

CHAPTER I

INTRODUCTION

‘Justice is the greatest interest of man on earth. It is the ligature, which holds civilized beings and civilized nations together’

Daniel Webster.

Law and Justice become relevant, meaningful only when people encounter a law and justice issue in their lives. Law and society influence one another. Law and Justice are two distinct concepts. No doubt they are inter related but each has a distinct sphere of its own. Justice is the legitimate end of law. What is ‘Justice’ cannot be defined in any restricted sense. In *Shastras*, justice has been equated with Dharma. Dharma is the basis of the universe. It is the fundamental law of life. Every scholar of legal thought has given justice a supreme place. *Justinian* has said: ‘justice is the constant and perpetual will to give every man his due’. With this view in mind, the framers of our Constitution gave ‘Justice’ the supreme place.

There are certain basic norms of justice. Equality is a pillar of justice founded on the theological concept that all human beings being children of God are entitled to equal treatment. Fairness is

another pillar of justice. Fairness means what appears to be fair to a disinterested, impartial and reasonable observer. Impartiality is the very foundation of fairness. Law and justice through law remains the province of judges, lawyers, political scientists and academics. The concept of justice is even older than that of law. What is Justice is today as unanswered as it was and cannot be defined in any restricted sense.

A Constitution means a written document having a special legal sanctity which sets out the framework and the principal functions of the organs of the government and declares the principles governing the operation of those organs. All Constitutions are the reflections of the past as well as the testators of the future. Within this constitutional framework, judicial process has much wider connotations, starting from the concept of judicial review, to the enrichment of fundamental rights, providing life to Directive Principles of State Policy, making the constitutional bodies and others work within their specified limits, resolve conflicts between organs of the government horizontally and among governments vertically and others. In this process, it is to a large extent a judge made law. Roscoe Pound defined this as a mode of judicial process and juristic thinking, a mode of treating legal problems. It is often based on precedents and provides continuity by linking the present

with the past.¹ The Constitution of India specifically empowers the courts in general and the Supreme Court in particular for ensuring these objectives of the Constitution.²

The quality of the judicial process is determined by the following four factors:

1. The historic role played by the judicial process in shaping the socio legal institutions of the society;
2. With the written Constitution providing fundamental rights and separation of powers in a federal context, the prestigious position of the judiciary has focused its attention on greater creative involvement and in law reforms;
3. Creative abilities of judges are to a large extent shaped by the professional capacity of the lawyer to persuade the judiciary to adopt the change in the law argued for; and
4. A systematic approach which focuses attention on the role of lawyers, the role of citizens, the role of judges and the role of legal education is necessary for judicial process reforms.

Amongst the Constitutions of the world the melancholy distinction of being the world's longest still belongs to India. The world's oldest Constitution, the U.S.A, is also the shortest.

¹ Henry J. Abraham, *The Judicial Process: An Introductory Analysis of the Courts of the United States, England and France*, V ed., Oxford University Press, New York, 1986, at 8.

² For example, Articles 13 (2), 14 to 32, 36 to 51, 141, 142, 143, 226 and 227.

The Preamble to the Indian Constitution is referred to as the main source of judicial responsibility in India. The phrase 'justice social' in the Preamble is expected to be secured from the judiciary as it is the instrumentality of the State to review state action. As such the judiciary has to share the proportionate responsibility to achieve the aforesaid goal.³

The Constitution of India is the supreme law of the land. By nature, the law relating to the Constitution is dynamic and it gets developed in consonance with the changing times and needs. The Indian Constitution is not an exception to the above cardinal rule. The Constitution of India is not a mere mechanical apparatus. It is a living organism. It is dynamic and has an innate vitality. It grows and develops. Though a Constitution is intended to be for all times, it responds to changed conditions. With the currents and cross-currents in the stream of national life, the constitutional development would determine the ultimate direction in which a nation is moving in its onward march.

In India the constitutional development may be said to be also the measure of socio-economic progress. The Constitution has a noble

³ Ashok A. Desai, *Justice Versus Justice*, Taxmann Allied Services Private Limited, New Delhi, 2000, at 27.

and grand vision as contained in the Preamble. After the Constitution came into force on 26th January, 1950 there has been a phenomenal growth in the development of constitutional concepts, principles and dynamics.

