry of Information and Broadcasting
• Ministry of Commerce and Industry
• Ministry of Minority Affairs
THE LEGISLATIVE BRANCH

The legislature in India, functioning within the parliamentary system, is the totality of Central, State and local legislatures, their formal and informal arrangements, with inter-linkages and their interaction with the other state bodies and environment. The central legislature, also referred to as Parliament, consists of the President and the two Houses - Lok Sabha (House of the People, the Lower House) and Rajya Sabha (Council of States, the Upper House). The State legislature shall include Governor and the two Houses (Legislative Assembly and Legislative Council) in some of the states or one house (Legislative Assembly) in the rest. The local legislature — Gram Sabha and Municipality in rural and urban areas, respectively- is an institution of self government constituted by the Constitution. The 73rd and 74th Amendments are still in the process of acquiring substantive legislative power to be devolved by the concerned state.

For the purpose of legislation, the Constitution introduces a federal system as the basic structure of the government, wherein there is a three-fold distribution
of subjects between the Centre and the States enumerated in the Seventh Schedule, viz. Union List, State List and Concurrent List. There is also an effort to distribute the subjects between state and local bodies by incorporating the Eleventh Schedule into the Constitution by the 73rd and 74th Amendments. Such distribution of subjects is essential to make legislature at all levels responsible and accountable by following the ambit of items in the list.

Central Legislature / Parliament

President: The President of India is an integral part of the Indian Parliament like the Crown of England but unlike the American President who is not a part of the Congress. However, the Indian President differs from the Crown of England in respect of his powers and status, e.g. certain discretionary powers vis-à-vis legislation and administering of oath.49 A harmonious correlation between the President and various legislative institutions has led to a sort of successful working of parliamentary democracy. For instance, the relationship between the President and the Prime Minister is crucial in legislation. A sore relationship between the two indicates problems in the legislative issues and therefore will catch attention of the opposition and civil society for a sustained debate. The relationship may have political ramifications, which perhaps may be echoed in the President’s speech inside as well as outside the Parliament.

Lok Sabha: The Lower House of India’s bicameral Parliament is the Lok Sabha, or House of the people. Its members are elected on the basis of universal adult suffrage. Every adult citizen (18 years and above) is entitled to vote, other than non-residents, the insane, criminals and those who have been convicted of corrupt electoral practices.50 In a reserved constituency, only members of the Scheduled Castes and Tribes may run for office, but all adults within the constituency may vote. The two nominated seats are filled by the President with representatives of the Anglo-Indian community.51

The system of voting is the single member constituencies. The system has produced governments that have substantial majorities in the Parliament, yet lack endorsement from a majority of the voters. By and large, Parliament is
fairly chosen with the help of the constitutional body called the Election Commission. While individual seats may have been determined by musclemen or bribes, no general election in India has produced an overall result that was not a fair reflection of voter preferences.

The term of the Lok Sabha is for a maximum period of five years, although in an emergency this may be extended to one year at a time, indefinitely.52 There is no minimum term of the parliament. While the parliament may be dissolved and fresh elections held because a government has lost the confidence of the house, the more common occurrence is for a prime-minister of the time to call for fresh elections with the goal of maximising personal or party political gains. The Lok Sabha is required by the Constitution to be convened, twice a year, with a maximum allowable period of gap between the two sessions being six months. In practice the Lok Sabha has often met in three sessions per year.53 The language of parliamentary business is mostly Hindi or English, although a member may use any of the recognised official languages. The process of legislation involves three stages corresponding to the familiar three readings of bills in the parliamentary systems: the introduction of a bill, its consideration and its enactment into law.

The first reading consists of the bill being introduced along with an explanation of its aim and purposes. After the second reading, a bill may be referred to a Select Committee, circulated for public response or taken up for immediate consideration. The last course is rare and reserved for urgent and uncontroversial items. The second course is the most frequent. The select committee reports back either unanimously or with a majority recommendation and a minority note of dissent. The bill is then considered in the House clause by clause, with members being able to introduce amendments. Once all clauses have been dealt with, the bill has crossed the report stage, and is listed for its third and final reading, which is tidying-up amendments and then the bill is put to vote. If the speaker authenticates its passing, the bill is sent to the second house, where the entire procedure is repeated. When both Houses of Parliament
have passed an identical version of a bill, it is presented to the President for formal assent, and becomes law on receiving his assent.

The seasonal and daily business of the government is decided by the cabinet and its Parliamentary affairs committee under the chairmanship of the chief whip. Each session of the Lok Sabha is opened with a presidential address. The quorum for the Lok Sabha to be able to meet is one-tenth of its membership. The Lok-Sabha is of course fundamentally akin to other legislative assemblies in parliamentary regimes, its context can, however, be quite different, reflecting its own unique socio-political environment. The conduct of the House is in the hands of the Speaker who recognizes members, keeps order and does other things, which are required of presiding officers. The speaker may not vote on an issue before the Lok Sabha, but can exercise a casting vote in the event of a tie on any motion. The Speaker is selected by the governing party for formal election by the House but is expected to conduct Parliamentary business with fairness and impartiality.\(^5\)

Parliament is the central forum for amending the Constitution under Article 368. The procedural powers are those which allow the parliament to make rules for the conduct of its business. The legislative powers pertain to the authority and role of Parliament in enacting laws for governing the country. Parliament is technically the legislature, the institution that enacts the law of the land and the authority of the people and the assent of the head of state. In reality the legislative agenda is controlled by the government and endorsed by the Parliament with the help of tightly maintained party discipline. The financial powers of Parliament are those empowering it to raise and spend money as it sees fit, including discussion and approval of the annual budget. Only the Parliament has the authority to levy taxes and spend money from the Consolidated Fund.

Parliament formally controls the reins of the government in the sense that the cabinet is required to have the confidence of the Lok Sabha and is collectively responsible to the Parliament. Under constitutive powers, finally, parliament
can legislate to admit or create new states into the Union of India; to create a
High Court for a Union Territory and to extend the jurisdiction of a High Court
to or restrict it from a Union Territory; and to create or abolish a Legislative
Council (an Upper House) for a state with the consent of the State’s Assembly
(Lower House).

**Rajya Sabha:** Rajya Sabha or the Council of States is the Upper House of
India’s bicameral Parliament. Three sets of reasons guided the adoption of
bicameral legislature for the Union of India. First, Rajya Sabha as the name
implies, was to be the chamber for representing and protecting the rights of the
states in a federal polity. Rajya Sabha, therefore, has equal role and status to
that of the Lok Sabha in the Electoral College for choosing the president.
Members of state legislative assemblies elect Rajya Sabha representatives for
their States on a proportional representation system.

The Constitution provides that the Rajya Sabha shall consist of 250 members,
of which 12 members shall be nominated by the President from amongst
persons having special knowledge or practical experience in respect of such
matters as literature, science, art and social service; and not more than 238
representatives of the States and of the Union Territories.

Elections to the Rajya Sabha are indirect; members representing States are
elected by elected members of legislative assemblies of the States in
accordance with the system of proportional representation by means of the
single transferable vote, and those representing Union Territories are chosen in
such manner as Parliament may by law prescribe. The Rajya Sabha is not
subject to dissolution; one-third of its members retire every two years. Rajya
Sabha, at present, has 245 seats. Of these, 233 members represent the States
and the Union Territories, and 12 members are nominated by the President.

The Constitutional position of the Rajya Sabha is not comparable in power,
functions or prestige to the US Senate when conceived of solely in terms of
State rights. In the event of a deadlock between the two Houses of Parliament,
for example, if reconsideration of a bill fails to achieve a mutually satisfactory resolution, then the president can convene a joint sitting of both the Houses. Its decisions are made by simple majority. Since Lok Sabha MPs outnumber their Rajya Sabha counterparts by more than 2:1, in a combined sitting, the Rajya Sabha can generally expect to be defeated.

