

“The Legislative Body is Supreme Over All the Government Institutions, Including Executive or Judicial Bodies”

Paras Mutreja

(B.A LL.B), PURSUING LL.M

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Parliament means, in the mouth of a lawyer (though the word has often a different sense in conversation) **the King, the House of Lords, and the House of Commons: these three bodies acting together may be aptly described as the "King in Parliament", and constitute Parliament.** The principle of **Parliamentary sovereignty** means neither more nor less than this, namely that Parliament thus defined has, **under the English constitution,** “the right to make or unmake any law whatever: and, further, that no person or body is recognised by the **law of England** as having a right to override or set aside the legislation of Parliament”.

—A.V. Dicey **Introduction to the Study of the Law of the Constitution (1885)**

I. INTRODUCTION:

Parliamentary sovereignty (also called parliamentary supremacy or legislative supremacy) is a concept in the constitutional law of some parliamentary democracies. It holds that the legislative body has absolute sovereignty and is supreme over all other government institutions, including executive or judicial bodies. It also holds that the legislative body may change or repeal any previous legislation and so it is not bound by written law (in some cases, even a constitution) or by precedent.

The concept in political philosophy is also called parliamentarianism or parliamentarism. In some countries, parliamentary sovereignty may be contrasted with separation of powers, which limits the legislature's scope often to general law-making, and judicial review, where laws passed by the legislature may be declared invalid in certain circumstances.

Many states have sovereign legislatures, including the United Kingdom,[1] Finland,[2] the Netherlands,[3] New Zealand,[4] Sweden,[5] Norway, Denmark, Iceland, Barbados, Jamaica,

Papua New Guinea, Israel, and the Solomon Islands.

The hon'ble President of India and two houses viz. **Rajyasabha (Council of States) and Lok Sabha (House of People), together form The Parliament** of the Republic of India. It is commonly referred to as the Indian Parliament. **It is the supreme legislative authority that possesses the final authority over all other political bodies of the country.** In a Parliament, the President has the power to summon and prorogue either House of Parliament or to dissolve the Lok Sabha.

The **origin of Parliament** can be traced back to many centuries. It is the central institution of many systems of Government. The word itself is derived from the Latin **'parliamentum'** meaning **'discussion'** and the **French word 'parler'** (to speak). **The term came to use to name a body of people who would meet to discuss matters of the state.**

The Constitution of India came into force on January 26, 1950. The first general elections under the new Constitution were held during the year 1951-52 and the first elected Parliament came into being in April, 1952. Over the years, the Parliament of India has turned out to be multi-functional institution. It is the political nerve centre of the country, acting as a mirror of the society, accommodating the needs of the changing times, shouldering responsibilities and engaging itself fully in the process of running our parliamentary polity. Some of the cardinal roles and functions of the Parliament are: ensuring executive accountability, law making, control over the budget, constituent functions, representational role, educational role, informational functions, training and recruitment of leadership, besides other miscellaneous functions.

A parliamentary form of Government acknowledges the fact that in this

system, **Parliament derives its power directly from the consent of the people** expressed through periodic elections and that it exists to implement the will of the people. The parliamentary system also ensures the best possible participatory democratic system and active interaction between the people and their representatives.

Apart from the basic authorities, **the Parliament can, under certain circumstances, also assume legislative power** with respect to a subject falling within the sphere, exclusively reserved for the states. **The Parliament is also vested with powers to prosecute the President, remove judges of Supreme and High Courts, the Chief Election Commissioner, and Comptroller and Auditor General in accordance with the procedure laid down in the Constitution.** All legislation requires the consent of both Houses of the Parliament. It is also vested with the power to initiate amendments in the Constitution.

II. HISTORY

Originally, legislative power was exercised by the Sovereign acting on the advice of the Curia regis, or Royal Council, in which important magnates and clerics participated and which evolved into parliament. In 1265, the Earl of Leicester irregularly called a full parliament without royal authorisation. Membership of the so-called Model Parliament, established in 1295 under Edward I, eventually came to be divided into two branches: bishops, abbots, earls, and barons formed the House of Lords, while the two knights from each shire and two burgesses from each borough led the House of Commons. The King would seek the advice and consent of both houses before making any law. During Henry VI's reign, "it became regular practice for the two houses to originate legislation in the form of bills, which would not become law unless the Sovereign's assent was obtained", as the Sovereign was, and still remains, the enactor of laws. Hence, all Acts include the clause "Be it enacted by the Queen's (King's) most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows...". The Parliament Acts 1911 and 1949 provide a second potential preamble if the House of Lords were to be excluded from the process.