The constitutional development results through the following three processes:

1. By convention or through changes in political equations;
2. Through formal amendments to the Constitution if the Constitution has a provision for its amendments and
3. Through judicial interpretation of the provisions of the Constitution.

The most direct one is the constitutional amendment by the parliament and conventions relating to its working as also those affecting its relationship with the executive and the judiciary. Indeed, conventions have also developed in relation to various organs of the Government as well as offices created by the Constitution.

The task of interpreting the Constitution is a highly creative judicial function. A democratic society lives by certain values like

individual liberty, human dignity, rule of law, socio, economic justice and limited government. It is the task of the judiciary to interpret the Constitution to inculcate these values on which democracy sustains and develops. The Indian judiciary has contributed immensely to this constitutional development through judicial interpretation. In this regard Justice Black and Justice Frankfurter of the USA had rightly observed that 'while the language of the Constitution does not change the changing circumstances of a progressive society for which it was designed yield new and fuller import of its meaning'.

When the faith of the people in the efficiency, quality and integrity of governmental institutions stands eroded, it in turn results in the increasing number of cases filed before the courts. Apart from deciding these disputes, in a democracy there are other elements affecting the judicial process. There are factors, internal as well as external, present in the judicial process that keep changing from time to time and make the process living and complicated at times. The judiciary has stood the test always and satisfactorily in its role as the interpreter of law and policy. In this endeavour, the judiciary has exercised the power of review, played an activist role and yet restrained itself from over-activism, and at times attempted a harmonious blend of every aspect. The role of the judge as a law

maker and also as a policy maker is brought into sharp focus in modern studies of the judicial process.⁴

Among all laws, it is the Constitutional law that is considered to be the most important and fundamental law of the land and the rest of the legislative initiatives are always subject to the provisions of the Constitution. It is for this reason, that the Constitution is regarded as the fundamental law or the basic law of the land. It is this Constitution which deals with the major issues of the society, the form of government and the principles governing them. Thus, constitutional law is the most fundamental of the law in a nation that seeks to ensure that laws are made in consonance with the Constitution and also that the basic rights of the citizens are not violated by arbitrary actions of the government.

The difference between Constitution and constitutionalism is that the former provides not only the powers and functions of the three organs of the government, but also provides for a series of limitations on the exercise of those powers. The object of doing so is to prevent the constitutional governance from becoming constitutional anarchy wherein the rights and liberties of the

⁴ N.K.Jayakumar, *Judicial Process in India: Limitations and Leeways*, APH Publishing Corporation, New Delhi, 1997, at 3.

citizens and others are constantly at threat. It is because of this, the Constitution itself provides for specific limits on the various powers of the different organs of the State. Again, the Constitution also provides for internal checks on the exercise of powers by conferring on every organ the power to do so whenever the other organ crosses the limitation so specified in the Constitution. In Political Science these developments are well described in the name of 'separation of powers' and 'checks and balances'.

On the other hand, Constitutionalism ensures that those limits provided in the Constitution are fully functional, failing which, the Constitution remains a mere document and would certainly not be in a position to safeguard the lives and liberties of their own citizens and others in the State. 'Constitutionalism connotes the essence of limited government or a limitation on the government. Constitutionalism is the anti-thesis of arbitrary powers.' ⁵ Many political philosophers, like Locke and Rousseau have also specifically advanced arguments in favour of such limitation on the powers of government.

Schwartz emphasized that the 'stress upon grant and limitation of authority is fundamental' and went on to define Constitution as a

‘written organic instrument, under which governmental powers are both conferred and circumscribed’.⁶ Similarly, Prof. Vile also remarked that the ‘Western institutional theorists have concerned themselves with the problems of ensuring that the exercise of governmental power, which is essential to the realization of the values of their societies, should be controlled in order that it should not itself be destructive of the values it was intended to promote’.⁷ Thus, it is very clear from the constitutional developments of a country like the U.S.A that it is not simply providing for limited powers to governmental authorities but in essence it is also the technique of ensuring them that is described as constitutionalism.

Going by the Abraham Lincoln’s definition, democracy is government by the people, for the people and of the people. True democracy is the governance by the words enshrined in the Preamble of the Constitution of India. The people of India are largely living in the darker side of the governance of the country, are often uninformed about the public affairs and are dominated

⁵ S. A. de Smith, *Constitution and Administrative Law*, Penguin Books, London, 1977, at 34.

