UNIT-18 GOVERNMENTAL INSTITUTIONS: TOWARDS REFORMS

Structure

18.0 LEARNING OUTCOME

After reading this Unit, you will be able to:

- Examine the case for reforming the legislature, political executive and judiciary ; and
- Discuss the various reform measures suggested by the different committees and commissions to bring about changes in these governmental institutions

18.1 INTRODUCTION

We in India have adopted the parliamentary system of government. In this system, the Parliament is the supreme body as it is vested with the governmental authority of the country. It consists of two Houses, namely, Lok Sabha and Rajya Sabha. The Lok Sabha is the Lower House consisting of the elected representatives of the people. The Rajya Sabha is the Upper House, also known as the House of Representatives from the states. The Lok Sabha is more powerful, as it enjoys financial powers.

The members of various political parties who win the elections are the members of the Parliament. The political party, which gets the majority in the Parliament, forms the government, that is, the political executive and stays in power till it enjoys the confidence of the Parliament. The executive has to place all the bills before the Parliament for its approval. Bills can be placed in either House but the financial or money bills can be presented only in the Lok Sabha. Bills become laws after being passed by both the Houses of the Parliament, and after getting the President's assent.

In the parliamentary system, the political executive is made up of Council of Ministers with Cabinet forming the top rung. Then there are state ministers and deputy ministers. The Cabinet is headed by the Prime Minister. There is a Prime Minister's Office, and also a Cabinet Secretariat to aid and assist the Prime Minister and the Cabinet respectively. There is a permanent executive or the civil servants as well, which plays an important role in policy making. It assists the political executive

with necessary information and expertise, and provides details to the political executive in the formulation and evaluation of policies, delegated legislation, ordinances etc. We have discussed the role of the permanent executive or the bureaucracy in Unit 12 of this Course. Over here, we will only highlight the need for reforming the political executive.

There is also the judiciary, which is the guardian of justice and law. It protects the Fundamental Rights of the citizens. The Supreme Court is the apex court in the country performing significant role of balancing the relation between the Union and the state/s. It has the power of Judicial Review by which it can review the validity of the laws enacted by the Parliament. It is the interpreter of the Constitution and any policy that violates the spirit of the Constitution is declared null and void by it. It can also issue directions and orders to the executive and legislature on matters of public interest. Besides the Supreme Court, there are high courts in the states, and district and sessions courts at the local level.

The Constitution has, thus, provided a separate and independent jurisdiction to these governmental institutions. At the same time, it has provided checks and balances through various Articles and sub-clauses to prevent these institutions from overstepping or misusing their powers. However, time and again, one finds that these bodies have not performed as desired and have violated the spirit of Constitutional democracy. In this light, this Unit will assess the need for reforms in these governmental institutions. An attempt will also be made to throw light on the problem areas, and examine the steps that could be taken for reforming these key institutions.

18.2 LEGISLATIVE REFORMS

Legislature represents the people's will in a democracy. It is, therefore, necessary that the real and genuine representatives of the people are selected by the political parties and then elected by the people on the basis of a free and fair voting system. This is with regard to the formation of the legislature. The legislature needs to function in such a manner that its rules and procedures as well as its policies and legislations duly reflect people's expectations.

We will discuss certain pertinent issues connected with the legislative system in India and the measures that can be taken to reform it. These reforms aim at making legislators professional and more accountable, and the whole system responsive to the people of the country. Criminalisation of politics is playing havoc with the governance processes. Hence, reforms are necessary to break the strong nexus that exists between the politicians and criminals. We find members with criminal antecedents entering the election fray and getting elected to the legislative bodies. Some reforms could be initiated to change the scenario. These are:

State Funding of Political Parties

State funding of political parties and elections is a significant step in the direction of reforms. This can weaken the nexus between electoral expenditure and criminalisation of politics. It has to be accompanied by a proper maintenance of accounts of the party funds and their systematic audits. Khandwalla (1999) points out that state funding to the registered political parties can be in the form of maintenance subsidy and electioneering expenditure. The funds may cover establishment costs, costs of grass roots work, training of cadre, media costs, and costs of organising meetings and rallies. Funds may be provided through Election Commission. It is required of the political parties that they maintain accounts, get them audited, and file the audited

accounts with the Election Commission, so that they are then open to public scrutiny. It is also necessary that political parties elect party office bearers in a democratic and transparent manner, and put up their election candidates in the same way. They have also to disclose donations and contributions received. All this will restrict criminalisation and provide for greater financial transparency and intra-party democracy.