During the 17th century in England, a notion developed that Parliament (made up of the House of Lords and House of Commons) shared in sovereignty with the King, based on an entirely erroneous (containing errors/assumption) notion of the history of Parliament. It was not until the **changing of the Coronation Oath in the Coronation Oath Act 1688** as part of the **Glorious Revolution** that Parliament was recognised as part of the constitutional structure, with laws being considered to emanate from Parliament and not just the King. The **Bill of Rights 1689** and **Claim of Right Act 1689** were passed the following year which asserted certain rights of the **parliaments of England** (which at the time included Wales) and **Scotland and limited the powers of the monarch.** Furthermore, in 1698 Parliament created the **Civil List**, a financial arrangement that left the monarch reliant on Parliament for income.

After 1689 English parliamentary supremacy became evident in the relation of the English parliament to those of **Scotland and Ireland.** The **Act of Settlement 1701** made a presumption upon Scotland: **the Scots retaliated with the Act of Security 1704,** which was **countered by the Alien Act 1705:** the issue was settled by the **Union of the parliaments of England and Scotland in 1707** which created a new **British parliament,** though "in essence it was just an extension of the English parliament". However the truth of that comment historically, legally under the **Treaty of Union as implemented by the Acts of Union of 1706/7,** the **English and Scottish Parliaments had given up their rights and sovereignty** to the new, **Union Parliament.** Perhaps it is more correct to say that they had "pooled" their sovereignty. It is arguable whether the concept of **parliamentary supremacy arose from the Acts of Union 1707** or was a doctrine that evolved thereafter. The **autonomy of the Parliament of Ireland** also came under attack and the **Declaratory Act 1720** made the **Irish parliament a dependency.** The so-called **Constitution of 1782** removed **British parliamentary supremacy over Ireland** for a short period but then the **Irish parliament was merged with Britain's in the Acts of Union 1800.**

The doctrine of parliamentary supremacy may be summarized in three points:

-Parliament can make laws concerning anything.

-No Parliament can bind a future parliament (that is, it cannot pass a law that cannot be changed or reversed by a future Parliament).

-A valid Act of Parliament cannot be questioned by the court. Parliament is the supreme lawmaker.

European law does not recognize the British concept of parliamentary supremacy. The UK courts currently recognize the supremacy of EU law on those subjects where the EU can legislate. However, this supremacy derives from the European Communities Act 1972 and its successors. The European Union Act 2011 declared that EU law is directly applicable only through the European Communities Act or another act fulfilling the same role. **Parliament legislated in 2018 to repeal the 1972 Act, and in 2020 the United Kingdom ceased to be a member of the EU,** demonstrating that the previous Parliament (of 1972) had not bound its successor.

III. COMPARISON OF DIFFERENT NATIONS

Italy

The sovereignty of Parliament in Italy is born from parliamentary privilege, but, in one of the most comprehensive and compelling "systemic" judgments, the Constitutional Court (**rappporteur Carlo Mezzanotte**) had opened the justiciability of "interna corporis". By the way, remnants of the old theories are expressed in *autodichia*, which involves subtracting the ordinary courts of all acts performed within the Chambers. The choice to set off some acts to the Presidents of the Parliament has been criticized as an attempt to exclude them from judicial review, even when pertaining to individual rights: this has given rise to some conflicts between the judiciary and Parliament, brought to the Constitutional Court, who gave useful elements to restrict the legal definition, compelling the legal doctrine through the modern evolution of the sovereignty of Parliament.

New Zealand

The concept of parliamentary sovereignty in New Zealand is derived from that in the United Kingdom:

The constitutional position in New Zealand is clear and unambiguous. **Parliament is supreme and the function of the courts is to interpret the law as laid down by Parliament.** The courts do not have a power

to consider the validity of properly enacted laws.

