

Resurgence of Judiciary

Judiciary is one of the important pillars of our democracy along with executive and legislature. Its independence has been ensured in our constitution. But in recent years, Indian judiciary has pronounced landmark judgements which is being viewed as encroaching upon executive jurisdictions. It is not a correct observation. Actually, judiciary is doing its duty by judging the issues on its merit. The role of judiciary widened due to the use of public interest litigation (PIL). It touched almost every aspect including environment protection, uniform civil code, corruption cases, human rights, etc.

Judiciary has become active due to the negligence and callous attitude of the executive on social, political and administrative issues. That is why courts have been giving directions to the government and brought to the notice serious administrative lapses on the part of the government. But most important issue which has irked politicians is that it has exposed serious corruption cases against public figures. Courts are supervising corruption cases like fodder scam and Jharkhand bribery case. It is for the first time that former Prime Minister is facing a trial in a bribery case and former Chief Minister of Bihar is in jail for 1000 crore fodder scam. In this context, the role of public interest litigation is commendable in bringing the public figures to court for misusing the public money.

The governance in India has not been upto the mark. As a result the worst sufferers have been the public. Various laws exist only on paper and the related implementations are very poor. The court has to give directions to the concerned authorities to remove the garbage and ensure proper sanitation essential for hygienic and good living. The concerned authorities just do not do their assigned duties and that is why courts have to intervene. The system has become so dysfunctional that for anything people rush to courts for action and justice. Sometimes, even the courts' orders are not heeded to and that is why contempt of courts cases are piling day by day. The court gave order to close down few industries because they are responsible for rising pollution around Tajmahal which could damage the most beautiful historical monument. In recent years the court has given several rulings to protect the environment. Similarly the courts have touched a lot of social issues like child labour, protection of human rights and uniform civil code. Recently it gave landmark judgement against sexual harassment at work places for enforcement of basic human right of gender equality.

On political front, the Kerala High Court as well as Supreme Court gave a judgement that Bandhs are illegal and unconstitutional. Bandhs involve violence and physically restraining others which violates fundamental rights for those who

do not support the Bandh. It is also a fundamental right for some who do not support the Bandh. The Bandhs affect the poor the most because it deprives them of daily bread and butter on that day due to no job. However Peaceful Hartals without violence and coercion are allowed as a last resort. Earlier the courts have also given rulings on the validity of President's Rule imposed on BJP rules states in the wave of Babri Mosque demolition.

It has been felt at different forums that Judiciary is taking over the function of the executive, *e.g.*, at Speaker's Symposium on the "relationship between the executive, the legislature and judiciary". It was also said that Judiciary is becoming active due to degeneration in the performance of the legislature. Similar concerns were raised at the Privileges Committee meeting headed by Congress M.P. Mallikarjun in 1996. In order to check the resurgence of judiciary, the Union Cabinet wanted to amend the Constitution (Article 124) to restore supremacy of the executive in appointment of judges to Supreme Court and High Courts but later on dropped it. According to the Constitution under Article 124(2), every judge of the Supreme Court shall be appointed by the President may deem necessary for the purpose and shall hold office until he attains the age of 65 years, provided that in the case of appointment of a Judge other than Chief Justice, the Chief Justice shall always be consulted. However, in 1993, the Supreme Court in the Judges case ruled that the Chief Justice will have an upper hand in the appointment of Judges.

In order to check the growing powers of Judiciary the government is considering the proposal to reduce the scope of public interest litigations (PIL) and will be restricted to only few. The petitioner will have to deposit Rs. 1 lakh if the moves to the Supreme Court and Rs. 50,000 for the High Courts. This amount will be forfeited if found baseless, but a poor person can file PIL petitions if his income is upto Rs. 6000. But this is being done just to escape from the responsibility. In this case the middle class will be at loss who is the most educated and sensitive to issues facing the country.

If Judiciary has asserted through its landmark judgements, it has done right because basically it is doing what it should do. But at the same time the two other wings, executive and legislature have done their duty and have shirked from responsibilities which has resulted in increase of PIL cases. Of course, PILs should not be misused and Judiciary should be impartial in its approach. At the same time the courts should be the last resort and not things of first resort. If Indian democracy has to grow and mature all the three wings, executive legislature and judiciary have to act in harmony.