In respect of certain specified federal features of the Constitution, the primary amending role has been given to the Rajya Sabha as the custodian of State rights. For example, the powers of Rajya Sabha itself can be altered only with the consent of a two-thirds majority in the Upper House. In theory, the House provides the means to bring in competent or skilled personnel who are not prepared to face the uncertain rigours of political campaigns. They can be appointed to the Rajya Sabha and be inducted into the cabinet without having to go through the formal process of elections.

Committees: The Lok Sabha operates with the aid of Parliamentary Committees. The composition of the committees is determined by the Speaker and the chief whip with due regard to the respective party strengths in the House. To prevent undue Executive influence, no minister who is in charge of a bill being considered by the committee, is permitted to participate in the deliberations of that committee. Parliamentary Committees help to expedite Parliamentary business and to scrutinise the government activities. They may be divided into four broad groups: those that are concerned with the organisation and powers of the House, for example the Rules Committee; those that assist the House in their legislative functions, for example Select Committees; those that assist the House in making government departments more accountable, for example various standing committees; and those that assist the House in their financial functions such as Public Accounts Committee (PAC), Estimates Committee (EC) etc.

Parliamentary committees act as watchdogs of the Parliament to ensure culture of accountability and good governance. The financial committees particularly, are regarded as the most important ones as they unearth ‘scams’ and the
convention requires that their recommendations be implemented and to report to the Parliament on the follow-up-actions by the concerned minister.\textsuperscript{56}

**The Opposition:** The opposition in a Parliamentary democracy is expected to play the role of an alternative government. This has not been the case for most of the independent Indian history due to the complete dominance of the Congress party. Because of the multiplicity of political parties in India, the status of the leader of the opposition can be conferred only on the leader of a party with at least fifty seats in the Lok Sabha.

Regardless of the capacity or numbers to form an alternative government, opposition parties do register and express the diversity of opinions in a country as large and varied as India. The opposition also serves to keep the government on its toes. The opposition loses when it comes to tallying up the votes on any motion. But its statements in Parliament are heard in the country at large and often listened to within the ranks of the political parties. Opposition arrangements, therefore, often strike a resonance within the party and can shape public policy by this indirect means. The debate that is ostensibly between the government and the opposition can, in effect, serve to structure the internal debate within the ruling party. Pt. Jawaharlal Nehru himself was very sensitive to the range of opinion in the ranks of the opposition. This has been a distinctive feature of the Indian politics since independence.

**State Legislature:** State legislatures, while in most respects, are similar to the Parliament of India, there are some important differences. The choice of unicameralism or bicameralism was left to the states, depending on how they weighed the functions of the second chamber compared to the costs involved in running it. Any Legislative Assembly may create or abolish a Legislative Council by itself by a special majority (a majority of the total membership that is not less than two-thirds of members present and voting), followed by an Act of Parliament. The size of the Council must be no less than 40 and no more than one-third of the total membership of the Assembly.\textsuperscript{57} Like the Rajya Sabha, one-third of a State Council’s members are elected biennially. Five-
sixths of the Council Members (MLCs) are indirectly elected on a complicated formula involving graduates, educators and members of the Legislative Assembly (MLAs); and one-sixth are nominated by the Governor. But a state council’s role is even more circumscribed than that of the Rajya Sabha: it is merely an advisory house that may delay the passage of a bill but cannot compel modifications or abandonment.\(^5\)

The Legislative Assemblies themselves vary in size from a minimum of 40 to no more than 500; their members are chosen for five-year terms by direct elections on the basis of universal adult suffrage. The State Assembly is subject to dissolution but not the Council. Because of the great difference in size between Parliamentary and State Legislative constituencies, MLAs are far more closer to the people than MPs. The MLAs are correspondingly the more significant political actors.

**Parliamentary Sovereignty:** As a theory of politics, sovereignty embodies the notion that in every system of government, there must be some absolute power of final decision. The person or body exercising such decision must be legally competent to decide and practically able to enforce the decision. The concept entails a prescriptive and a descriptive element. Contrary to the situation as it ought to be, in reality many states do not possess the unity, clarity and effectiveness of command implied in the concept of Sovereignty.

In India, governments have often come into conflict with judiciary over the extent to which Parliament may amend the Constitution. In the Golaknath case (1967),\(^5^9\) the court ruled by 6:5 majority that Parliament was not competent to amend Fundamental Rights as they are transcendental and immutable, though the power to amend the Constitution is a legislative power,\(^6^0\) and hence the Constitutional Amendment Act is a ‘law’ within the purview of Article 13(2). However, in 1971, by the 24th Amendment Act, the Parliament sought to retain its sovereignty by making the Constitutional Amendment Act immune to judicial review on the ground that it takes away or affects Fundamental Rights. Also an amendment of the Constitution passed in
accordance with Article 368 will not be ‘law’ within the meaning of Article 13. The 25th Constitutional Amendment Act which allowed the Parliament to encroach on Fundamental Rights was said to be done pursuant to giving effect to the Directive Principles of State Policy. In April 1973, in the Kesavananda Bharti case, the Supreme Court ruled that while Parliament could amend even the Fundamental Rights ‘guaranteed’ by the Constitution, Parliament was not competent to alter the ‘basic structure’ or ‘framework’ of the Constitution.\textsuperscript{61} The 42nd Amendment Act (1976) unambiguously and unabashedly declared the Parliament to be competent to amend all provisions of the Constitution and the courts to be incompetent to question Parliamentary enactments.

The assertion of parliamentary sovereignty in the wake of conflict between the ‘due process of law’ and the ‘procedure established by law’ is due to its consideration as the repository of the \textit{will of the people} as it is directly elected by and accountable to the people. In fact, Parliament elected by all adult citizens is more representative of the \textit{general will} than a Constituent Assembly, which had been elected on a very restricted franchise. Moreover, the courts, over the years, had delivered contradictory decisions, and the inconsistency of judicial verdicts had produced constitutional confusion.\textsuperscript{62} The concept of the ‘basic structure’ in particular was nowhere to be found in the Constitution itself but was instead an invention of the judges. In 1980, in Minerva Mills case, the judiciary tilted the balance of power towards its own side by declaring validity clauses (4) and (5) of Article 368 as ultra vires because they exclude judicial review which is the basic feature of the Constitution. However, to insist that the Constitution could be amended, at will by the Parliament, free of judicial oversight, would be to reduce the Constitution to a private preserve of the Prime Minister.
**THE JUDICIAL BRANCH**

One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of courts to administer both Union and State laws. The Judiciary of India is an independent body and is separate from the executive and legislative bodies of the Indian Government. The judicial system of India is stratified into various levels. At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each State or group of States. Below the High Courts, lies a hierarchy of subordinate courts. Panchayat courts also function in some States under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to decide civil and criminal disputes of petty and local nature.63

The judiciary of India takes care of maintenance of law and order in the country along with solving problems related to civil and criminal offences. Different State laws provide for different kinds of jurisdiction of courts. Each State is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction and can try all offences including those punishable with death.64 The Sessions Judge is the highest judicial authority in a district. Below him, there are courts of civil jurisdiction, known in different States as Munsifs, Sub-Judges, Civil Judges and the like. Similarly, the criminal judiciary comprises the Chief Judicial Magistrates and Judicial Magistrates of First and Second Class.65

Judiciary in India is the continuation of the British legal system established by the English in the mid-19th century. Before the arrival of the Europeans in India, she was governed by laws based on *The Arthashastra*, dating from the 400 BC, and the *Manusmriti* from 100 AD. They were influential treatises in India, texts that were considered authoritative for legal guidance. *Manu’s* central philosophy was tolerance and pluralism. The judiciary, the executive, and the legislature were the same person, the King or the Ruler of the Land.
But the villages had considerable independence, and had their own panchayat to resolve disputes among its members. Only a bigger feud merited a trans village council. This tradition in India continued beyond the Islamic conquest of India, and through to the middle ages. Islamic law "The Sharia" was applied only to the Muslims of the country. But this tradition, along with Islamic law, was supplanted by the common law when India became part of the British Empire. The history of modern judicial system in India starts from there. Thus, the judicial system that is followed in India is based on the British legal system that was prevalent in the country during pre-independence era. Very few amendments have been made in the judicial system of the country.

