and appellate jurisdiction with all the powers of such a court including the power to punish for its contempt (article 215).

The President appointed judges of the High Court after consultation with the Chief Justice of India, the Governor of the State and in case of appointment of all judges other than the Chief Justice, the Chief Justice of the High Court. It was held in S.P. Gupta v. Union of India (AIR 1982 SC 149) that all the three functionaries were to be given equal importance in the process of consultation,

Since then we have the Supreme Court verdict in the Advocates-On-Record case and the advisory opinion. To be appointed a High Court judge, a person must be a citizen of India with ten years' service in a judicial office or ten years' experience as a High Court advocate. On appointment, every High Court judge must take an oath of office. Every High Court judge shall hold office until he attains the age of 62. He cannot be removed from his office except in the manner provided for removal of a judge of the Supreme Court. Further, to ensure the independence of the office of a High Court judge, it is laid down that after being a permanent judge of a High Court, a person shall not plead in any court in India except the Supreme Court or other High Courts. Every High Court judge is entitled to a salary and allowances as may be settled by Parliament by law or as specified in the Second Schedule to the Constitution.

The President may transfer Judges from One High Court to another after consulting the Chief Justice of India (article 222). However, the Supreme Court has held that judicial review is necessary to check arbitrariness and that a High Court judge cannot be transferred without his consent but that only the judge affected can question it. (Union of India v. Sankal Chand, AIR 1977 SC 2328; K. Ashok Reddy v. Govt of India, JT (1994) I S C 40). The President may appoint an acting Chief Justice for a High Court. Also, in case of need, the President may appoint additional and acting judges of the High Court for a period not exceeding two years. The Chief Justice of a High Court may, with the consent of the President, appoint a retired judge to sit and act as a judge (articles 215, 217-224A).

Every High Court shall consist of a Chief Justice and such other judges as the President may deem necessary to appoint

from time to time (article 216). Each High Court has powers of superintendence over all the courts and tribunals-other than those set up under any law relating to armed forces-in the area of its jurisdiction (article 227).

Where any High Court is satisfied that a case pending in the lower courts involves a substantial question of law as to the interpretation of the Constitution, it may withdraw the case and either itself decide it or determine the said question of law and return the case to the Court for determination (article 228).

Every High Court has full control over its staff. The salaries and allowances of the judges and of the High Court staff are all charged on the Consolidated Fund of the State. Appointments of officers and staff of a High Court are made by the Chief Justice of the Court or by such other judge or officer of the Court as he may decide. The terms and conditions of service of the staff and officers of the Court should appropriately be settled by rules made by the Chief Justice and approved by the President (article 229). The jurisdiction of a High Court may be extended to or excluded from a Union territory (article 230).

Article 226 lays down that every High Court shall have power throughout the territory under its jurisdiction to issue to any person or authority directions, orders or writs including writs of habeas corpus, prohibition, quo warranto and certiorari or any of them for the enforcement of the fundamental rights or for any other purpose. Thus, while the Supreme Court's writ jurisdiction extends only to cases of violation of fundamental rights, the High Courts under article 226 enjoy much wider powers and can issue writs in all cases of breach of any right. This becomes obvious from the use of the term "for any other purpose". The High Court may set aside an illegal order, may declare the law or the right, may order relief by way of, for example, refund of illegal tax etc. Just as the law declared by the Supreme Court is binding on all courts in India, that declared by the High Court is binding on all subordinate courts within the State or within the territory covered by the jurisdiction of the High Court (State of Orissa v. Madan Gopal (1952) SCR 28; Rambhadraiah v. Secretary, AIR 1981 SC 1653; Desai v. Roshan, AIR 1976 SC 578; State of M.P. v. Bhailal,

AIR 1964 SC 1006). In appeals by special leave against the Patna High Court orders in writ petitions alleging large-scale misappropriation of public funds to the extent of several hundred crores of rupees in the Animal Husbandry Department (Fodder Scam), the Supreme Court directed the High Court to ensure that a fair, honest and complete investigation was completed by the CEI and all persons against whom a prima facie case for trial is made out were identified and put on trial in" accordance with law.

The High Court's jurisdiction extended to examining the manner of investigations and considering the question of extension of time (Union of India v. Sushil Kumar Modi, AIR 1997 SC 314).