⁶ Schwartz, *Constitutional Law: A Text Book*, 1972, at 1. Cited from M.P.Jain, *Indian Constitutional Law*, 5th ed., Wadhwa and Company, New Delhi, 2005, at 6.

⁷ M.P.Jain, *Indian Constitutional Law*, 5th ed., Wadhwa and Company, New Delhi, 2005, at 6.

by those who wield power in the executive, legislative and judicative spheres. The jurisprudence of democracy is envisaged in Articles 23 and 25 of the Universal Declaration of Human Rights, 1948 and Part III and Part IV of the Constitution of India which guarantees some rights principal among which are the right to life, liberty, dignity and decent conditions of life and development.

According to Fali S. Nariman, Senior Advocate, 'there is hidden magic in the words WE THE PEOPLE'.⁸ The Constitution of India establishes the main organs of the State, namely, the Legislature, the Executive and the Judiciary, it defines their powers, their jurisdictions, demarcates their responsibilities and regulates their relationships with each other and with the people. According to Montesquieu, the three organs of the state should have well defined areas of functions and powers so that the one does not transgress upon the others. No organ has an overpowering role to play over the others. Thus, they all stand on the same pedestal. However, in the scheme of the Indian Constitution, the judiciary has a unique role to play.

⁸ Fali. S. Nariman, '*The Silences in our Constitutional Law*, (2006) 2 SCC.J-15.

After the Constitution of India came into force on 26th January 1950, the Supreme Court of India⁹ came into existence on 28th January, 1950. The Inaugural sitting of the Supreme Court of India was a memorable function. In addition to the presiding judges, who were present in the Court Chamber the Chief Justices of Allahabad, Assam, Bombay, Hyderabad, Madhya Bharat, Madras, Mysore, Nagpur, Orissa, PEPSU, Punjab and Travancore-Cochin as well as the Prime Minister of India, the Deputy Prime Minister and other Ministers, Ambassadors, Advocates General of States, Ministers and diplomatic representatives of foreign States and several other dignitaries were also present.¹⁰ The most significant feature of the Constitution of India is the area, extent and nature of the jurisdiction of the Indian Supreme Court. Laws enacted by Indian Parliament and by the State Legislature are finally and authoritatively interpreted by the Court. There is virtually no area of legislative or executive activity which is beyond the highest Court's scrutiny. The Supreme Court of India, when it was established, was consisting of a Chief Justice and seven other judges.¹¹ Clause (1) of Article 124 provides that the number of judges of Supreme Court can be increased by the Parliament by law. Thus the Parliament has increased the number of judges from

⁹ Article 124 (1).

¹⁰ R. C. Lahoti, '*Canons of Judicial Ethics*', M. C. Setalvad Memorial Lectures, Universal Law Publishing Co. Pvt. Ltd., Delhi, at 64.

7 to 25 by the Act 22 of 1986. The Supreme Court of India has celebrated its golden jubilee.

Lord Denning, admirer of the Supreme Court of India, has said that the Supreme Court of India has upheld the rule of law in the most challenging period of the whole history of India. Lord Denning has said that 'it is the role of the judges in developing the law. Many of the judges of England have said that they do not make law; they only interpret it. This is an illusion which they have fostered. But it is a notion which is now being discarded everywhere. Every new decision – on every new situation – is a development of the law. The law does not stand still, it moves continually. Once this is recognized, then the task of the judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic, a mere working mason laying brick on brick, without thought to the overall design. He must be an architect – thinking of structure as a whole – building for society a system of law which is strong, durable and just. It is on his work that civilized society itself depends.'

¹¹ *Supra*, note 1.

The Constitution of USA which came into force in 1789 has served that country for more than 217 years but was amended only 18 times resulting in 27 amendments. The Constitution of India which came into force in 1950 but has been amended already 93 times.

The independence of the judiciary has been secured both by Constitutional provisions as well as by judicial interpretations. The Indian judiciary is immune from political interference. The Indian judicial salad does not include any significant political vinegar.¹²

The Courts play an important role in the development of the constitution. Since the commencement of the Constitution the Supreme Court has rendered many decisions giving creative, purposeful, liberal and dynamic interpretations expanding various provisions of the Constitution. In *Unni Krishnan's* case,¹³ the Supreme Court has gone to the extent of stating that a fundamental right need not be explicitly stated in the Constitution, but it can also be implied from expressly stated fundamental rights. They should be so interpreted having regard to the

¹² Ashok Desai, 'The Law shall Prevail: A Relook at the Indian Legal System' Butterworths, New Delhi, 1999, at 46.