The Supreme Court in India: The Supreme Court of India is the highest judicial body in the land as established by Part V, Chapter IV of the Constitution of India. According to the Constitution of India, the role of the Supreme Court is that of a federal court, guardian of the Constitution and the highest court of appeal. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Primarily, it is an appellate court which takes up appeals against judgments of the High Courts of the states and territories. However, it also takes writ petitions in cases of serious human rights violations or any petition filed under Article 32 which is the Right to Constitutional Remedies or if a case involves a serious issue that needs immediate resolution. The Supreme Court of India had its inaugural sitting on 28 January 1950, and since then has delivered more than 24,000 reported judgments.

Constitution of Supreme Court: On the 28th of January, 1950, two days after India became a Sovereign Democratic Republic, the Supreme Court came into being. The inauguration took place in the Chamber of Princes in the Parliament building which also housed India's Parliament, consisting of the Council of States and the House of the People. It was here, in this Chamber of Princes that the Federal Court of India had sat for 12 years between 1937 and 1950. This was to be the home of the Supreme Court for years that were to follow until the
Supreme Court acquired its own present premises.70

After its inauguration on January 28, 1950, the Supreme Court commenced its sittings in a part of the Parliament House. The Court moved into the present building in 1958. The building is shaped to project the image of scales of justice. The central wing of the building is the centre beam of the scales. In 1979, two new wings - the east wing and the west wing - were added to the complex. In all there are 15 court rooms in the various wings of the building. The Chief Justice's Court is the largest of the courts located in the centre of the central wing.

The original Constitution of 1950 envisaged a Supreme Court with a Chief Justice and 7 judges - leaving it to Parliament to increase this number. In the early years, all the judges of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and arrears of cases began to accumulate, Parliament increased the number of judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978 and 26 in 1986. As the number of the judges has increased, they sit in smaller Benches of two and three - coming together in larger Benches of 5 and more only when required to do so or to settle a difference of opinion or controversy.

The Supreme Court of India comprises the Chief Justice and not more than 25 other Judges appointed by the President of India. Supreme Court judges retire upon attaining the age of 65 years. In order to be appointed as a judge of the Supreme Court, a person must be a citizen of India and must have been, for at least five years, a judge of a High Court or of two or more such courts in succession, or an advocate of a High Court or of two or more such courts in succession for at least 10 years or he must be, in the opinion of the President, a distinguished jurist. Provisions exist for the appointment of a judge of a High Court as an Ad-hoc judge of the Supreme Court and for retired judges of the Supreme Court or High Courts to sit and act as judges of that court.71
The Constitution seeks to ensure the independence of Supreme Court judges in various ways. A judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity. A person who has been a Judge of the Supreme Court is debarred from practicing in any court of law or before any other authority in India. The proceedings of the Supreme Court are conducted in English only. Supreme Court Rules, 1966 are framed under Article 145 of the Constitution to regulate the practice and procedure of the Supreme Court.\textsuperscript{72}

**Attorney General:** The Attorney General of India is appointed by the President of India under Article 76 of the Constitution and holds office during the pleasure of the President. He must be a person qualified to be appointed as a judge of the Supreme Court. It is the duty of the Attorney General of India to give advice to the Government of India upon such legal matters and to perform such other duties of legal character as may be referred or assigned to him by the President. In the performance of his duties, he has the right of audience in all courts in India as well as the right to take part in the proceedings of Parliament without the right to vote. In the discharge of his functions, the Attorney General is assisted by a Solicitor General and four Additional Solicitor Generals.

There are three categories of Advocates who are entitled to practice law before the Supreme Court of India:-

(i) **Senior Advocates:** These are advocates who are designated as Senior Advocates by the Supreme Court of India or by any High Court. The Court can designate any advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said advocate is deserving of such distinction. A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or
without a junior in any other court or tribunal in India. He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake convincing work of any kind whatsoever, but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

(ii) Advocates-on-Record: Only these advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

(iii) Other advocates: These are advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court.

Jurisdiction of the Supreme Court: The jurisdiction of the Supreme Court is divided into original jurisdiction, advisory jurisdiction and appellate jurisdiction. Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends. In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them. The Supreme Court has been conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court or from a Court subordinate to another State High Court. The Supreme Court, if satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, may withdraw a case or cases.
pending before the High Court or High Courts and dispose of all such cases itself. Under the Arbitration and Conciliation Act, 1996, International Commercial Arbitration can also be initiated in the Supreme Court. The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under Article 132(1), 133(1) or 134 of the Constitution in respect of any judgment, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution. Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies: (a) that the case involves a substantial question of law of general importance, and (b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court. In criminal cases, an appeal lies to the Supreme Court if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or (c) certified that the case is a fit one for appeal to the Supreme Court. Parliament is authorised to confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court.

The Supreme Court has also a very wide appellate jurisdiction over all Courts and Tribunals in India in as much as it may, in its discretion, grant special leave to appeal under Article 136 of the Constitution from any judgment, decree, determination, sentence or order in any case or matter passed or made by any Court or Tribunal in the territory of India.

Apart from the original and appellate jurisdiction of the Supreme Court, there is an advisory jurisdiction that needs special mention. The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India under Article 143 of the Constitution. There are

Under Articles 129 and 142 of the Constitution the Supreme Court has been vested with power to punish for contempt of Court including the power to punish for contempt of itself. In case of contempt other than the contempt referred to in Rule 2, Part-I of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, the Court may take action (a) Suo-motu, or (b) on a petition made by Attorney General, or Solicitor General, or (c) on a petition made by any person, and in the case of a criminal contempt with the consent in writing of the Attorney General or the Solicitor General.

Under Order XL of the Supreme Court Rules the Supreme Court may review its judgment or order but no application for review is to be entertained in a civil proceeding except on the grounds mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure and in a criminal proceeding except on the ground of an error apparent on the face of the record.\textsuperscript{75}

**Public Interest Litigation:** Although the proceedings in the Supreme Court arise out of the judgments or orders made by the subordinate courts including the High Courts, but of late the Supreme Court has started entertaining matters in which interest of the public at large is involved and the Court can be moved
by any individual or group of persons either by filing a writ petition at the Filing Counter of the Court or by addressing a letter to Hon'ble the Chief Justice of India highlighting the question of public importance for invoking this jurisdiction. Such concept is popularly known as 'Public Interest Litigation' and several matters of public importance have become landmark cases. This concept is unique to the Supreme Court of India only and perhaps no other Court in the world has been exercising this extraordinary jurisdiction. A writ petition filed at the Filing Counter is dealt with like any other writ petition and processed as such. In case of a letter addressed to Hon’ble the Chief Justice of India the same is dealt with in accordance with the guidelines framed for the purpose.