Representative Legislature

The legislature as the supreme policy making body is expected to represent the interests of the people. The legislators sometimes do not reflect the preferences of the people. The one who is elected may not even have a majority when the contest is multi-cornered. Even if a candidate gets a majority, the representation is faulty because a very visible minority still goes underrepresented *(ibid.)*. Sometimes the party getting two-thirds majority may not represent the votes of various states, regions, and communities. It may just have the majority from particular places and particular communities. Thus, when such a party forms a government, and tries to bring changes, then democracy gets respected only in letter, and not in spirit.

Presently, the number of candidates contesting elections per constituency is increasing. This is leading to fractured votes. Earlier, this was not the case, because the number of candidates was limited to three or four from each constituency. Today, we have 15-20 contestants from a parliamentary seat. Thus, preferences of a majority of the electorate are not represented. It gets divided into the large number of contestants. Moreover, there has been a rise in the regional parties contesting elections. Thus, the chances of one party getting a full majority have declined. For instance, in the 9^{th}, 10^{th}, 11^{th}, 13^{th}, and 14^{th} general elections, no single party managed to get the majority because the votes always got divided between multiple political parties.

In such a situation, coalition government can be considered the need of the day. Based on the principles of consultation and consensus, it is said to provide a fairer representation. There can be a provision of rotation for the post of Prime Minister and Cabinet. We have had coalition governments in India for the past decade and the trend is likely to stay. Proportional representation, as Khandwalla suggests, can also be an appropriate step. Under such a system, each constituency will elect not one but more than one legislator depending on the size of the constituency. So each political party can put up more than one candidate from one constituency, and there will be more than one winning candidate as per the number fixed for each constituency. The winning candidates will reflect the preferences of the voters. So in case a constituency is required to elect three candidates, then the top three candidates with highest number of votes from the entire list of candidates of the constituency will go to the legislature. Thus, instead of one, three candidates will get a chance to become legislator, and they will reflect the preferences of majority of the voters from the constituency.

Stable Coalitions

The Indian political scene is presently characterised by coalition governments. Coalitions are formed in a situation when no party gets a full majority to form the government single-handedly. Hence, different political parties get together form groups in order to weave a coalition government. But, this formation sometimes gives rise to instability in the government. The members of the coalition have their individual ideologies and self-interests, which often clash with each other. The leader of the government has to work more towards pacifying and appeasing the allies, than focusing on the development policies. In case, where the interests of the allies are not met, the allies withdraw their support from the coalition. This results usually in the falling of the government.

To stabilise coalitions, all defections and splits should be avoided. For this purpose, all grey areas of Anti-defection Act should be removed. In case any party pulls out of the coalition without genuine reason, legal action should be taken. The coalition should work on the basis of consensus and mutual consultation. Coalition government should draw up a Common Minimum Programme and every member should work towards it in the larger interest. We have now the example of National Democratic Alliance (NDA) that has completed its full term as coalition. Perhaps this could set an example for future coalition governments.

Khandwalla (*op.cit.)* suggests that there should be a system of recognition and reward for the politicians who show achievements. Those who are punctual in meetings, and attendance, those who render effective suggestions, and those who work efficiently, should be duly appreciated. Equally, there should be some disincentives for those not attending the House regularly. Fines should be imposed for misconduct. There can be a panel of senior legislators, jurists, and citizens to perform a qualitative audit of the work of Legislative Committees.

Responsive Parliamentary Procedures

The National Commission headed by former Chief Justice M. N. Venkatachaliah, that was set up in 2000 to review the working of the Indian Constitution. It came up with several recommendations to improve the working of the legislature, executive and judiciary. It observed a decline in the quantity and quality of the work done by the Parliament and state legislatures. The number of days on which the houses sit to transact legislative and other business has come down very significantly. It drew attention to the falling standards of debate, and discussion, frequent adjournments, erosion of moral authority and unseemly incidents. It suggested that the Parliament has a decisive role to play if it wishes to continue as a representative, responsible, and responsive institution to the citizens. Parliament can play this historic role only if it consciously reforms its procedures and prioritises its work methods.