Some legal experts such as Robin Cooke in **Taylor v New Zealand Poultry Board, [1984]** have questioned how far parliamentary sovereignty goes. There are several laws and conventions that limit the exercise of parliamentary sovereignty. **For example, the maximum term of Parliament and some other matters relating to the electoral system may only be altered by a parliamentary supermajority or by a majority in a popular referendum.**

Norway

The principle of separation of powers laid out by the constitution of 1814, was challenged in 1884 when a parliamentary majority led by the (Liberal party (Venstre)) impeached the government appointed by the king.

India

In India, parliamentary sovereignty is subject to the Constitution of India, which includes judicial review. In effect, this means that while the parliament has rights to amend the constitution, the modifications are subject to be valid under the framework of the constitution itself. **For example, any amendments which pertain to the federal nature of the Constitution must be ratified by a majority of state legislatures also and the parliament alone cannot enact the change on its own. Further, all amendments to the constitution are also open to a Judicial Review. Thus, in spite of parliamentary privilege to amend the constitution, the constitution itself remains supreme.**

Israel

The Knesset, the legislative branch of the Israeli government, has the power to enact and repeal all laws. It enjoys **de jure parliamentary supremacy**, and can pass any law by a simple majority, even one that might arguably conflict with a Basic Law of Israel, unless it has specific conditions for its modification. **The Knesset can adopt and amend Basic Laws acting through its capacity as a Constituent Assembly.** The Knesset also supervises government activities through its committees, elects the Prime Minister of Israel and approves the Cabinet of Israel, elects the President of Israel, and

recommends the Comptroller of Israel. It also has the power to remove the President and State Comptroller from office, revoke the immunity of its members, and to dissolve itself and call new elections.

England and the UK generally

Parliamentary supremacy is cited by contemporary American legal historians as the reason English law did not develop due process in the American sense. It is also argued to be integral to the way in which England's approach to rights and liberties evolved.

The doctrine of parliamentary supremacy was demonstrated in, for example, the War Damage Act 1965. In English Law, it was upheld in 2005 by Lord Bingham in the case of **R (Jackson) v Attorney General:**

The bedrock of the British Constitution is ... the Supremacy of the Crown in Parliament.

However, there is a **distinction to be made between legal sovereignty and political sovereignty.** Parliament is not politically sovereign, which means that "if Parliament passes unpopular or oppressive legislation, then it may not be applied in practice; for example, the various civil servants who administer laws within government departments may be relied upon to use any loopholes and vague language which exists in a Bill to get around unwanted areas, and the judiciary is likely to purposefully interpret and create precedent for said laws in a similar manner. However this does not necessarily mean that Parliament is not legally sovereign. It is argued that nonetheless Parliament can legally pass any legislation it wishes. This point is made clearly by Lord Reid in **Madzimbamuto v Lardner-Burke [1969] 1 AC 645:**

It is often said that it would be **unconstitutional for the United Kingdom Parliament** to do certain things, meaning that the moral, political and other reasons against doing them are so strong that most people would regard it as highly improper if Parliament did these things. But that **does not mean that it is beyond the power of Parliament** to do such things. **If Parliament chose to do any of them, the courts would not hold the Act of Parliament invalid**

IV. IN BRIEF

Parliamentary sovereignty:

Parliamentary sovereignty (also called parliamentary supremacy or legislative supremacy). Parliamentary sovereignty is a concept in the constitutional law of some parliamentary democracies. It holds that the legislative body has absolute sovereignty, and is supreme over all other government institutions, including executive or judicial bodies. "The concept also holds that the legislative body may change or repeal any previous legislation, and so that it is not bound by written law or by precedent". **Parliamentary sovereignty** may be **contrasted** with the **doctrines of separation of powers, which limits the legislature's scope often to general law-making, and judicial review, where laws passed by the legislature may be declared invalid in certain circumstances.** Many states have sovereign legislatures, among which are the **United Kingdom, Finland, Israel, New Zealand, Jamaica, Barbados, Papua New Guinea, the Solomon Islands, and others.**