**Provision of Legal Aid:** If a person belongs to the poor sections of society having annual income of less than Rs. 18,000/- or belongs to Scheduled Castes or Scheduled Tribes, a victim of natural calamity, is a woman or a child or is mentally ill or otherwise disabled person or an industrial workman, or is in custody including custody in protective home, he/she is entitled to get free legal aid from the Supreme Court Legal Aid Committee. The aid so granted by the Committee includes cost of preparation of the matter and all applications connected therewith, in addition to providing an advocate for preparing and arguing the case. Any person desirous of availing legal service through the Committee has to make an application to the Secretary and hand over all necessary documents concerning his case to it. The Committee after ascertaining the eligibility of the person provides necessary legal aid to him/her. Persons belonging to middle income group i.e. with income above Rs. 18,000/- but under Rs. 1,20,000/- per annum are eligible to get legal aid from the Supreme Court Middle Income Group Society, on nominal payments.

**Amicus Curiae:** If a petition is received from the jail or in any other criminal matter if the accused is unrepresented then an advocate is appointed as *amicus curiae* by the Court to defend and argue the case of the accused. In civil matters also the Court can appoint an advocate as *amicus curiae* if it thinks it necessary.
in case of an unrepresented party; the Court can also appoint amicus curiae in any matter of general public importance or in which the interest of the public at large is involved.

**High Courts in India:** There are High Courts in almost all the states of India and the Union Territories. The High Court stands at the head of a State's judicial administration. Established in the year 1862, the Calcutta High Court is the oldest of such courts in India. Apart from this, there are a total of 18 High Courts in the country, three having jurisdiction over more than one State. Among the Union Territories, Delhi alone has a High Court of its own. Other six Union Territories come under the jurisdiction of different State High Courts. Each High Court comprises of a Chief Justice and such other Judges as the President may, from time to time, appoint. The Chief Justice heads each of the High Courts in India. The numbers of judges vary from one court to other depending on the area that the High Court covers and the load of work that it handles.

The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The procedure for appointing puisne judges is the same except that the Chief Justice of the High Court concerned is also consulted. They hold office until the age of 62 years and are removable in the same manner as a Judge of the Supreme Court. To be eligible for appointment as a judge one must be a citizen of India and have held a judicial office in India for ten years or must have practised as an advocate of a High Court or two or more such courts in succession for a similar period.

The High Courts work under the Supreme Court in the country. These courts are vested with lot of power. Each of these courts have original and appellate jurisdiction under them. They decide on both civil as well as criminal cases. Each High Court has power to issue to any person within its jurisdiction directions, orders, or writs including writs which are in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of Fundamental Rights and for any other purpose. This power may also be
exercised by any High Court exercising jurisdiction in relation to territories within which the cause of action, wholly or in part, arises for exercise of such power, notwithstanding that the seat of such government or authority or residence of such person is not within those territories. Moreover, revenue matters are dealt by original jurisdiction, while an eminent jury handles original criminal cases.\textsuperscript{76}

Most of the cases that are handled by the High Courts of the country are passed on from the district or lower courts. Each High Court has powers of superintendence over all courts within its jurisdiction. It can call for returns from such Courts, make and issue general rules and prescribe forms to regulate their practice and proceedings and determine the manner and form in which book entries and accounts shall be kept.

\textbf{Advocate General:} There is an Advocate General for each State, appointed by the Governor, who holds office during the pleasure of the Governor. He must be a person qualified to be appointed as a judge of High Court. His duty is to give advice to State governments upon such legal matters and to perform such other duties of legal character, as may be referred or assigned to him by the Governor. The Advocate General has the right to speak and take part in the proceedings of the State Legislature without the right to vote.

\textbf{Lok Adalat:} \textit{Lok Adalats} which are voluntary agencies are monitored by the State Legal Aid and Advice Boards. They have proved to be a successful alternative forum for resolving disputes through the conciliatory method. The Legal Services Authorities Act, 1987, provides statutory status to the legal aid movement and it also provides for setting up of Legal Services Authorities at the Central, State and District levels. These authorities will have their own funds. Further, Lok Adalats which are at present informal agencies will acquire statutory status. Every award of Lok Adalats shall be deemed to be a decree of a civil court or order of a Tribunal and shall be final and binding on the parties to the dispute. It also provides that in respect of cases decided at a Lok Adalat, the court fee paid by the parties will be refunded.
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Sources: [http://www.indiancourts.nic.in/](http://www.indiancourts.nic.in/)
District Courts in India

The District Courts in India take care of judicial matters at the district level. Headed by a judge, these courts are administratively and judicially controlled by the High Courts of the respective states, to which the district belongs. There are many secondary courts also at this level, which work under the District Courts. There is a court of the Civil Judge as well as a court of the Chief Judicial Magistrate. While the former takes care of the civil cases, the latter looks into criminal cases and offences.

The Chief Judicial Magistrate is endowed with the responsibility of deciding critical cases. He or she has the power of punishing the accused by imprisonment for a maximum of 7 years. The independence of the judiciary even at the district level needs a special mention. There is a strong bar in each district court that ensures proper decisions are made in the cases that come to these courts. The major problem that is faced by the district courts in India is that numerous cases get piled up day after day and as a result there is inordinate delay in the decisions of the court.

Tribunals

There are also various tribunals that have been set up in India that look into various matters of grave concern. The tribunals that need a special mention are as follows:

- Income Tax Appellate Tribunal
- Central Administrative Tribunal
- Intellectual Property Appellate Tribunal, Chennai
- Railways Claims Tribunal
- Appellate Tribunal for Electricity
- Debts Recovery Tribunal I, Chennai
• Debts Recovery Tribunal II, Chennai
• Central Excise Service Tax Appellate Tribunal
• Debt Recovery Tribunal, Coimbatore

There is also a ministry and some departments that look after the judicial set up of the country. The Ministry of Law and Justice and the National Informatics Center are endowed with the responsibility of maintaining law and order in the country. There are also many legal committees and commissions that are set up in India so that the judiciary can run smoothly and render all possible help to the general masses of India in solving their legal problems.

Issues: Indian courts have large backlogs. For instance, the Delhi High Court has a backlog of 466 years according to its chief justice. This is despite the average processing time of four minutes and 55 seconds in the court.\textsuperscript{78} In \textit{Uttam Nakate} case, it took two decades to solve a simple employment dispute. However, it needs to be mentioned that the problem of backlogs doesn't describe the actual reason for so many cases lying in the courts. Rather the term ‘backlog’ has been misused and the term ‘pendency’ is the right word for describing the large number of cases lingering in the courts today. As could be understood, the largest numbers of cases that are actually pending in the Indian Courts are that of minor motor vehicle cases which usually evolve out of wrong parking, minor road accidents, not following traffic rules, etc.\textsuperscript{79} In these cases, the people involved are generally the drivers, who happen to carry 3-4 driving licences having different addresses. Thus, the actual address is never given to the police officer, due to which the accused remain untraceable and thus cannot be produced before the court for years at end and many times ever. Moreover, many believe that corruption is rampant in India’s courts which is another reason for such a colossal pendency. According to Transparency International, judicial corruption in India is attributable to factors such as “delays in the disposal of cases, shortage of judges and complex procedures, all of which are exacerbated by a preponderance of new laws.”\textsuperscript{80}
Pendency of cases in the courts across India has turned out to be a gigantic problem with about three crore cases waiting for redressal and the undue delay making people to shy away from justice delivery system, Supreme Court judge, justice SB Sinha said. Former Chief Justice Bala Krishnan highlighted many issues while dealing with the pendency of cases. He said there could be so many administrative reforms that could prevent the number of litigations coming to courts. In a large number of cases pending in courts, especially in higher courts, government is one of the parties either as defendant or as an appellant. These litigations are on account of lack of proper governmental administration. If the decision making authorities take firm, independent and impartial decisions, the citizens would not normally be driven to litigations. He further said that, “Lack of proper and good governance largely contributes to the number of cases in subordinate courts.”