It needs to be remembered that the remedy through a writ in cases other than those of violation of fundamental rights is not a normal one and is not expected to be granted as a matter of routine. It is an extraordinary remedy, which can be expected, in special circumstances and only under the discretion of the Court. Judiciary is not supposed to lay down policy and no court or tribunal can compel the governments to change its policy involving expenditure. (Himmat Lal Shah v. State of U.P., AIR 1954 SC 403; Abraham v. ITO, AIR 1961 SC 609; Bhopal Sugar Industry v. ITO, AIR 1967 SC 549; State of Rajasthan v. Karam Chand, AIR 1965 SC 913; Union of India v. Tejram, (1991) 3 SCC 11; Karlar Singh v. State of Punjab, JT (1994) 2 SC 423).

The power to issue writs has been vested in the Supreme Court and the High Courts with a view to ensure quicker justice and early relief to persons whose rights are violated with impunity and who would suffer irreparably if a ready and speedy remedy is not made available without going into avoidable technicalities. There are five well-known writs.

Habeas Corpus literally means a demand to produce the body. It applies in a case where a person is alleged to have been illegally detained. The issuance of the writ means an order to the detaining authority or person to physically present before the Court the detained person and show the cause of detention so that the Court can determine its legality or otherwise. If the detention is found to be illegal, the detained person is set free

forthwith. Since now, after the 44th Amendment, article 21 cannot be suspended even during the proclamation of Emergency; this becomes a very valuable writ for safeguarding the personal liberty of the individual. While the Supreme Court can issue the writ of habeas corpus only against the State in cases of violation of fundamental rights, the High Court can issue it also against private individuals illegally or arbitrarily detaining any other person.

Mandamus is a command to act lawfully and to desist from perpetrating an unlawful act. Where A has a legal right, which casts certain legal obligations on B, A can seek a writ of mandamus directing B to perform its legal duty. Mandamus may lie against any authority, officers, government or even judicial bodies that fail to or refuse to perform a public duty and discharge a legal obligation. The Supreme Court may issue a mandamus to enforce the fundamental right of a person when its violation by some governmental order or act is alleged. The High Courts may issue this writ to direct an officer to exercise his constitutional and legal powers, to compel any person to discharge duties cast on him by the Constitution or the statute, to compel a judicial authority to exercise its jurisdiction and to order the Government not to enforce any unconstitutional law.

Prohibition is issued by a higher Court to a lower Court or tribunal and is intended to prohibit it from exceeding its jurisdiction. Writ of prohibition is not issued against administrative agencies. It is available only against judicial and quasi-judicial bodies. Certiorari also lies against judicial and quasi-judicial authorities-courts and tribunals-and means 'to be informed'. When, for example, a tribunal acts without jurisdiction or in excess of it and issues an illegal order, that order can be quashed by a writ of certiorari. Such a writ may lie even against an administrative body affecting individual rights. (Union of India v. Nambudri (1991) 2 VJSC 302).

Quo-Warranto is a question asking 'with what authority or warrant'. The writ may be sought to clarify in public interest the legal position in regard to claim of a person to hold a public office. An application seeking such a writ may be made by any person provided the office in question is a substantive public

office of a permanent nature created by the Constitution or law and a person has been appointed to it without a legal title and in contravention of the Constitution or the laws and a person has been appointed to it without a legal title and in contravention of the constitution or the laws. Besides writs, the High Courts under article 226 may also issue other directions and orders in the interests of justice to the people (T:C. Basappa v. Nagappa, AIR 1954 SC 440).

JUDICIAL REVIEW AND JUDICIAL ACTIVISM

Judicial Review

Judicial Review is the power of judiciary to review any act or orders of the Legislative and Executive wings and to pronounce upon the constitutional validity when challenged by the affected person. While reviewing such enactment, the Supreme Court will examine whether jurisdictional limits have been transgressed. This power is based upon a simple rationale that the constitution is the supreme law of land and any authority, if it ventures to go beyond the limitation laid down by the constitution, will be curbed.

The doctrine of judicial review is a contribution of American constitutional system. This was acquired by the American Supreme Court in Marbury v. Madison case of 1803 when Chief Justice Marshall announcing the verdict remarked that any law violating the constitutional provision is null and void. Since then it got strongly embedded in the constitution and judicial supremacy got established.

In India, the Government of India Act, 1935, gave the power of judicial review to the federal Court, but its scope was limited to the extent that it could review only the provisions of the act which provided for distribution of powers between the Union and Provinces. The Constitution provides for distribution of power among states and the centre, separation of powers among governmental organs and Fundamental Rights, which has widened the scope of judicial review.

The constitution does not refer to the concept of judicial review because the framers realized that there were inherent drawbacks of this doctrine. In the first place, it may set at naught the will of the people expressed through the Parliament:

Secondly, judicial review inevitably opens the floodgates litigation involving huge expenditure and loss of time and consequent delay in the implementation of government programmes, and, thirdly, the judiciary is responsible to none and is not answerable for consequences of its decisions.