The Vohra Committee commonly know as the Ethics Committee also came up with many suggestions to reform the governmental institutions. It expressed its serious concern over the increasing trend of disorderly proceedings in the legislature. Behaviour of some of the members inside the House leads to interruptions of its proceedings. The unruly behaviour of some of the members put an avoidable financial burden on the national exchequer, which our economy can ill-afford. The Committee called upon the leaders of the political parties to cooperate effectively with the presiding officers of the legislature in enforcing discipline. They should enthuse their members to faithfully adhere to the norms of discipline and decorous behaviour in the House.

The Ethics Committee viewed that government has to be more responsive and accommodating towards the opposition in allowing it to raise matters of urgent public importance in the House. Equally, the opposition in turn has to be aware of its responsibility to ensure that proceedings in the House are conducted uninterruptedly in accordance with the rules, established procedures, and conventions of the House.

Strong Committee System

The National Commission recommended the strengthening of the Committee System of the Parliament. The most important of Committees of the Parliament are the Departmental Standing Committees. They are set up to provide the Parliament with the wherewithal to handle complex economic and social issues with competence and sophistication. It is in these Committees that the demands for grants of the ministries and departments can be examined in depth in an atmosphere of objectivity and freedom from partisan passions. It is here that the legislative proposals of the

government can be scrutinised to ensure their consistency with the policy objectives and their suitability to serve the societal goals. But, more energy and effort would have to go into the task of making these Committees work. Given the enormous importance of these Committees for the effective functioning of the Parliament, it is obvious that conscious, coordinated and sustained reforms of the Committee system need to be taken up. The National Commission therefore recommended:

- Streamlining of the functions of the Parliamentary and Legal Affairs Committee of the Cabinet
- Making more focussed use of the Law Commission
- Setting up of a new Legislation Committee of Parliament to oversee and coordinate legislative planning; and
- Referring all bills to the Departmental Parliamentary Standing Committees of the Parliament for consideration and scrutiny after public opinion has been elicited and all comments, suggestions and memoranda are in.
- Rescheduling of public hearings, if necessary, and finalising with the help of experts the second reading stage of the bill in the relaxed Committee atmosphere.

18.3 REFORMING THE POLITICAL EXECUTIVE

The scene at the political executive level is of growing corruption at the ministers' level, which has led to the decline in the values of governance. The ministers are found to be involved in kickbacks, embezzlement, and frauds. There is increasing criminalisation in the executive as some of its members come from a criminal background. In a coalition, the political executive remains under constant fear of withdrawal of support by the allies. Also, the political executive finds it difficult to function due to non-cooperation and walkouts by the opposition in the House. Then there are demands of the civil society that exert pressure on the executive constantly. In such a situation, it is essential to take some revamping measures:

Educational Qualifications for Legislators

Legislators should have a basic knowledge of current affairs. Hence, as Khandwalla *(op.cit.)* suggests, they should have minimum educational qualifications, such as a graduate degree to contest parliamentary elections, matriculation to contest assembly elections, and primary school education to contest local elections. This will make way for literate and informed candidates to the legislature. Once they are elected, training should be imparted to them regarding their duties and responsibilities; entitlements, and rights; Constitutional provisions; working of the government; legislative process; legal procedures; and important political, social, economic institutions-agencies. A National Training Academy can be set up for this purpose. It could inculcate professional work culture in the legislators. Besides, they have to be made professionally competent to use Information and Communication Technology (ICT) to assess the performance of government, gauge people's needs and interests, and provide effective services to them.

Norms for Elected Candidates

According to the National Commission, the parliamentarians must voluntarily place themselves open to public scrutiny through a parliamentary Ombudsman, supplemented by a code of ethics. The Ethics Committee suggested the imposition of one or more of such penalties as censure; reprimand; suspension from the House for a

specific period; and any other penalty considered appropriate by it to ensure ethical conduct by members.