Citing an example, he said weak and inefficient revenue administration, which resulted in poor land rights recording system, was the main reason for the large number of civil litigations.

“If the revenue administration is streamlined and everyone in the country is given proper title deeds with computerized diagrams, a large number of land disputes could be avoided. “In States where the revenue administration is poor, there are large number of civil cases and these disputes relate either to title or boundaries of their properties and these cases could be avoided, if proper re-survey operations are done and proper revenue records are maintained by the authorities.”

Due to the high rate of pendency of cases and the tendency of the lawyers to seek adjournments on flimsy grounds, the time allotted for court holidays should be re-evaluated. The vacation period of the entire Judiciary — starting with the Apex Court — should be shortened by at least 10-15 days. The attendance of the judges at international conferences should be taken in turns. If the working hours are extended by even half-an-hour, the judges could make a real impact on the high rates of pendency.”
Terming the funds allocated to judiciary in Ninth Plan a mere 0.0711 percent and in Tenth Plan 0.078 percent which is not even 0.1 percent of the total Plan outlay as a pittance. Chief Justice K. G. Balakrishnan had said, “It is sad to note that the greatest institution is accorded the least attention. Is administration of justice not an essential feature of development?”

Role of Judiciary in India

Justice concerns the relationship between the individuals and also the relationship between the individuals and groups. Basically it stands for the rights of the individual. Innocent should not be punished is the basic principle of all civilized systems of justice and the notion of equality is central to the notion of justice.

Judiciary is that organ of government which dispenses justice to individuals and groups. It does not permit any discrimination and ensures equality before law. It protects individuals against the unjust actions of other individuals and groups and also against the high-handedness of the government. Thus, judiciary is entrusted with an important duty of protecting and safeguarding the rights of individuals and putting a check on arbitrary actions of the state. Another important function of the judiciary in all democratic countries which have a constitution is to interpret the Constitution. This function empowers the judiciary to determine the legal competence of the legislative bodies and to pronounce upon the constitutional validity of legislative measures passed by the legislatures.

The Constitution of India envisages an independent judiciary to adjudicate upon the disputes arising between the Government of India and one or more states, or between the Government of India and any state or states on one side and one or more than one state on the other, or between two or more states if and in so far as the dispute involves any question whether of law or fact, or between two or more private citizens of the country. The judiciary in India has the right to hear and decide all civil and criminal cases. It is expected to function as the custodian of the Constitution, protector of right of the citizens.
and a watch-dog against the arbitrary actions of the administrative apparatus of the state.

In India, the Constitution is supreme and the judiciary is an independent institution. The Constituent Assembly which framed the Constitution, emphasized utmost need of keeping the judicial organ completely free from the control and influence of the executive and legislature. It was so because the father of our Constitution was keen to protect the legitimate rights and interests of the citizens. The need for an independent judiciary was greater in a democracy without which it may degenerate into mobocracy.

During the last 50 years or so, the role of judiciary has been the subject of debate in our country. Very important scholars have expressed various views blaming the judiciary of being conservative. Their main complaint has been that judiciary has been hostile to the needs and aspirations of common man and thus is anti-people and anti-legislature. Some intellectuals have seen an attitude of confrontation in judicial pronouncements. Some even want the judiciary to be committed. A few in their anger against the judiciary went to the extent of demanding that it should be barred from sitting over judgment on matters decided by the collective wisdom of the elected legislature. Encouraged by such comments by certain scholars government has tried time and again to curtail the powers of the judiciary.

As enlightened citizens and scholars, let us examine the comments referred to above. First, the judiciary has been called conservative. It has been said that judiciary has opposed the progressive legislation passed for the benefits of the poor and down trodden; Second, some thinkers floated the idea of a committed judiciary. They want the judiciary to toe the official line. Third, some intellectuals advocated curtailment of powers of judiciary.

The notion of committed judiciary is very dangerous. Government will become dictatorial in case judiciary is forced to toe the official line. Under such circumstances government shall tend to violate the Constitution and our
judiciary will not be able to protect it. The idea that the judiciary should not have a right to sit over judgment upon the collective decision of the legislature is often termed as absurd. If judiciary has to function as a protector of the Constitution and as a watch-dog of the liberties of the people, it must have the right to sit over judgment upon the validity of the legislative measures.

One basic and fundamental question that confronts every democracy governed by the rule of law is: what is the role or function of a judge in a democracy, and in turn raises a further question: is the function of a judge merely to declare a law as it exists or to make law? The anglo-saxon tradition persists in the belief that a judge does not make law. He merely interprets it. He merely reflects what the legislature has said and this is the phonographic theory of judicial function. This traditional view of judicial function hides the real nature of judicial process. This theory has been evolved in order to insulate judges against vulnerability to public criticism and to preserve the image of their neutrality which is regarded as necessary for enhancing their credibility. It also helps judges to escape accountability for what they decide, because they can always plead helplessness, even if the law they declare is unjust, by saying that it is the law made by the legislature and they have no choice but to give effect to it and it is only natural that judges should wish to exercise power but not to be accountable to anyone for such exercise. It is natural for them, too, to indulge in the fiction that they are merely carrying out the intention of the legislature or discovering the imminent something called law.84

In India the position of judiciary is somewhere between the courts in England and United States . . . Our Constitution, unlike the English Constitution, recognises the court’s supremacy over the legislative authority, but such supremacy is a very limited one, for, it is confined to the field where the legislative power is circumscribed by limitation put upon it by the Constitution itself. Within this restricted field, the court may, on a scrutiny of the law made by the legislature, declare it void if it is not found to have transgressed the constitutional limitation.85 Power of the Parliament is constrained by the
judicial review exercised by the Supreme Court and in case of state legislature by the High Courts.

We, therefore, come to the conclusion that these adverse comments against the character of the judiciary are unwarranted and seem to be bordering on being political. The judiciary in India has given a very commendable account of its performance. It has worked, most of the time, independently and impartially. It has always followed in letter and spirit, the provisions and philosophy of the Constitution and has refused to be cowed down by the executive and legislature. It has neither shown any fear nor favour howsoever high and mighty he or she might have been. It has stoutly protected the Constitution and the rights of the citizens.

In a nutshell, democratic state plays a crucial role in maintaining order and reconciling conflicts in a civil society. Modern state, in the form of three important bodies - legislature, executive and judiciary - tries to accomplish the political goal of the society, thus endorsing the credentials of democracy. Legislature not only represents the people but also assumes the role of law making body. It is an embodiment of participative democracy. The President, Lok Sabha, Rajya Sabha, various committees and opposition are an integral part of the legislature. State legislatures are important at the state level. The concept of sovereignty, which contains both the descriptive as well as prescriptive element, is essential to enforce the decisions of the legislature. An overall analysis of the functioning of the parliament in its sequence is necessary to understand the institutions and procedures. Thus, legislature contributes to achieving the goals embedded in the Preamble of the Constitution.
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2. The Westminster System is a democratic system of government modeled after that of the United Kingdom system of government and used in Westminster, the seat of government, hence its name. It is used in a number of Commonwealths nations such as Canada, Australia, Malaysia, Singapore, Jamaica, New Zealand and India and in non-commonwealth states like the Republic of Ireland. It is a series of procedures for operating a legislature. Although Westminster system is parliamentary system, there are some parliamentary governments, such as Germany and Italy, whose legislative procedures differ considerably from the Westminster system.