¹³ *Unni Krishnan v. State of Andhra Pradesh*, AIR 1987 SC 2178.

Preamble and Directive Principles of State Policy. In the result, a number of socio and economic, 'fundamental rights' have been created.

The contribution of the Supreme Court and of the High Courts is essentially the result of contribution by individual judges who, with their erudition, expertise and vision, have infused new vigour into many provisions of the Constitution of India. It has led to unprecedented judicial policy making and judicial legislation adding new dimensions to the constitutional provisions with aspect the powers of the executive and legislature. Thus, it becomes necessary and imperative to evaluate the contribution of judges in the constitutional development of India through the judicial process. It involves the study of various norms of constitutional interpretation, judicial creativity, scope and effect of judicial review in general and the study, analysis and assessment of the positive, liberal and purposive role of judges. While exercising its power of judicial review the Supreme Court has evolved the doctrine of 'Basis Features' of the Constitution as a shield to protect and preserve certain fundamental constitutional values. Justice K.Subba Rao, in the *Golaknath*¹⁴ case has interpreted the role of the judiciary as follows:

¹⁴ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

‘Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this court to formulate legal doctrines to meet the ends of justice. To deny this power to the Supreme Court on the basis of some outmoded theory that the court only finds the law but does not make it, is to make ineffective the powerful instrument of justice placed in the hands of the biggest judiciary of this country’.

In a democratic system conflicts between different interests and sometimes differences between organs of the government do arise. These conflicts and differences can, however, be reduced and even prevented if the spheres of the various organs and functionaries and their boundaries are well understood and recognised. An attempt is made to discuss the role of the Supreme Court in constitutional developments. The origin and growth of the Supreme Court of India, as contemplated by the framers of the Constitution, the changing facets of judicial role and review in India and more particularly the role of the supreme Court in expanding the scope of ‘State’ under Art.12 of the Indian constitution, interpreting the dynamics of ‘Equality’ including protective discrimination, widening the scope of ‘life’ and ‘personal liberty’ while reading a ‘due process clause’ into Art.21 even though originally it was not intended, as advised by Justice Frankfurter of the American Supreme Court to Sir B. N. Rau.

This has opened up possibilities for giving a holistic interpretation of fundamental rights. The associated judicial activism is critically

analysed. The judiciary has developed various new techniques like public interest litigation and compensatory jurisprudence.

This study is aimed at the constitutional developments in India through judicial process during the last five-and-half decades in the light of judicial pronouncements by the Supreme Court and the High Courts. One of the principles of democracy's constitutionalism is judicial review. Under the constitution's scheme of separation of powers, it is the duty of the superior courts to defend the fundamental rights, and the basic structure of the Constitution as the principles governing Indian democracy, but keep away from political questions. The power of review has become an essential part of the rule of law and constitutionalism in India. The judiciary is the only bulwark against large scale corruption and total misuse of power by politicians and the bureaucracy and it has to be active in maintaining democracy and the Rule of Law. The very existence of an effective justice-delivery system depends on the judges who for the time being constitute the system.

The judges have to honour the judicial office which they hold as a public trust and strive to enhance and maintain the people's confidence in the judicial system. The greatest strength of the

judiciary is the faith of the people in it. Faith, confidence and acceptability cannot be commanded; they have to be earned. And that can be done only by developing the inner strength of morality and ethics'.¹⁵ Speaking in the Constituent Assembly on India, its President Dr. Rajendra Prasad had emphasized the need for the Indian Judiciary to be independent of the Executive and competent in itself. There was a long discussion as to how the twin objects could be achieved. Socrates had counseled judges to hear courteously, answer wisely, consider soberly and decide impartially. These four virtues are all aspects of judicial diligence.