The terms Parliament and legislature are usually used interchangeably as generic terms for the elected represented body. But such legislative body takes different names in different countries. i.e. for example legislative body in UK is called to be Parliament whereas the same in US is called to be Congress. The term Parliament also connotes the supreme law making body. And the law made by them are called to be the primary and supreme legislations

Powers and functions of these legislative organs also differ in different countries. As **in the case of US,** the legislative branch is the American Congress which is a bicameral legislature and the same consists of the House of Representatives and also the Senate. **In case of UK,** the British Parliament consists of the House of Common and the House of Lords. **Indian Parliament** also has the two houses, **the house of people or the Lok Sabha which is the lower house and the Rajya Sabha, the upper house.** Here the legislative power may be limited as **in case of American Congress and that of the Indian Parliament,** whereas the same would be a kind of unlimited **in the case of the British Parliament.** So the powers of legislative bodies may be strong or weak. **It differs.** Their functions are also not identical. The pertinent point to be noted is that it all depends upon the form of government a country adopts and upon the relationship between its executive branch and the legislature.

Relationship between Legislature and Judiciary

Even though the functions of the executive and the judiciary are well-defined in the Constitution, the system of checks and balances ensures that each one can impose checks on the other.

- The judiciary can strike down laws that it considers unconstitutional or arbitrary.
- The legislature, on its part, has protested against judicial activism and tried to frame laws to circumvent certain judgements.
- Judicial activism is said to be against the principle of separation of powers.
- There have been instances where the courts have issued laws and policies through judgements. For example, the Vishakha Guidelines where the SC issued guidelines on sexual harassment.
- In 2010, the SC directed the government to undertake the distribution of food grains.
- If the judiciary oversteps its mandate and crosses over into the territory of the legislature or the executive, it is called judicial overreach.

Judicial Supremacy and Parliamentary Sovereignty

To strike a balance between the judiciary and the legislature, the Indian constitution uses the following principles:

- The doctrine of Parliamentary Sovereignty has been adapted from the British Constitution.
- The doctrine of Judicial Supremacy has been adapted from the American Constitution.
- The power of judicial review of the Supreme Court of India is narrower in scope than the Supreme Court of the USA.
- The Constitution of India guarantees 'established procedure by law' in Article 21 instead of the 'due process of law' provided in the American Constitution.
- The Indian Constitution has opted for an amalgamation of Britain's principle of parliamentary sovereignty and the judicial supremacy of the USA.
- The Supreme Court, on the one hand, can declare the parliamentary enactments as unconstitutional using the power of judicial review.
- The Parliament, on the other hand, can amend a large chunk of the Constitution using its constituent power.

Relationship between Legislature and Executive

The Constitution states that the executive branch of the State (Council of Ministers) shall be collectively responsible to the Legislature (Lok Sabha). This implies that the Parliament should supervise the work of the government and hold it accountable for its actions.

- In a parliamentary form of government, the executive is not separated from the legislature in that the members of the council of ministers are members of the legislature.
- The executive loses power when it loses the confidence of the legislature. The executive/council of ministers is dismissed if it loses the legislature's confidence before its tenure is over. So, the legislature controls the executive through a vote of no-confidence.
- The head of government and head of state are different. The head of the government is the Prime Minister while the head of state is the President.
- The parliament makes laws in general broad terms and delegates the powers to the executive to formulate detailed policy and implement them.
- In a presidential form of government, the executive is not accountable to the legislature. One person is the heads of both the State as well as the government. A minister need not be from the legislature.

Relationship between Executive and Judiciary

There are several provisions in the Constitution that make the judiciary independent. This is because, it is believed that for a democracy to remain efficient and effective, the judiciary must be independent. The judiciary is said to be the guardian of the constitution. If the executive also assumes judicial powers, that sort of a government tends to become oppressive.

However, there are some judicial functions which are performed by the executive as well. They are:

1. The appointments of the judges are made by the executive.
2. The President and the Governors also enjoy the power to pardon, reprieve, etc. These are direct judicial functions.
3. Under the system of administrative adjudication, the executive agencies have

the power to hear and decide cases involving particular fields of administrative activity

The judiciary also performs some executive functions. It can review the actions of the executive and declare them void if found unconstitutional.