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19. Art. 53

20. Art. 54


22. Art. 75(1)


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27. Art. 64

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31. Art. 153

32. Art. 154

33. Art. 166

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INTRODUCTION

Judicial activism is a pervaded phenomenon, and it is not confined to a particular ideological or social viewpoint though it may be viewed from a liberal perspective. The term ‘judicial activism’ was first introduced by Arthur Schlesinger Jr. when he wrote about American judiciary in his article entitled, “The Supreme Court: 1947”, which appeared in Fortune Magazine in January 1947.

Constitution of India, carefully, separates the legislature, executive, and judiciary from each other and thereby guaranteed the independence of each of these organs, thus ensuring rights to life, liberty and security of its citizens. These provisions raise an alarm over the balance of separation of powers between the three organs of government. In India, right from the highest levels of the judicial hierarchy, there has been a clear recognition of the notion that excessive activism may damage the very institution which gave birth to it. Thus, there is a need to discover the reality of judicial activism which has caused so much of debate world-wide.

Judicial activism has played a major role in safeguarding the rights and freedoms of a common Indian, as guaranteed under the constitution. In a number of landmark cases, like Abolition of Privy Purses Case, Bank Nationalization Case, etc,(details of cases are in subsequent chapters), the judiciary interpreted the constitutional provisions in its wider possible meaning to protect basic civil liberties and fundamental rights, for the last three decades. It is a known fact that the Supreme Court has delivered many landmark cases that witnessed process of judicial activism for betterment of the society, but its consistency still needs to be questioned.

This study is an effort to identify and analyse the issues relating to judicial activism and also an attempt to find the actual position of it in the present times. The study will also try to discover the problems of governance in India
and the role of judiciary in the functioning of government with special reference to legislations and execution of laws. The manner and extent to which apex court should interpret the constitution is a matter of great debate with varying views on the correct approach. Question arises as to what is the appropriate role for the Supreme Court in the area of governance? Usually, any decision which is at variance from expected lines is labelled as an instance of judicial activism.

This thesis is divided into five chapters with an introduction in the beginning and a conclusion at the end which analytically summarizes the issues involved. Suggestions have also been made part of this portion of the thesis for possible use of policymakers, academics, members of the legal fraternity and researchers to work on.

The first chapter deals with the scheme of separation of powers; the Executive, the Legislature and the Judiciary being the three wings of any democratic government. The doctrine of separation of powers, as understood in the United States of America, means that there are three branches of the machinery of the state each of which has its own functions namely; legislative, executive and judicial, and that each branch must be strictly limited to its own sphere and should not be allowed to trespass upon the sphere allotted to any other branch.¹ The concept of separation of powers, that is, the division of the legislative, executive, and judicial functions of government as separate and independent bodies, has been adopted by India with the purpose of providing a system of shared powers known as Checks and Balances.

Constitution of India has adopted a parliamentary form of government in which parliament is the supreme law making body that consists of the elected representatives of people. Legislatures are elected directly by the people based on universal adult suffrage. Indian Parliament is bicameral; the Lok Sabha or the Lower House, representative body of people, and Rajya Sabha or Upper
These representatives are known as Members of Parliament (MPs). Lok Sabha members are elected on party platforms or as independent candidates whereas, Rajya Sabha members are elected indirectly by the State Legislative Assemblies. The elected representatives, can be elected on the basis of their party affiliations or as independent candidates. The members of the Rajya Sabha are elected indirectly by the State Legislative Assemblies. The President can also nominate two members of the Anglo-Indian community to the Lok Sabha if in his opinion the community is not adequately represented and 12 distinguished persons are nominated to the Rajya Sabha from the fields of literature, science, art and social services. The State Legislatures consist of two houses; the Vidhan Sabha or the Legislative Assembly; whose members are called Members of the Legislative Assembly (MLAs), and the Vidhan Parishad or the Legislative Council; whose members are called Members of the Legislative Council (MLCs). Again, like the Lok Sabha, the members of the Vidhan Sabha are elected directly by the people, whereas the members of the Vidhan Parishad are elected indirectly by different agencies and organizations, such as universities, local bodies, graduates, and professions.

Although, the presidential government is based on the doctrine of separation of powers, the parliamentary government stands for the concentration of executive and legislative powers. It is a fact that separation of powers has been established by the Supreme Court of India through the landmark judgements in various cases like Kesavananda Bharti case, where the Court provided the concept of ‘basic structure of the Constitution’. (Details in chapter four)

In this chapter, we have tried to examine the structural functional areas of these three core branches of the government of India, separately and in detail. At the time of India’s independence, the prevalent mood of the country was dominated by a sense of uniform nationalism shaped by the momentum of the freedom movement and the fear generated by the partition of the country about
centrifugal potentialities of sub-national identities. Although, the framers of the Indian Constitution were far-sighted enough to opt for a federal set-up, they were not entirely uninfluenced by the then national mood. The Indian Constitution is quasi-federal in nature as it said to possess strong unitary features, including a strong central government which holds crucial emergency powers with the residuary powers. The states are apparently functioning autonomously, but the central government controls them in many ways.

This chapter also deals with the executive branch of government in detail too. It is headed by the President, or Rashtrapati, who is the Head of State and he/she can exercise his or her powers either directly or through officers subordinate to him in accordance with the relevant provisions of the Constitution of India. Rashtrapati cannot exercise his powers directly, with few exceptions, under the authority vested in the President. In practice, however, his powers are exercised by the Council of Ministers, headed by the Prime Minister. The election and functions of Rashtrapati have been given in detail in the relevant part of the thesis. In India, real executive is the Council of Ministers, led by the Prime Minister or Pradhan Mantri, as the chief of government. The Constitution provides for the presence of a Council of Ministers in the executive branch of government of India. He is head of the Cabinet, also acting as a liaison between the legislative and executive branches of government. The Cabinet, composed of the principal members of the Council of Ministers, heads the bureaucracy and supervises all the actions of government. The relationship between the President as Head of State and the Prime Minister as head of the government is crucial to successful working of a parliamentary democracy. Other central government executives are also mentioned in detail in this chapter.

Indian republic consists of 28 states and 7 union territories (UTs) with a parliamentary system of democracy placed in each one of them. Details of states and state legislatures and state executives have also been discussed in this chapter. In the Constitution, powers have been divided into three lists: the
Union list (97 subjects), the state list (66 subjects) and the concurrent list (47 subjects).

An independent judiciary is essential for any form of government. Constitution of India has provided a Supreme Court which is the highest court in the country to act as the guardian and can declare any law or order as unconstitutional or *ultra-vires* if it contravenes any provision of the Constitution. The Supreme Court also ensures that the central and the state governments operate within the areas assigned to them in the Constitution. The Supreme Court interprets the Constitution and ensures that all legislation conforms to the Constitution. The Indian Constitution also gives the Court the power to supersede the authority of Parliament in deciding the constitutionality of legislation. The purpose of instituting a Supreme Court for interpreting laws at the centre was to promote national unity of the country. The active role of the Supreme Court of India has been widely appreciated both within as well as outside India. The independence of the judiciary ensured through constitutional provisions, and subsequent strengthening by judicial interpretations, definitely contributed to the present status of the Indian judiciary. It is an un-denying fact that an independent and impartial judiciary is *sine qua non* in any system of governance, particularly in a democratic dispensation and in any civilized society whose constitutional goal is to establish an egalitarian social order and a welfare state, even-handed justice has been a cherished ideal since the dawn of the civilization. Indian judiciary had shown the courage and strength of the court by delivering many bold decisions. For example, in the famous 1967 case of *Golaknath v. State of Punjab*, the Court ruled that Parliament could not curtail any of the fundamental rights provided in the Constitution, and others like, *Kesavananda Bharti* case, *Bank Nationalization* and *Abolition of Privy Purses* cases. (For details of cases refer to chapter four)

The history of Indian judiciary has been characterised by manifold attempts to fulfil this responsibility, albeit with some aberrations motivated by misplaced
social perspective, excessive pursuit of activism or plain subjugation to political authority. In this context- the attempts to evolve a people oriented sense of responsibility as well as the aberrations- does make a strong case for judicial co-governance and this is the reason why there is a continuing need to keep a watch over the judiciary. An analysis into the working of the three organs of a government and the relations between them is to be done with great care and experience in the Indian scenario so that it gives a clear idea about the doctrine of judicial independence and its importance in the Constitution. These comments referred to above have also been examined in the thesis.