Further, while recommending for a better and more institutionalised arrangements to provide professional orientation to the newly elected members, the National Commission called for preparing effective curriculum that should include, among other things, adequate knowledge of the: political system, Indian Constitution, rules of procedure and conduct of business, practices and precedents, mechanisms, and modalities of working of the Houses and Parliamentary Committees, rules of parliamentary etiquette, and, what is even more important, unwritten rules of parliamentary conduct and speech. The emphasis, the National Commission felt, should be on imparting practical knowledge and skills on how to be an effective member of the legislature.

Candidates of criminal background should be barred from contesting elections as per the National Commission. Today, as high as forty per cent of legislators have criminal records. Candidates with criminal cases against them should be asked to furnish their antecedents before the elections. Fortunately, now the Supreme Court has upheld the right of people to know about the antecedents of the electoral candidates so that they are able to make the right choice. This right has been inserted in Article 19(1)(a), as the right to vote is a part of right of freedom of speech and expression of the people. Because of this right, a citizen is entitled to know the antecedents of the candidates so that he can make a proper choice.

The Supreme Court in its ruling has also barred the convicted legislators from contesting polls. In its ruling, it has stated that appeal against conviction is irrelevant and inconsequential. If, on a given date of filing nomination, the conviction existed, then a person, whether he was a sitting MP/MLA or not, would be debarred from contesting the polls. A subsequent decision in appeal or revision setting aside the conviction or sentence or reduction in sentence would not have the effect of wiping out the disqualification which did exist on the date of filing of nomination. Under Section 8(4) of the Representation of People Act, sitting MLAs and MPs, if convicted and sentenced to more than two years imprisonment during their tenure, can continue if their appeal against the order of conviction is pending with a higher court and if the sentence has been stayed (*The Hindu*, Jan 12, 2005). This will ensure better candidates to the legislature as well as greater transparency, integrity, and accountability on the part of candidates.

Anti-defection Measures

Legislators get votes from the people on the basis of the party they contest from. But what is seen is that they defect after the poll results. This switching of party membership is a major factor behind destabilising governments. Defection depicts the lack of ideological and social commitments, and also deterioration in values of the members. This also amounts to betrayal of the sentiments of people.

The new Anti-defection Act passed in 2004 was seen as a sign of relief. But sooner, there emerged certain grey areas, as the defiant members have rarely been punished. The Act refers to the Tenth Schedule of the Constitution, which lays down that an elected member of the House is a member of the party, which fields him as a candidate for the elections. But he ceases to be a member of the House if he votes or abstains from voting in contravention to the direction of the party on whose ticket he contested and won the election. He has to seek prior permission of the party authority to abstain from voting or indulge in negative voting. In case he does not, the defiance has to be condoned by the party within fifteen days from the date of voting to prevent the disqualification of the defiant member. Again, those members who join any other

political party after their election shall also be disqualified from the membership of the House.

Hence, members have to be guided by the party leader in the party. No member can go against party leadership or decision. But this did not happen in the case of Jharkhand. The elections to the state assembly called for a hung house. Both the NDA and United People's Alliance (UPA) staked claims to form the government. But both these parties had a common name in the list of supporters submitted to the Governor. What transpired was that while the member gave his support to the NDA, his party leader gave a letter of support to the UPA. The member acted in contravention to his political leader. Here is where the Anti-defection Act was rendered ineffective. The Speaker should have disqualified the member immediately to give effect to the Act (*The Hindu*, March 13, 2005).

The National Commission was of the opinion that almost everyone dealing with this subject agree that defections flout people's mandate and cannot and should not be permitted, neither singly nor in a group. The fact is that most candidates get elected on the basis of the party that has given them a ticket. Defections allow these candidates to theoretically go to the polls against the very party they contested from, which is not the basis on which people elected them. Simply because no accountability *vis-à-vis* the people is ever felt, such a practice continues unabated. Defections encourage corruption at the highest levels. Defectors, in fact, are rewarded with political positions and other such privileges so openly that it really makes a mockery of our democracy.

The National Commission recommended that the provisions of the Tenth Schedule of the Constitution should be amended specifically to provide that all persons defecting - whether individually or in groups - from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections. The vote cast by a defector to topple a government should be treated as invalid. The Commission further recommended that the power to decide on questions of disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.