Functions of Legislative Organs

Function of Law Making

A modern Parliament, either in India or in any other country, is not merely a law making body. It has many other functions to do. But still, the most important function among them is the function of lawmaking.

The place of a legislative body in the law making process depends upon the character of the principle of separation of powers recognized in a country. For example separation powers are rigid in US and the same is flexible in UK. And the very same is not strictly applied in India too. In these countries the form of government also differs. The presidential form of government in US and the parliamentary form of government in UK and India also have different impacts.

When we have a look into the parliament of India, Indian Constitution provides for Parliament at the Union with President and the Lok Sabha and Rajya Sabha as the two houses. The structure of state government closely resembles to that of the Union Parliament. Legislature of the State consists of the Governor and the two houses, namely Legislative Assembly and the Legislative Council where most of the states have adopted the unicameral way of legislature in the states i.e. the legislative assembly.

As in the Parliament, President does not actively participate in the deliberations of the two houses. But he is an essential element of the parliament as he has different functions such as to summon the two houses, to prorogue them and in dissolving the House of People. And a bill takes effect only after the President has given his assent to it.

Lok Sabha or the House of people is elected directly by the people on the basis of adult suffrage. This house in its composition corresponds to that of the House of Commons in UK and to certain extends to that of the House of representative in US.

The Council of States can be said to be a continuing body, where 1/3 rd of its members retires every two years and its

members are elected by an electoral college in accordance with the system of proportional representation by means of single transferable vote. Its composition corresponds and is comparable with that of the US Congress Senate in giving its representation to the States.

Parliament can make laws on a wide range of subjects allotted to it under the Union and the Concurrent lists in the VII th schedule to the Constitution. Residual powers also vests with the parliament in the matters that are not specifically assigned to the States. States can make law on subjects enumerated in the State list.

The procedure to enact laws are also detailed in the constitution, where a legislative proposal may be initiated in either house of the Parliament, in the form of a bill, and it should be passed by both the houses and the same should get the assent of the President. And in case of any disagreement between the two houses, a joint sitting may be summoned by the President. This call for a joint sitting of the both houses by the President is a unique feature of the Indian Parliament.

In US, a convention has been established to resolve such differences between the houses through a joint conference of selected representativesTM of both houses of Congress. But if the report of this conference is rejected by either of the houses, the proposal of bill is also dropped. So the joint sitting procedure in Indian Parliament can be said to be a unique feature.

Administrative Accountability Function

In India, Parliament does not interfere with the day to day administration of the executive but exercise surveillance on it. Parliamentary scrutiny is exercised through various procedures like questions, motions, discussions etc.

Question Hour

Question hour is the hour where members of the parliament can raise any question with regard to the administrative activity. There the concerned minister is obliged to answer to the parliament, either orally or in writing. Questions may be either starred or non-starred. Starred questions are those for which an oral answer is expected and non-starred for which a written reply is expected. Generally a notice period of 15 days is to be given to the minister to make him reply to a question raised. But if it is urgent,

with the permission of the speaker the same can be raised.

This question hour in Indian Parliament is similar to that of the Prime Minister Questions in the House of Commons in UK, where during every Wednesdays at noon when the House of Commons is sitting, the Prime Minister spends around half-an hour answering questions raised by the members. And where the Prime Minister is away on his official business, then his role is usually filled by the Deputy Prime Minister and if he too is not available, the next most senior member of the cabinet will receive questions. This question hour procedure is also practiced in different countries in different names, as Question Period in Canada and Question Time in Australia. In US, as there is the Presidential form of government, there is no particular procedure of question hour as such

Discussions

When the member who raised a question feels that the answer given to a question is not complete, he may be allowed by the speaker of the house to raise a discussion in the house for half an hour. This is generally termed as the Half an Hour discussion. During discussions, the members have full liberty to criticise the administrator for their past performance and can even suggest how they should act in future. In UK also there is the half-hour debate where members raise questions in the Westminster Hall.