In the second chapter, attention is given to understand the issue of governance, with the emphasis on good governance and performance appraisal of government. We have also analysed the new trends and developments that have been taking place in the structural functional performance of the government of India in this part of work.

The concept of governance has acquired exciting and intense importance in the ongoing discussions on international relations and international law. There are two principles; international human rights law and international development, in the area of international law. One field, international human rights law, has provided some democratic norms which must be followed by the international community in their interactions with each other. Governments which fail to follow these standards are often considered as illegitimate. However, the issue of the proper functioning of government is a very old and familiar one within the discipline of international law. Governance applies to several contexts: international governance, and national, regional or local governance as well as corporate governance. The issue of good governance and the role of judicial activism have a huge impact in a democratic political system like that of India.

The thesis has a separate sub-heading titled ‘National Value Perspective’ in order to comprehend the phenomenon of national values. These values in the
Indian context at the time of the inauguration of the Republic were those of nationalism, democracy, secularism, non-alignment and mixed economy.

The term governance also evokes notions of transparency, accountability and the rule of law. The term has come into use in this way precisely because the coercive power and regulatory authority of the sovereign state is being called into question. Good governance is a concept that has recently come into regular use in political science, public administration and, more particularly, development management. It appears alongside such concepts and terms as democracy, civil society, popular participation, human rights and social and sustainable development. In the last decade, it has been closely associated with public sector reforms. Within the public management discipline or profession, it has been regarded as an aspect of the New Paradigm in Public Administration which emphasises the role of public managers in providing high quality services that citizens value; advocates increasing managerial autonomy, particularly by reducing central agency controls; demands, measures and rewards both organisational and individual performance; recognises the importance of providing the human and technological resources that managers require to meet their performance targets; and is receptive to competition and open-minded about which public purposes should be performed by public servants as opposed to the private sector.6

Good governance would improve the management of public resources, like the government treasury, the Reserve Bank of India, public sector enterprises, revenue and expenditure, public distribution system, law and order machinery, and the overall administrative machinery. Since the failure of the socialist economies, the thrust is on the role of the private sector. This stems from the realisation that entrepreneurial capabilities are basic to individuals and organisations, and cannot be replicated by a single entity i.e., the government. Some of the biggest capitalist economies of the world have raised the standards of living of their people by using the entrepreneurial abilities of individuals and
organisations, and raised more revenues for the governments, which would enable them to administer even better. Most communist countries are also doing just that. This focus requires the government to develop and maintain a regulatory environment that is conducive to efficient private sector activities. Creation of physical and human infrastructure that would facilitate continuous and sustainable economic and social development by entrepreneurs in the society is a must for good governance.\(^7\)

According to the Human Rights Initiative, good governance has eight major facets. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law. It is assessed that if corruption is minimised, the views of the minorities and vulnerable members of society are heard, that promotes governance. Good governance is an ideal which is difficult to achieve in its totality. However, to ensure sustainable human development, action must be taken to work towards this ideal. The details of these eight facets have been discussed in separate subheadings in the chapter. (See chapter two for details)

Performance appraisal of government, that is the second part of the chapter two, has been attempted to accumulate in different sub-headings namely; Securing Justice, Threats to Peace, Access to Justice, Rule of Law, Empowerment, Employment, Regional Diversity, Delivery of Services, Administrative Responses and Capacity Building. These are the parameters through which the performance of the government of India in promotion of good governance has been examined in this chapter. Good governance has been an eternal challenge to rulers since the emergence of the state, irrespective of its nature, structure and form. It is a dynamic concept in the contemporary world; good governance is associated with efficient and effective administration in a democratic framework. Simply put, good governance envisages a responsive administration that is citizen-friendly.\(^8\)
The third chapter deals with the issue of parliamentary versus judicial supremacy in a theoretical framework. This issue, in India, has acquired a particular place in between the British sovereignty of parliament and American judicial supremacy. British Parliament is supreme and sovereign. There are absolutely no limitations on its powers, at least in theory, because there is no written Constitution, and the judiciary has no power of judicial review of legislation. Whereas, in the US, the Supreme Court with its power of judicial review and interpreting the Constitution has assumed supremacy.

In India, the Constitution has chosen a middle course and a compromise between the parliamentary sovereignty of UK, and judicial supremacy of USA. India has the longest written Constitution, and powers and functions of every organ are defined and delimited by the Constitution, there is no question of any organ- not even Parliament- being sovereign.

The issue of parliamentary versus judicial supremacy surfaced again when many innovative judgement of the Supreme Court ignited the debate. The Kesavananda Bharti case which introduced the ‘basic structure’ concept motivated the controversy of the parliamentary versus judiciary supremacy. The details with relevant cases have been given in this chapter.

It has been often referred to the Constitution of UK having an ‘unwritten constitution’ but that is not exactly true. It may not exist in a single text, like in the USA or India, but large parts of it are written down, much of it in the laws passed in Parliament - known as Statute law. Over the years, Parliament has passed laws that limit the application of parliamentary sovereignty. These laws reflect political developments both within and outside the UK. Therefore, the British constitution is often described as ‘partly written and wholly un-codified’. Parliamentary statutes in the United Kingdom are the supreme law of the land. Parliamentary sovereignty is important in the United Kingdom because it reflects fundamental constitutional values and how the law has
evolved since the 17th century. The American approach is less rigid in comparison to its British counterpart – the law can be allowed to develop within a changing society by allowing citizens the right to challenge a law, keeping within the boundaries of the constitution, similar to the ‘natural law’ professed by 17th century judges. The doctrine of parliamentary sovereignty means that the legislative body is not subject to judicial review by a court. And the doctrine of judicial supremacy holds that an Act or Statute passed by legislative body may be declared unconstitutional by the court if it is not competent with the constitution as in the United States and France.

The Indian constitution has struck a balance between parliamentary and federal features, simultaneously. The roots of the present problem of having to decide between parliamentary sovereignty and judicial supremacy in a federal set-up can be traced to the design of the Constitution of India. Just as the Indian parliamentary system differs from the British system, the scope of judicial review power of the Supreme Court in India is narrower than that of what exists in the US. This is because the American Constitution provides for ‘due process of law’ against that of ‘procedure established by law’ contained in the Indian Constitution. Therefore, the framers of the Indian Constitution have preferred a proper synthesis between the British principle of parliamentary sovereignty and the American principle of judicial supremacy. The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review. The Parliament, on the other hand, can amend the major portion of the Constitution through its constituent power. These conflicting postures have been covered in this chapter with the relevant case examples and constitutional provisions of the country.