Code of Conduct

The Ethics Committee called for a Code of Conduct for the members of Rajya Sabha, keeping in view the special needs and circumstances, in the Indian context. The Committee recommended the framework of a Code of Conduct, which prescribes certain dos and don'ts for the members of Rajya Sabha. The members are required to work diligently to discharge their mandate for the common good of the people, and hold in high esteem the Constitution, the Law, the parliamentary institutions, and above all the general public. Members must not do anything that brings disrepute to the Parliament, and affects their own credibility. They must utilise their position as members of Parliament to advance general well being of the people.

In case of a conflict between personal interests and the public trust, it should be resolved in a manner that the private interests are subordinated to the duty of the public office. Members should never expect or accept any fee, remuneration, or benefit, for giving or not giving a vote on the floor of the House, for introducing a Bill, for moving a resolution, or desisting from moving a resolution for putting a question, or abstaining from asking a question, or for participating in the deliberations of the House or a Parliamentary Committee. They should not take a gift, which may interfere with the honest and impartial discharge of their official duties. If they are in possession of any confidential information owing to their being members of Parliament or members of Parliamentary Committees, they should not disclose such information for advancing their personal interests. They should not

misuse the facilities and amenities made available to them. They should not be disrespectful to any religion and work for the promotion of secular values. In all, they should keep uppermost in their mind the fundamental duties listed in Part IV A of the Constitution, and maintain high standards of morality, dignity, decency, and values in public life.

Training and Performance Review

The political executive generally does not have firm grounding in policy making and managerial skills. Most of the members that political executive do not have professional backgrounds that enable them to take strategic decisions. As a result, they are not able to bring technical, economic, and social reasoning into policies. This affects the decision making process. Hence, it is necessary, as Khandwalla (*op.cit.)* observes, to give them training in areas of public policy, analysis, human resources management, financial management, e-governance, and law. They need to be trained in developing a vision and a mission for their ministries. They should be made proficient in goal setting, planning, control, coordination, motivation, communication, and leadership skills. Professional help and expertise from specialists, such as economists, statisticians, scientists, and technologists should also be provided in the policy making process. Likewise, they need to be adept in public relations.

The performance of each minister/department should be assessed annually on the basis of its laid down targets/ goals. Each minister has to propose the goals and targets for the coming year. The Prime Minister and cabinet ministers will examine and assess the minister's performance on the basis of these targets/goals. Such a 'diagnostic review and performance audit' will not only improve the performance, but has also ensure ministerial accountability. The Finance Minister recently introduced 'outcome budget' to set 'measurable' and 'monitorable' physical targets for funds allocated for each plan project under various ministries and departments. Such innovative steps towards reforms need to be encouraged and sustained.

18.4 JUDICIAL SYSTEM: TOWARDS REFORMS

Judicial system in our country is overburdened with a large number of cases. When cases are not disposed in time, justice is delayed. Judges deliberately adjourn, and postpone decisions, hence cases get delayed for years. There has been an increase in judicial activism, which has made the courts more powerful than the executive and legislature. One finds that even the public confidence in the judiciary has decreased in the recent years. Hence, some pro-active reforms have to be initiated to improve the judicial system.

Speedy and Time-bound Disposal of Cases

The Indian judiciary is plagued by many problems. It has more than five million cases pending for judgement because of lack of judges and courts in the country. Hence, it takes years for the existing courts to dispose off the backlog. Further, new cases keep adding on to the existing bulk. Steps have to taken to improve the existing system. Time limit has to be prescribed for arguments. Worthless cases should be dismissed in the initial stage itself. The number of 'appeals' and 'stays' should be reduced. Software should be generated to segregate similar cases, so that a single judgement relevant to such cases can help in disposing all of them in one go without delay. Khandwalla *(op.cit.)* points out that efficient system of grievance redressal should be in vogue in the public and private institutions so that the disputes arising between employees and employers are resolved within the institution. This will

reduce the number of disputes coming to the courts and will enable timely disposal of significant cases.