Committees

Another method of having administrative surveillance is by way of Parliamentary Committees. They may be either Standing Committees or the Adhoc Committees. Standing Committees are constituted every year and they work on a continuous basis whereas the Adhoc Committees are created temporarily for a specific task. There are Standing Committees both in Lok Sabha and Rajya Sabha. They exercise certain functions such as they enquire, scrutinise and review the whole range of administrative actions. These Committees are similar to that of the Select Committees in UK.

Executive Responsibility

In India, head of the executive is the President and the executive powers are vested in him and are taken in his name. But he is

only the formal head as he acts only on the aid and advice of the council of ministers.

The parliamentary control over the executive is based on the constitutional provisions of collective responsibility of Council of ministers to the House of people. This has been specifically enshrined in Article 75(3) of the Indian Constitution.

In UK also the concept of collective responsibility is accepted. US Constitution does not recognize this concept as there is President, who is having the ultimate power of decision making and he is the one who ensure that the law made by him is faithfully executed.

Collective Responsibility

The collective responsibility concept lies on the principles that the minister must not vote against the government policy or speak against the government policy and all the decisions taken by a minister is the decision of the government. The ministers are also individually responsible to the head of the State in the sense that Ministers hold office during the pleasure of the President. But again the President acts only on the advice of the council of ministers headed by the Prime Minister. So ultimately the government can make a minister resign if he acts against the government policy. In collective responsibility, if a no-confidence motion is been passed, the whole government has to resign. So ministers are individually and jointly responsible to the house. But it is also certain that the government can overcome the same if it is a majority government and gains public confidence.

Adjournment motions

Another method of having control over the executive is by way of introducing adjournment motions in the houses, to invite the attention of members of the house towards a serious problem seeking public attention.

Cut Motions and Censure motions

Cut motions are where the members of Lok Sabha have veto power to oppose a demand in the financial bill discussed by the government. And if the same gets passed, ultimately the government has to resign. Censure motions are brought when the ruling government fails to act according to their policy.

Representational Role

It is also the primary function of the legislative organs in the modern democracy to represent the people. They represent the changing needs and moods of the people. They represent as well as give expression to their difficulties, problems and grievances and seek redressal for the same in the house.

Conflict Resolution And National Integration Role

Conflicts are natural to man. Conflicts may be either of ideas or interests or may be for the struggle for power by various contending forces. The role played by the Parliament in resolving conflict is great. That is there the members of parliament who are from the different parts of the country irrespective of their caste, creed, religion or region; they meet informally and discuss in groups the problems which affect the country as a whole. It creates the feelings of national integrity.

The Informational Role

The parliament also has its significant function of informational role. That means the parliament has right of being informed. Government should feed the parliament with information by way of reports or by way of laying papers on the table of the house or by placing documents in the parliamentary library. Based on this the parliament may discuss on its shortcomings.

The Leadership Role

Parliament or the legislative organs also functions as a nursery for the political leadership. And these political leaders are one who can influence the society towards attainment of their specific goals. They built relationship with the Stakeholders and have a great impact on the wellbeing of the nation itself and for its people also.

Powers of Legislative Organs

Legislative Powers

Legislature has different powers and its main power can be said to be the power to enact laws. In total the legislature has the power to regulate the rights and obligations of the people, in accordance with the constitutional provisions.

As already state the legislature in India includes the Parliament at the centre and legislative assembly and legislative councils at

the state level. They make laws on the subjects enumerated in their lists concerned. But the Union Parliament has certain powers to enact laws over the subjects stated in the state list under certain circumstances. They include when a national emergency is proclaimed, or in case the Rajya Sabha passes a resolution with 2/3 rd majority that for national interest the parliament should make laws on subjects in state list, or for the reason of implementation of international treaties, and during the period of presidential rule is in force and also in case where the states concerned itself passes such a resolution seeking it.

In another aspect when we look into the powers of the houses to enact a law, particularly in the financial matters, power of the Rajya Sabha can be said to be limited, merely having the power of a delaying veto. A money bill shall be introduced only in the House of People. And after the same gets passed, it should be sent to Rajya Sabha for its recommendations and the Rajya Sabha should within 14 days, return it to the Lok Sabha with recommendations. If not the bill is deemed to be passed and even if it is sent back with recommendations, the same may or may not be adopted by the Lok Sabha. And also the President cannot withhold his assent and he even does not have the power of veto in case of a money bill.