Justice Patanjali Shastli states: "our constitution contains express provision for judicial review of legislation as to its conformity with the constitution, unlike.in America, where the Supreme Court has assumed extensive powers of reviewing legislative acts under 'due process' clause in the Fifth and Fourteenth Amendments". This is especially true as regards the Fundamental Rights as to which this court has been assigned the role of sentinel; while the court naturally attaches great weight to the legislative judgement, it cannot desert its own duty to determine finally the constitutionality of an impugned statute.

There are specific provisions in the constitution which provide for judicial review, though the Supreme Court has enumerated certain rules for applying this doctrine. According to H.M. Seervai, they are:

(1) There is a presemption in favour of constitutionality and a law will not be declared unconstitutional unless the case is free from all doubts and onus to prove that it is unconstitutional lies with the petitioner who has challenged it.

(2) When the validity of law is questioned, it should be upheld to protect parliament sovereignty.

(3) The court will not constitutional questions if a case is capable of being decided on other grounds.

(4) The court will not decide a larger constitutional question when is required by the case before it.

(5) The court will not hear an objection as to the constitutionality of a law by a person whose rights are not affected by it.

(6) A statute cannot be declared unconstitutional merely because it is not consistent with the split of the constitution.

(7) In assessing the constitutionality of a statute the court

Is not concerned with the motives-bonafides or malafides-of the legislature but the law must be upheld whatever a court may think of it.

(8) Courts should not pronounce on the validity of an Act or part of an Act which has not been brought into force because till then the question of validity would be merely academic.

The independent India had to go through many controversies leading to institutional rivalry between the legislature and judiciary. Though the power of judicial review had its limitations, it was viewed as a challenge to the supremacy of legislature leading to may constitutional amendments. Dr. Ambedkar had earlier remarked, "The Constituent Assembly In. making the constitution has no partisan motive. Beyond securing a good and workable constitution, it has no axe to grind. In considering the articles of the constitution, it has an eye on getting through a particular measure. The future Parliament, if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the constitution to facilitate the passing of party measures which they have failed to get through in Parliament by reason of some article of the constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none".

But Pandit Nehru, a staunch supporter of parliamentary sovereignty has remarked with a different tone, "No Supreme Court and no judiciary can stand in judgement over the sovereign will of Parliament, representing the will of the entire community...Ultimately, the whole constitution is a creation of Parliament.

By interpretation and amendment, the constitution underwent many vital changes. The process got started with the First Amendment Act, 1951, which abolished the zamindari system. This act was challenged in the Shankari Prasad case on the ground that this has infringed Fundamental Rights. The Court rejected the petition and stated that Parliament is authorized to amend any part of the constitution including the chapter on Fundamental Rights. This was upheld by a majority judgement in the Sqijan Singh case where the 17th Amendment

Act 1964 was challenged on the ground that it violated Fundamental Rights under article 31A. The landmark judgement professing judicial activism came in 1967, when the 1st, 4th and 17th amendments were challenged in the Golaknath case. The court by majority of 6-5 held that Parliament does not possess the authority,to amend the chapter on Fundamental Rights with respect to Article 13(2) embedding the doctrine of judicial review and giving way to due process of law.

In fear of non-implementation of its social legislations, the Parliament through an ordinance in 1969 nationalized 14 banks under Banking Companies (Acquisition and Transfer of Undertakings) Ordinance. This Act was challenged by R. C. Cooper on the ground that it violated Article 14 and 31(2). Once again in 1970, the President by an executive order abolished-the institution of ruler's privy purses. This was challenged by Madhav Rao Scindia. Both these ordinances were declared unconstitutional by the court.

In response to these setbacks the Parliament framed the Constitution (Twenty Fourth) Amendment Act, 1971, and due amendments were made in articles 13 and 368 to provide the authority to Parliament to amend any part of the constitution. By the (Twenty-Fifth) Amendment Act, 1971, Article 31 was amended to remove obstacles laid down by the court in the Bank Nationalization case. Further, the Tewenty-Sixth Amendment Act, 1971, was made to abolish the institution of rulers privy purses. The government defended its action by stating that these were necessary amendments which would transform socio-economic structures of the society.

In the Keshvanand Bharati case, the constitutional validity of the twenty-fourth, twenty-fifth and twenty-ninth amendments-came up for judicial review.

The court by limiting the power of amendment, held that Parliament does not possess the authority to amend the basic structure of the constitution though the concept of basic structure was not explained. The Supreme Court was moved to review its decision but the bench was abruptly dissolved by the chief justice. In 1975, the Thirty-Ninth Amendment Act, relating to electoral matter, was challenged in the historic