The concept of judicial independence has been described in golden letters in one of the judgments of the Supreme Court of India. 'To keep the stream of justice clean and pure, the judge must be endowed with sterling character, un-impeachable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and working of the Constitution itself. In short, the behaviour of the judge is the bastion for the people to reap the fruits of democracy, liberty and justice and the antithesis rocks the bottom of the rule of law'.¹⁶

¹⁵ Justice R. C. Lahoti *Cannons of Judicial Ethic*, Universal Law Publishing Co., Delhi, 2005, at 14.

¹⁶ *C. Ravichandran Iyer v. Justice A. M. Bhattacharjee*, (1995) 5 SCC 457, per K. Ramaswamy, J.

A single dishonest judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system. A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. 'A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a judge must keep himself absolutely above suspicion; to preserve the impartiality and independence of the judiciary and to have the public confidence thereof'.¹⁷ According to Justice P. B. Gajendragadkar 'Judges ordinarily must observe certain rules of decorum in their social behaviour. A little isolation and aloofness are the price which one has to pay for being a judge, because a judge can never know which case will come before him and who may be concerned in it. No hard and fast rule can be laid down in this matter, but some discretion must be exercised'.¹⁸

Justice Hidayatullah has placed observance of the punctuality by judges on a very high pedestal. According to him a judge who does not observe punctuality does not believe in Rule of Law. According to Justice V. R. Krishna Iyer the judges who do not pronounce

¹⁷ *K. Veeraswami v. Union of India*, (1991) 3 SCC 655, para 79, per Sharma, J.

¹⁸ P. B. Gajendragadkar, *To the Best of My Memory*, Bhavan's Book, Bombay, at 138.

judgment in time commit turpitude.¹⁹

The courts in India have faced a number of challenges including the ever increasing arrears, vacancies that have not been filled up as and when they arose, transfers and the like from within the institution. Greater challenges arise when one compares the size of the country and the population in the context of globalization and the resulting socio-economic changes constantly taking place in India. The judiciary has withstood the test of time till now and needs to continue this tempo in the years to come. The public expectation on the role of judiciary in India is on an increase and they have every right to have this expectation which reflects the confidence that they have in the institution. The consequence is the ever increasing case load for the judiciary at all levels. The very nature of the judicial process necessitates that the judges be guided, as legislators are, by considerations of expediency and public policy. They must, in the nature of things, act either upon knowledge already possessed or upon assumptions or upon investigations of the pertinent general facts - social, economic, political, scientific or legal. The judges are required to function with in the rigid constitutional parameters of the doctrine of

¹⁹ P. Krishnaswamy, *V. R. Krishna Iyer: A Living Legend*, Universal Law Publishing Co., New Delhi, 2000, at 138.

separation of powers which excludes judicial participation in policy formulation and articulation, counsel moderation and self-restraint in the use of overruling. The Constitution of India establishes the main organs of the State, the Legislature, the Executive and the Judiciary, defines their powers, delimits their jurisdictions, demarcates the responsibilities and regulates their relationships with each other and with the people. Judicial process in its largest sense would cover all the acts of the court from the beginning of its proceedings till the pronouncement of judgment in a given case before it.

Under the Indian Constitution, there is a unified judicial system with the Supreme Court at the apex followed by 21 different High Courts. Article 124 (1) provides for the establishment of the Supreme Court. The Supreme Court has been provided with different jurisdictions under the Constitution. It has the Original jurisdiction to resolve centre-state and inter-state disputes.²⁰ It is the highest court of appeal in all civil and criminal matters.²¹ Over and above this appellate jurisdiction, the Supreme Court also has a very extensive appellate jurisdiction from any court or tribunal not specifically provided for.²² It has the Advisory jurisdiction

²⁰ Article 131.

²¹ Articles 132 to 134.

²² Article 136.

unlike any other Apex Court.²³ It has the power to review its own decisions.²⁴ It is also the guardian of the fundamental rights of the individuals by enforcing those rights.²⁵ The Supreme Court is also a court of record.²⁶ Over and above all these, the Supreme Court is empowered to issue any order for doing complete justice in any case.²⁷ The other set of constitutional courts, the High Courts, are also given enormous powers and jurisdiction, subject of course, to those of the Supreme Court.²⁸ The decision of the Supreme Court is final as the law of the land and binding on all courts in India, ²⁹ unless its own pronouncement is reviewed or reversed by the Supreme Court itself or the Constitution or the laws are suitably amended by the Parliament or the State Legislatures. Providing speedy, transparent, fair, time bound and affordable justice to all is at the centre of the judicial process. A review of these and other provisions of the Constitution would reveal that the framers of the Indian Constitution not only wanted to ensure the independence of the judiciary, but also wanted the judiciary to check the arbitrary actions of the other two branches of the government, thereby ensuring 'constitutionalism'.