This situation is similar to that of the House of Lords in UK, where they do not have any power, even the power to make recommendations for the consideration of the House of Lords. In US too, a revenue bill can be originated only in the House of Representative and not in the Senate.

The law making power of the legislature also includes the power to delegate its power to the executive. That is in this modern democracy, although the supreme law making body is the legislature, most of its law making power has been delegated to the executive. Particularly in India, due to various numbers of reasons such as lack of parliamentary time, lack of expertise and also to meet unforeseen emergencies, the same can be delegated. But as held by the honourable Supreme Court in the case of Re Delhi Laws Act case the essential legislative functions cannot be delegated. And the law made by such delegates is known to be the subordinate legislation and they may the rules, regulations etc and these have the same force as law as

defined under article 13 of the Indian Constitution.

As there exists the strict application of "separation of powers" theory in US, delegated legislation is not entertained there. But in the recent periods, the judiciary out there has taken a liberal approach and had upheld a number of delegations. Whereas when looked into UK, delegated legislation is a kind of unlimited there, as constitutionality and separation of powers does not become a limitation there upon it. But although these delegations are allowed the same is always subjected to the legislative control as well as to the judicial control.

Executive Powers

The legislative control over the executive is through various methods such as the principle of collective responsibility, committees etc as already discussed. Executive is responsible to the legislature individually as well as collectively.

Financial Powers

The parliament or the legislature controls the financial matters. The government passes the budget before the starting of a new financial year. And the parliament discusses over the budget and gives assent to that bill. And no money can be spent or no tax can be imposed without the approval of the Parliament. If the budget does not get passed then also ultimately the government should resign.

To keep a vigil on how the executive spends money granted by the legislature, there are two standing committees. They are the Public Accounts Committee and the Estimates Committee. The public Account Committee oversees the financial functioning of the government based on the audits Comptroller and Auditor General.

Judicial Powers

Judicial powers of the parliament includes the power to impeach the President for violation of the Constitution, the power to remove the judges of Supreme Court and High Court on the grounds of proved misbehaviour and incapacity, the power to remove the Vice President etc.

Certain consequential powers are also vested in the Parliament so as to protect the privileges and immunities vested in it. It includes the power of the legislature to punish

any person, whether he is a member or not, for the breach of privilege or for contempt of the house. This power is also the most important privilege too. Parliament and State Legislature has also the power to judge for themselves what is right and what is wrong. And if the contempt is committed in the immediate presence of the house, the contemnor may or may not be heard. He may be taken on immediate custody and if he apologizes and if the House pleases, he may be left free.

Each House has also power to execute warrant to punish a person who commits the contempt. The punishment may range from admonishment which is the mildest form to reprimand, the most serious one. If the contemnor is a government officer or employee, punishment may extend to departmental action too. In case if the contemnor is a member of the house the punishment may range to suspension or expulsion of such person from the house.

Speaker of the House is the person who has the authority and power to inquire into a matter of contempt and pass orders. And if the speaker comes to the conclusion that a person has violated or committed an offence, he may report to the House and a motion may be moved to punish him for such contempt of the House. Speaker has the power to take action suo moto also.

The legislature also has certain other consequential powers such as the power to compel the attendance of witness and to provide documents, the power to regulate its own procedure and conduct of business and also the power to exclude strangers from the house.

This power of the Indian parliament is similar to that of the Congress power to punish for contempt of Congress, for libelling a member of Congress. The power to punish its contemnor also vests with the House of Commons of UK, established through precedents there.

Electoral Powers

Elected members of the Parliament and elected members of the Legislative assemblies as well as the elected members of the legislative assemblies of the Union Territories participate in the election of the President, the head of the Executive. Members of both Houses of Parliament participate in the election of the Vice President. Houses also participate

in the election of the Speaker and Deputy Speaker to the Lok Sabha and Deputy Chairman to the Rajya Sabha respectively.