The Supreme Court gave a ruling to lessen the burden of cases pending with the courts. It observed that superior courts can dismiss an appeal if they are convinced that there is no merit in the case in terms of fact or law, and such an appeal is a wastage of time and money. However, before dismissing appeals, it is necessary that the Court passes an order making it clear that it has deliberated on the pleas and found them devoid of any merit or substance *(The Hindu,* March 25, 2005)

The institution of 'Lok Adalat' or public court has gained importance for the above reasons. Lok Adalats are trying to ensure speedy justice and share the burden of the regular courts. Their decisions are based on mutual settlement and so there is no appeal to the superior courts. The decisions are also binding and have the legal force. There is no court fee and procedural laws are not followed in the strictest sense. The parties to the disputes though represented by their advocate, can interact with the Lok Adalat judge directly and can explain their stand in the dispute and the reasons behind it, which is not possible in a regular court of law. Hence, it is a worthy step to be taken in order to reduce the burden of the courts and ensure quick and cost-free justice.

The National Commission recommended that each high court should, prepare a strategic plan for time-bound clearance of arrears in courts under its jurisdiction. The plan may prescribe annual targets and district-wise performance targets. The high courts should establish monitoring mechanisms for progress evaluation. The purpose is to achieve the position that no court within the high court's jurisdiction has any case pending for more than one year. This should be achieved within a period of five years or earlier.

The National Commission also suggested that the Supreme Court and the high court judgements should ordinarily be delivered not later than ninety days from the conclusion of the case. If a judgement is not rendered within such time, it is possible that the complexities of the case might compel greater and larger judicial consideration and contemplation. The case must be listed before the court immediately on the expiry of ninety days for the court to fix a specific date for the pronouncement of the judgement. This will lead to the quick disposal of cases.

The Seventh Law Commission that was set up under Justice M. Jagannadha Rao in 2003 contemplated that the Gram Nyayalayas could process 60-70 per cent of rural litigation leaving the regular courts in districts and sub-divisions to devote their time to complex civil and criminal matters. With participatory and flexible machinery available at the village level, the rural people will have a fair, quick, and inexpensive system of dispute settlement. Only jurisdiction pertaining to revision on civil matters and that also on questions of law may be left to the district courts.

It suggested an alternative method for bringing down the pendency of cases. It recommended the model of Conciliation Court along with a participatory model where a professional judge interacts with two lay judges and evolves a reasonable solution. In such a case, there would not be any appeal against the decision and only a revision petition will be permissible on questions of law to the District Court.

User-friendly Courts

The privilege of contempt of court enjoyed by the judiciary is almost in negation to the Fundamental Right of Freedom of Speech and Expression enjoyed by the citizens of India. It has been stated that 'the definition of contempt is so elastic and open to subjective interpretation, and the process itself is so unfair that a person charged has little chance of getting away with anything other than an apology' (*The Hindu,* March

10, 2005*)*. Thus, the media and the citizens prefer to stay away from lodging complaints against judges for fear of contempt. Cases of corruption go unreported and the privilege of contempt of court prevails over truth.

The National Commission considered the need to bring about an appropriate change in the Contempt of Courts Act in this area. A total embargo on truth as justification may be termed as an unreasonable restriction. It would be ironical if the courts could rule out the defence of justification by truth. It suggested that an appropriate amendment by way of addition of a provision to Article 19(2) of the Constitution was needed. The amendment should be to the effect that, in matters of contempt, it shall be open to the Court, on satisfaction of the bona fides of the plea and of the requirements of public interest, to permit a defence of justification by truth. Hence, this Act has to be modified and truth has to prevail over the threat of contempt.

The UPA government has moved a bill to modify the Contempt of Courts Act in the public interest. Hence, it is necessary for the judiciary to focus on qualitative judgements than demanding respect under the threat of contempt. The courts have to be user-friendly. Some of the laws that have become redundant should be repealed, or modified. The State of Karnataka has taken first such step to reinvigorate the judiciary by setting a State Human Rights Commission with the courts in every district *(Outlook,* March 21, 2005). The Commission will not only look into matters of violation of human rights but also the provision of civic amenities, health, education, employment, environment, etc. to the people. This is going to help the courts in their extended activity of setting the policies to provide the right to better and dignified life to the people.