²³ Article 143.

²⁴ Article 137.

²⁵ Article 32.

²⁶ Article 129.

²⁷ Article 142.

²⁸ Articles 215 (court of record), 226, 227.

With the independence and autonomy given to the judiciary in India under the Constitution, the courts have by and large performed their task meaningfully till now. In this process, the courts have withstood the external pressures and internal dilemmas in a manner sufficient to uphold their autonomy, dignity and independence.

Access to justice is the most basic 'human right' of a modern, egalitarian legal system which purports to guarantee equality and liberty. Particularly in the courts, in formal dispute resolution mechanisms, access to justice has become very expensive in most of the modern societies. The United States Report says that a victim in a motor accident case for recovery of compensation had to pay 35.5% of claim amount to the lawyer and another 8% towards other expenses. A recent empirical study in England of personal injury litigation has found that 'in about a third of all contested cases, the total costs were greater than the amount in dispute.'³⁰ It is certainly clear that the single most important expense to the litigant is of course lawyer's fees. Claims involving relatively small sums of money suffer most from the barrier of cost. If the dispute is to be resolved by formal court processes, the cost

²⁹ Article 141 of the Indian Constitution.

³⁰ M. Zander, *Cases and Materials on the English Legal System*, 2nd Ed., Weidenfeld and Nicholson, London, 1976, at 323.

may exceed the amount in controversy or if not, may still eat away so much of the claim as to make litigation futile. The problem arises largely because Lawyers must be directly or indirectly compensated according to the time they work, and the cost of their time is very high.

According to the great jurist Roscoe Pound, one of the main causes of popular dissatisfaction is 'in the area of judicial organization and procedure'. According to him, judicial power is wasted in three ways:

- i) By rigid districts or courts or jurisdictions, so that business may be congested in one court while judges in another are idle.
- ii) By consuming the time of courts with points of pure practice and etiquette, when they ought to be investigating substantial controversies.
- iii) By nullifying the results of judicial action by unnecessary retrials.

In many countries, litigants seeking an urgent remedy must wait over two or three years for enforceable judicial decision. The effect of this delay is to increase the parties' costs and put great pressure

on the economically weak to abandon their claims or settle for much less than that to which they are entitled.

Persons or organizations possessing considerable or relatively considerable financial resources that can be utilized for litigation have obvious advantages in pursuing or defending claims and they can afford to litigate. They are able to withstand the delays of litigation. Each of these capabilities, is in the hands of only one of the parties can be powerful weapon, and the threat of litigation can become any effective deterrent on the other. Personal 'legal competence' which related to the advantages of financial resources and attendant differences in education, background and social status, is a much richer concept which is of crucial importance in determining the accessibility of justice.

The Judges of the Supreme Court who have interpreted and sustained the Constitution have broadened the reach of the constitutional provisions while working within the rigid constitutional parameters set by the separation of powers. Administration of justice, the main task of the judiciary is today universally a function belonging exclusively to the State. The judiciary is not only required to settle individual disputes but is also regarded as a custodian and defender of individual rights.

According to Lord Bryce 'there is no better test of the excellence of Government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen than the feeling that he can rely on certain and prompt administration of justice'.

As the topic is so vast, it is proposed to analyze a few issues pertaining to judicial process and constitutional developments in a few specific areas.

Objectives

With this backdrop, the objectives of this research would include the following:

- a. To analyse how the judicial process would contribute to various aspects of constitutional development;
- b. To analyse the method and manner through which the courts have attempted to reduce the gap between the international obligations undertaken by the government of India and their domestic implementation in reality;
- c. To critically analyse the nature and extent of the judicial power in the context of 'separation of powers' and 'checks

and balances' and within the framework of the Indian Constitution;

- d. To critically analyse the limits, if any, of judicial process;
- e. To analyse the extent of judicial accountability under the Indian Constitution; and
- f. To analyse the Electoral reforms through judicial process.

