

FACULTY OF JURIDICAL SCIENCES

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Lecture-31



the Importance of Independence of Judiciary

In ancient times much attention was not paid towards the independence of judiciary and the monarchs wielded executive, legislative and judicial powers. Later on it was realized that it did not ensure full justice. Bodin and Montesquieu emphasised the independence of judiciary. Today in all democratic countries, the independence of judiciary is considered essential so that the fundamental rights of the people are protected.

That is why in democratic countries, judiciary is considered the guardian of the freedom of the people and also of the constitution. In countries, where there is no democracy, the judiciary is not free, and the fundamental rights of the people are not protected. This is the position in Spain, Portugal, Russia, China and other Communist countries.

Thus independence of judiciary is essential for the protection of the freedom and the rights of the people. Bryce has rightly said, "There are no better test of excellence of a Government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen than his knowledge that he can rely on the certain and prompt administration of justice".

Bryce has further said, "Law is respected and supported when it is trusted as the shield of innocence and the impartial guardian of every private civil right....if the law be dishonestly administered, the salt has lost its flavour, if it be weakly or fitfully enforced, the guarantees of order fail if the lamp of justice goes out in darkness, how great is that darkness.

Therefore, the judiciary is regarded as the guardian of the rights and freedoms of the people and also of the constitution. In many countries the judiciary is the adviser to the executive in legal matters.

Bryce says, "The significance of Judiciary is emphasized by Marriot who observes, 'It matters not how elaborate the machinery of legislation may be, how scientific the product, how perfect the organisation of the executive, the life of individual citizen may nevertheless be rendered miserable, his person and property will be alike insecure, if there be any defect or delay in the administration of justice or any partiality or ambiguity in the interpretation of law'".

Garner also observes: "A society without legislative organs is conceivable and indeed, fully developed legislative organs did not make their appearance in the life of the state until modern times, but a civilized state without judicial organs is hardly conceivable". Thus the judiciary is essential. In the absence of judiciary the thieves, dacoits and other tough people will usurp the property of the gentry and of the weak persons through force and violence.

There will be widespread injustice in the society. Therefore, the judiciary is essential for maintaining peace and imparting justice, and also for the enjoyment of fundamental rights.

Major Functions of Judiciary

Some of the major functions of judiciary are as follows:

(1) It interprets the laws:

A number of cases are brought before the judges in which the question of the interpretation of the laws arises, because in such cases the law is not clear. Even such matters are brought before them in which the laws are silent. In these cases or matters the judges give their decisions. Later, these decisions are quoted in similar cases. In this way the courts expand the laws in an indirect manner.

(2) Protector of Civil Rights:

People are given many rights by the state through the laws of the Parliament. The courts protect these rights.

(3) Decides the cases:

Many cases relating to the disputes between the citizens, or between the government and the citizens, are brought before the courts. The courts give their decisions on such disputes.

(4) Custodian of fundamental rights:

In modern times, many countries grant fundamental rights to the people in the Constitution. The Supreme Courts there act as the custodian of these rights. In the Constitution of our country, citizen violates these fundamental rights or if, because of this violation, a person loses his rights, an appeal can be filed in a High Court or the Supreme Court for the protection of these rights. It is the duty of the courts to protect the rights of the citizens. Our High Courts and Supreme Court have decided many cases in which the question of the violation of the fundamental rights was involved.

(5) Guardian of the Constitution:

Chief Justice Marshall of U.S.A. definitely decided in *Marbury v. Madison* (1803) that the courts had the inherent right to declare the acts of Congress invalid. Since then *Marbury* case forms the basis of this important authority exercised by the Supreme Court.

If a law passed by the Congress violates the Constitution, that law shall be declared as void because the Constitution is the highest law of the land and it is the duty of the courts to protect it. The principle which was devised by Chief Justice Marshall is known as Judicial Review. For the protection of the Constitution many laws have been declared illegal which violated any law or any clause of the Constitution.

(6) Decides the conflicts of jurisdiction between the Centre and State Governments in Federations:

In federal constitutions there is a division of powers between the Centre and the States. There is a possibility of disputes arising between the Centre and the State over the jurisdiction. Therefore, the Supreme Court is given the right to decide these disputes.

(7) Advisory:

In India, the Supreme Court has been given, the right in the Constitution to render advice on Legal Matters when asked for by the President. Our late President Dr. Rajendra Prasad sought advice of the Supreme Court on the Kerala Education Bill. The Supreme Court advised that the Bill contained certain clauses which violated the Constitution.

Dr. Rajendra Prasad refused to give his assent to the Bill and returned it with his objections. Later, the Kerala Legislative Assembly removed all the objections and the President gave his assent. The Supreme Court recently (on 24 October 1994) for the first time rejected the Presidential reference.

(8) Miscellaneous functions:

The Court appoints Trustees or guardians of the property of minors. It gives approval of Civil Marriages. It appoints receivers of the companies which are Unable to meet their financial obligations. It also performs the act of the registration of Wills. It issues certificates for the grant of naturalised citizenship. In some countries it issues licenses. In our country, appeals relating the elections are also sent to High Courts.

MCQ

1. What is the minimum age for holding office in the Lok Sabha?

A. 18 Years

B. 21 years

C. 25 Years

D. 30 years

2. A motion of no confidence against the Government can be introduced in:

A. Rajya Sabha

B. Lok Sabha

C. Both A & B

D. Neither A nor B

3. How many sessions of the Lok Sabha take place in a year?

A. 2

B. 3

C. 4

D. 5

4. Which of the following are not sessions of the Lok Sabha?

A. Budget Session

B. Monsoon Session

C. Summer Session

D. Winter Session

5. The budget is also known as:

A. Annual Financial Statement

B. Monthly Financial Statement

C. Receipt and Expenditure Statement

D. Taxation Statement