Equally, to provide speedy justice to the citizens, the National Commission felt that the system of 'plea bargaining' could be adopted to dispose off a good number of pending cases. An accused can file an application for 'plea bargaining' in the Court in relation to an offence pending against him for trial, provided that the offence is other than an offence for which the punishment of death, or of imprisonment for life, or of imprisonment for a term exceeding seven years, has been provided under the law in force. The application shall contain a brief description of the case including the offence to which the case relates, and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred. 'Plea bargaining' in his case and that he has not previously been convicted by a Court for a similar offence. The proceedings that follow have to be examined in camera and if found not guilty, the victim should be given necessary compensation by the accused.

Judicial Reforms and Accountability

Today, the Indian judiciary has become self-appointing and powerful. The superior courts are not accountable and there are allegations of misconduct against the judges of these courts. There is no system to investigate complaints against judges for deviant behaviour. At the most, the Chief Justice of India can appoint a committee to investigate and report. However, there is no legal sanction to this and the defiant judge may not register such a committee investigating his or her conduct.

The Constitution of India has provided for the removal of the errant judge/s through impeachment. However, the entire process of impeachment is tedious. To set forth the impeachment motion, it is required that the charges levelled should be signed by at least 100 MPs. Again the MPs do not have the power to investigate the charges. Only there are official agencies, which are authorised, but they have to seek written permission of the Chief Justice of India to do so. Recently, as it has been pointed out, the judiciary has opposed any move to come under the purview of the Lok Pal. Even setting up of a National Judicial Commission has been resisted. The judiciary does not want to be accountable to any external or outside independent institution. Thus,

corrupt judges walk away freely. Punishment becomes difficult. So far only two high court judges have been prosecuted on corruption charges, but before they could be impeached they were made to resign (Bhushan, 2005).

Thus, judiciary still remains an elusive institution, keeping itself away from the principle of accountability. There is a need to re-look and re-examine its powers and privileges, and as we have mentioned before, especially vis-à-vis the power of contempt of court. When checks and balances prevail, it is not only judiciary that will keep a check on the misuse of power by other organs of the government, but even the other two organs will reciprocally keep a check on the misuse of power by the judiciary. But it rarely happens. At present Bhushan *(ibid.)* observes that judiciary has culminated into an institution that 'can hold everyone to account and be accountable to none'.

There is a need to set up a body like Judicial Council to look into cases of misconduct and deviant behaviour of judges. The Council will comprise judges and will take actions against a defiant judge. The Council can reprimand the judge, recommend for voluntary retirement, or resignation, and withdraw cases dealt by such a judge. If it considers removal of a judge as necessary, then it sends the records to the Lok Sabha for impeachment. It will also provide opportunity to the defiant judge to defend himself.

Recently, the 'Conference of Law Ministers and Law Secretaries' of different states proposed to set up a National Judicial Commission with the Chief Justice of India as the Chairman, and other Supreme Court Judges, and Chief Justices of high courts as members. The Commission will look into matters of favouritism, partiality, and discrimination on part of the judges, and will also take into account their properties and assets. The Conference also came out with 'Shimla Resolution on Judicial Reforms and Accountability', with an aim to deliver justice to the poor effectively. Such measures will help in making the judiciary publicly accountable, and will act as a deterrent to the misconduct and misbehaviour of the judges (*The Hindu*, June 13, 2005).

18.5 RELATIONSHIP AMONG THE LEGISLATURE EXECUTIVE AND JUDICIARY

The Constitution of India has provided for separation of powers and assigned fairly independent jurisdiction to each of the three organs of the government, that is, legislature, executive, and judiciary. The legislature and executive are concerned with enacting policies and legislations. The judiciary is concerned with protecting the law of the country. All the three organs are independent and autonomous in their respective spheres, but the system operates on the basis of mutual checks and balances.