Based on these objectives, the following research questions are framed for a detailed analysis in this dissertation:

- a. What are the meaning, nature and scope of judicial process under the Indian Constitution?
- b. What are the specific areas of constitutional developments that the judicial process in India has substantially strengthened?
- c. What are the limits of judicial process, if any? and
- d. What is the nature and extent of judicial accountability in relation to judicial process?

Hypotheses

Based on the above said specific objectives and research questions, the following hypotheses are framed for a thorough review of the Constitution, judicial decisions and the ground realities:

- 1) Judicial activism of the Supreme Court is nothing but the conscious exercise by the Judges of the power of judicial review to meet the challenging needs of time;
- 2) Judicial activism is a result of the failure or indifference on the part of the other two political organs of the State, viz., the legislature and the executive in discharging their constitutional responsibilities assigned to them under the Constitution;
- 3) The Judiciary has contributed more for the development of specific areas like Judicial review, Rule of law, Enrichment of fundamental rights, Judicial accountability, Electoral reforms and implementation of International Treaty Obligations; and
- 4) The heart of democracy lies in the judicial process of an independent judiciary, speedy disposal of cases, inexpensive, fair and transparent access to justice.

Methodology

In pursuing the study, the researcher has adopted a combination of descriptive and analytical methodology. This includes the study of case law where ever required. Similarly, comparative method is also pressed into service in appropriate places which require adoption of lessons learned by foreign jurisdictions. As the title indicates the study is purely doctrinal and critical.

Chapter Scheme

This thesis titled **“The Constitutional Developments in India through Judicial Process: A Study”** is divided into nine chapters. Apart from this Introduction, Chapter II entitled **‘JUDICIAL ACTIVISM AS PART OF JUDICIAL PROCESS’** attempts to analyse the contours of constitutional interpretation contributing to constitutional developments by referring to a series of judicial decisions and the nature of power exercised by the Supreme Court during the past 55 years.

Chapter III entitled **‘ENRICHMENT OF FUNDAMENTAL RIGHTS THROUGH JUDICIAL PROCESS’** is an attempt to identify the direction in which the judiciary has moved over a period of time enlarging the scope of fundamental rights. A plethora of judicial

decisions are referred to for this purpose to understand and appreciate its nature and extent.

Chapter IV entitled **‘ELECTORAL LAWS AND REFORMS THROUGH JUDICIAL PROCESS’** analyses the method and the manner in which desirable changes were brought into the electoral process without even the need to having them reflected in the appropriate legislation. At the same time, the powers and functions of the Election Commission, and a few decisions of the court which lead to legislative amendments are also studied in this chapter.

Chapter V entitled **‘CONTEMPT OF COURT & CONTEMPORARY DEVELOPMENTS’** makes an attempt to analyse the provisions of the Constitution and the Law relating to contempt of courts as well as to review the nature of contempt, object of the law and instances of contempt, and the direction in which the Supreme Court has been moving in the recent years.

Chapter VI entitled **‘SEPARATION OF POWERS AND CHECKS AND BALANCES’** explains the constitutional provisions and judicial interpretations to highlight judicial creativity and the need to move in this direction.

Chapter VII, entitled **‘ROLE OF THE JUDICIARY IN IMPLEMENTING INTERNATIONAL TREATY OBLIGATIONS’** an attempt is made to analyse the role of the Supreme Court in filling the gaps, through judicial process, in implementing such of the international obligations as were not attended to by the Parliament or by the Union Government.

Chapter VIII entitled **‘JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY’** is an attempt to evaluate the contemporary developments and the need for more focus on accountability.

The concluding chapter highlights of the previous chapters is presented with a verification and validation of the hypotheses. Observations and recommendations in the light of the study for adoption in future within the framework of the Indian Constitution form the core of this chapter.

A few annexure pertaining to accountability of the judiciary are also included in this thesis.

Survey of Literature

The researcher has referred to a number of primary sources, like the Constitution, statutes and international treaties. Other secondary sources like books, articles published in leading journals, magazines, newspapers and internet sources are also referred to. These sources are organized and presented in the bibliography. The cases referred are arranged alphabetically in a Table of Cases. A Table of Statutes is also annexed. A plethora of cases decided by the Supreme Court and various High Courts are reviewed in detail. However, a very few select cases have been cited here for detailed study keeping in mind the constraints on the length of the thesis.