Fourth chapter starts with the concept and historical background of judicial activism. We deal with the concept, definitions, and first recorded use of judicial activism under various sub-headings. The doctrine of judicial activism, starting in USA, rests on the conviction that the federal judiciary should take an
active role by using its power to check the activities of Congress, state legislatures, and administrative agencies when those governmental bodies exceed their authority. One of the Supreme Courts’ most activist eras was the period from 1953 to 1969, when the Court was headed by Chief Justice Earl Warren. The Warren Court propelled the civil rights movement forward by holding, among other things, that laws permitting racial segregation violated the equal protection clause. The most striking example of a successful ‘activist’ decision is probably Brown v. Board of Education, which held public school segregation unconstitutional. (See chapter four for case details)

This chapter also makes an attempt to bring out the various connotations of judicial activism and to find out its effects on today’s changing society. The first use of the term judicial activism to attract substantial attention from the public occurred in ‘Fortune’, a popular magazine, in an article meant for general addressees written by a non-lawyer, Arthur Schlesinger Jr., in January 1947.

Judicial activism, as some people contend, the practice of judges ignoring the law and deciding cases based on their personal political views and public policy preferences, has been a problem in America since well before the United States Supreme Court invented a right to abortion in Roe v. Wade. (See detail in chapter four). In recent decades, many federal judges have tried to become de facto legislators, substituting their self-presumed wisdoms for the will of the people’s elected representatives and Senators in the U.S. Congress. Prasad, in Indian context, explains that Justice Syed Mahmood, the first Indian Judge of the Allahabad High Court (formerly NW Province High Court), expounded that law as a science would be unworthy of the name, if it did not, to some extent, provide the means of preventing the mischief of improvidence, rashness, blind confidence and credulity on one side, and skill, avarice, cunning and a gross violation of the principles of morals and conscience on the other. Thus, going beyond the textual confinement of law, he held in the ease of Queen Emperor
v. Pohpi and Others, that an appeal under section 420 of the Code of Criminal Procedure could not be disposed of in the absence of the accused, and the appellant must be heard in person. This chapter deals with judicial activism and judicial review with an overview of controversial court cases, and where the whole idea of judicial activism comes from. These are Brown v. Board of Education, Cooper v. Aaron, etc. The principle of judicial review was further elaborated and justified in one of the most famous US Supreme Court decisions, Marbury v. Madison, when parts of the Federal Judiciary Act of 1789 was declared unconstitutional. Chief Justice John Marshall, on behalf of the Court, noted that, ‘the Constitution organizes the government, and assigns to different departments their respective powers’.

In India, the judgement of Kesavananda Bharati case which is popularly known as, ‘the fundamental rights case’ was an innovative decision of the Supreme Court of India. It is the basis for the power of the Indian judiciary to review, and strike down, amendments to the Constitution of India passed by the Indian Parliament which conflict with, or seek to alter, the constitution’s ‘basic structure’. The details of these cases and, others of cases like, the Bank Nationalization case and Abolition of Privy Purses case, are elaborated in this chapter in detail.

The fifth chapter is an attempt to analyze the nature and magnitude of judicial activism in India, with necessity and causes, with relevant cases of judicial interventions in governmental work. The framers of the Constitution of India enacted several provisions designed to secure independence of judiciary by insulating it from executive or legislative controls. Due to an independent judiciary, the area of judicial intervention steadily expanded through concepts of judicial activism, public interest litigation etc, in India. People regard it as a cause for concern because through judicial activism the courts have played the role of legitimizing and channelling various movements for social change and
social justice. Judicial activism in India has been categorised into two periods; one is pre-emergency (1975-77) period and the other is post-emergency period.

Judicial activism prospers in India through Public Interest Litigations (PILs). According to the concept of PIL, anyone can file cases on behalf of aggrieved groups or aggrieved persons. This is contrary to simple case filing where a person files a case when something wrong happens with him. Public interest litigation has gained great importance and is being used frequently. The traditional rule of ‘Locus Standi’ that a person, whose right is infringed alone can file a petition, has been considerably relaxed by the Supreme Court in its recent decisions. Now, the court permits public interest litigation at the instance of public spirited citizens for the enforcement of constitutional or legal rights. Now, any public spirited citizen can approach the court for a public cause by filing a petition. This chapter contains all the above discussed procedures and concepts in detail.

Causes of Judicial Activism have also been evaluated carefully in this chapter. The essence of true judicial activism is delivering justice which is in tune with the tempo and time. It furthers the cause of social change or articulates concept such as liberty, equality or justice. It has to be an arm of social revolution. An activist judge activates the legal mechanism and makes it play a vital role in socio-economic process. The main causes for the emergence of judicial activism is the expansion of the right of being heard in the administrative process, excessive delegation without limitation, expansion of judicial control over discretionary powers, expansion of judicial review over administration, promotion of open government, indiscriminate exercise of the power of contempt, exercise of jurisdiction when it does not exist, over extending the standard rules of interpretation in its search to achieve economic, social and educational objectives and passing of orders which are unworkable.
Indian courts have a tendency of filling the gap by moving in where the executive branch or the civil servants fail to perform their duties. In many such cases, the apex court has issued orders on different occasions. For example quite recently the Supreme Court suggested/ordered the government to distribute food grain under public distribution system policy to the poor instead of letting it rot inside warehouses. In this chapter, exemplary cases of court interventions have been described in detail.

The Supreme Court has delivered many judgements keeping in mind the environment and clarifying that development should not take place at the cost of environment. The judiciary took the position that as such there is no conflict between the development and environment. Conflicts developed between them because the process of development has not been conceived keeping in view the question of environment, which is certainly an issue of equal significance. Details of the cases related to environment have been discussed in this chapter. The judiciary has always played a pro-environment role in India. For this purpose, it interpreted the right to a clean environment as a fundamental right.

Judicial activism has proved to be a very important tool in the field of gender jurisprudence. There is universal gender jurisprudence applicable to India too and beneficial to Indian women, consisting of international instruments, Indian statutes and case-law which are judicially binding too. The issue has been presented supported by examples of important cases. The Indian judiciary has taken an active role in protecting the human rights of women and in maintaining gender equality. Women often find it more difficult than men to access the justice system. This may be the result of discriminatory norms and practices within the justice sector and society as a whole; or it may reflect inadequate training or a lack of awareness by actors within the justice sector. It may be a function of the generally low level of literacy among African women and their consequent challenges in accessing information and institutions that are mediated by unfamiliar, albeit official, languages. It may also be because
women are less aware of their rights under the law, or that the crimes and threats to which they are exposed are not prioritized by law enforcement actors. The debate about judicial activism contemplates judges assuming legislative or executive functions. But the judges are the least influential and impacting of the three branches of government.

Judicial activism has also played an important role in safeguarding the common people and weaker persons of the society who are prone to be victims of injustice or ignorance. Therefore, judicial activism has definitely helped in promoting good governance in India. In other words, it has indeed proved to be a boon to the victims of arbitrary, illegal and unconstitutional actions of state as well as of public servants. Through the tool of PIL, Supreme Court expanded the interpretational meaning of the fundamental rights. The right to life and personal liberty was elevated to the status of fundamental rights, which could not be abridged, defeated or taken away by the State. In the Indian democracy where fragmented socio-cultural population lives together, only an active judiciary can protect the rights and liberties of minorities and weaker sections of society, by erecting a few checks points on activities of the other branches of government.

Scope of the present thesis is to conceptualize and to analyse judicial activism (as practiced by Supreme Court in India) and the problem of government in India. While writing the thesis, we do not acknowledge any difference between judicial activism and judicial hyper activism. This thesis is largely based on historical, descriptive and analytical approaches. An attempt has been made to follow uniform mode of citation throughout the thesis.
REFERENCES:

8. E. Vayunandan & Dolly Mathew, op. cit., p. 46.