Constituent Powers

Article 368 of the Indian Constitution provides specific provision for amendment of the Constitution and the Parliament is the repository of the constituent powers of the Union. For an amendment, a bill should be introduced in either Houses of the Parliament so that the constitutional amendment has been exclusively reserved for the Parliament. And the provisions of the Indian Constitution can be amended by the Parliament only by a special majority, not less than 2/3 rd members of each house present and voting. In case of limited categories of constitutional provisions, special majority needs to be ratified by the legislature by not less than half of the States. And also, the Constitution Amendment Bill, as duly passed or ratified should be presented to the President and the President should give his assent and there he has no option to withhold his assent or to return the bill to the House for reconsideration.

The Parliament also has the power to alter, repeal or amend any provision of the Constitution and such amendments cannot be questioned before any court of law on any ground unless they tend to alter or violate the 'basic structure' of the Constitution. The 'basic features' as defined by the court has not been foreclosed and the same has been interpreted by different judges in different cases in a very wide manner.

Control Over The Judiciary

This can be said to be peculiar feature of the legislature in U.K, the best example of a Unitary Constitution. In England, the Courts are subordinate to the legislature. They do not derive their powers from a Constitution as there is no written Constitution. They derived certain powers from the common law and certain other powers from the statutes. And in any case these powers can always be diminished or increased by the legislature.

Another context is that they do not possess any power to override the legislation passed by the parliament. This position of judiciary emanates from the principle of parliamentary sovereignty.

But this concept does not apply to the case of judiciary in India. Framers of the Indian Constitution envisaged a higher

Judiciary, independent, impartial and powerful to check the arbitrary exercise of state power. Indian Constitution being a written Constitution imbuing in itself the federal characteristics, guarantees supremacy of the Constitution. Though we have adopted the parliamentary system of government from the British Constitution, as regards the position of the judiciary

V. CONCLUSION

The legislative bodies are important element of the modern constitutional state. In present almost all countries have the legislative bodies though their role in the governmental mechanism may be different – from formal one to very active and important.

The place of the legislative bodies in the law-making process is determined by two factors. From one side the acts of the legislative bodies are important source of all national legal systems and they increase in number and influence on the development of the national legal system and society in general. From the other side, the real role of the law-making process depends from political traditions, form of the government. The position of the executive bodies is strengthening in almost all countries. The executive bodies adopt acts on the basis of the delegated powers, may adopt acts in the case of the 'legislative emergency', etc. The executive bodies control the pre-legislative stage of the law-making as the Government is the main initiator of the bills which have a chance to become a law. The legislative process itself is also controlled by the Government especially in the parliamentary countries. In some countries they are called as 'machine for improvement of the decisions of the Government'. In the presidential and even in some half-presidential countries the legislative bodies are more independent from the executive.

In present the law-making process in the legislative bodies are only visible part of iceberg the greater part of it is hidden for public. In great degree it is regulated by the executive bodies, political parties and lobbies. Legislatures expect executive agencies to prepare bills and to lobby; agencies are thought of, rightly or wrongly, as representatives of the public interest against the private interests served by lobbyist from commerce and industry.¹⁸ In fact, this position may characterized the countries with the

different form of the government though there are differences in relations of the legislative and executive bodies in the sphere of law-making in the countries with parliamentary form of government, in presidential republic and half-presidential republics.

The role of the legislative bodies in the law-making process is connected with the role of the statutes as the source of law. In present the executive bodies adopt many acts.

The legislative bodies have powers to control the law-making of the executive bodies. The level of control depends from the form of the government and from the specific features of the legal families – roman-German and common law. In some countries the legislative bodies exercise more strict control (through parliamentary committees) in other less. But the coordination of the legislative and executive bodies is important for formation uniformity in legal system and support of legal order and legitimacy, realize in practice the conception of “rule-of-law” state.

The law-making process and the role of the legislative bodies in it are based on the constitutional principles of democracy, separation of powers, social state. These principles in present are filled with concrete content in the countries with different legal and political traditions.

Nevertheless it will be wrong to make conclusion about small role of the legislative bodies in the law-making process. The acts of these bodies are adopted according to the most democratic manner and different political and social group may more or less influence on it. This process is open for public and is under control of the public opinion. All these arguments let to keep formally leading position of the legislative bodies in the law-making process.



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