No Constitution can function if the autonomy of each of the organs of the government is not respected. Over the years, the balance of emphasis in these matters has shifted with the courts acquiring a greater judicial review over the President, governor and the legislature (Dhawan, 2005). In recent years, the relationship of the judiciary with the executive and the legislature, particularly with the executive, has been a cause for concern in many quarters. It has been alleged that in many instances, the judiciary has overstepped its role as the custodian and interpreter of the Constitution and has become a virtual policy maker. It has time and again issued directives and orders to the executive and legislature to follow. The reasons are:

1) The executive and legislature do not formulate and implement laws in true faith. Criminalisation of executive and legislative branches of government is increasing due to many reasons, but mainly because of failure on the part of the executive and legislature to formulate and implement laws in the right earnest.

2) Lack of political will and sensitivity on the part of the executive and legislature.

The Supreme Court can well direct the executive to take actions on matters of public interest. We have seen as to how the Supreme Court has been giving directives on matters of ecological conservation, shifting of polluting industries, cleaning of River Yamuna, child labour, etc. Thus, everything cannot be construed as a negative ascendancy of the Supreme Court. Efforts like these have made civic life better. But, as V. Kumar (2005) suggests, the 'inter-institutional continuity' has to be maintained and respected. Articles 122 and 212 of the Constitution provide that 'no officer or member of Parliament who is vested with the power of regulating the procedure or conduct of the business in the House or in the matter of maintenance of order in the House, shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers'.

The Supreme Court's ruling on reservation in private education institutions is a clear case of the absence of laws leading to the Court's intervention. Some feel that the government needs to frame clear-cut laws to enforce its policy rather than expect the judiciary to uphold its executive circulars. The tendency of the government to bypass the legislature has to be curbed. It must build support cutting across party lines to push these laws in the legislature. The judiciary should be made to confine itself to technical interpretation of the law (Jindal, 2005).

National Commission observed "Constitutional adjudication have an inevitable legislative element. But then, they need great wisdom and restraint on the part of the judge in wielding the high power lest they erect these own prejudices into principles" (C f *The Hindu* April 29, 2005). Thus, it is required of the three institutions that they abide by their jurisdictions and do not overstep. If judges cannot be discussed in the legislature for their acts, the superior court also cannot subsume executive functions. The Constitution is above the three branches and it has to be respected. Therefore, each of these institutions has to exercise restraint and work within one's assigned jurisdiction. They have to uphold the supremacy of the Constitution that delineates their respective roles and jurisdictions.

18.6 CONCLUSION

Effective governance depends very much on the smooth and sound functioning of the basic institutions of the government. If these institutions overstep their jurisdictions and misuse their powers, they would then be guilty of violating the spirit of Constitutional democracy. Therefore, there is a need for systematically conceived and implemented reforms of these Constitutional bodies to insure effective governance. This Unit highlighted some of the reform measures. Some steps necessary for revamping the governmental institutions could thus be:

- Strict implementation of Representation of People Act
- State funding of elections
- Amendment to Anti-defection Act
- Amendment to Contempt of Courts Act

- Setting up of Judicial Council
- Implementing the concept of User Friendly Courts
- Use of Technology
- Training and Performance Review
- Use of knowledge and skills in governance
- Promotion of a responsive work culture
- Encouraging public scrutiny
- Strengthening political will

18.7 KEY CONCEPTS

Judicial Activism

The view that the Supreme Court can and should creatively interpret or reinterpret the texts of the Constitution and the laws in order to serve its judges' own contemplated estimates of the vital needs of contemporary society, especially when the elected 'political' branches of the Central and state governments seem to be failing to meet these needs. This view holds that judges should not hesitate to go beyond their traditional role as interpreters of the Constitution and laws given to them by others in order to assume a role as independent policy makers or independent 'trustees', on behalf of the society. (Paul M, Johnson 'A Glossary of Political Economy Terms).

Judicial Review

It is the power of the Supreme Court to review a law or an official act of a government employee and declare it ultra vies or null and void, if it is not in consonance with the basic Constitutional principles. The Court through its jurisdictions has the power to strike down the law, overturn the executive act or order a public official to act in a certain manner, if it finds the act or law to be unconstitutional.

18.8 REFERENCES AND FURTHER READING

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18.9 ACTIVITIES

1. Study the Report of the National Commission to Review the Working of the Constitution and pen down your observations
2. Go through some books and articles on the Indian Constitution and Role of Governmental Institutions. Try to write a note on your observations on the relationship between the three branches of the government. Substantiate it with examples.