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# MAD- 2020
# Day – 26
# POLITY

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**Question:**

The Indian Judiciary has become an institution of Governance. Discuss.

**Answer:**

The Indian judiciary in newly independent India started as a conservative institution, but over time has tilted towards an activist one. Through a creative interpretation of the Indian Constitution, the courts have acquired an enhanced role going beyond their judicial mandate.

The judiciary has also become an institution of governance due to a number of reasons:

- Rise in judicial activism and Article 142 (to do complete justice)
- Movement towards due process from procedure established by law.
- Delays and slow pace of Parliamentary legislations.
- Evolving nature of Indian society and higher judiciary as a 'trustworthy' institution.
- Expanded definition of fundamental rights and related policy requirements.
- Push to executive to achieve goals listed out in DPSPs.

There are numerous ways in which the judiciary in India has taken up the mantle for providing governance and providing law and policy inputs to cater to the same. These include:

- **Law making:** The Vishakha judgment is one of the key examples of Indian judiciary taking up a legislative role to provide for governance keeping in mind rights and security of women in workplace. The guidelines put in place by the Supreme Court in 1997 were only replaced with the passing of the Sexual Harassment of Women at Workplace Act 2013.
- **Policy making and regulation**: Recent years have witnessed the judiciary intervene a number of times in the sphere of both policy making and regulation. The ban of Supreme Court on liquor vendors to operate along highways may be seen as an example of the same. The Supreme Court used Article 142 in 2015 to ban all coal block allocations till then.
- **Environmental governance**: One of the most importance and earliest examples was that of environment related PILs which pushed forth environmental conservation and governance such as Yamuna pollution, air pollution in Delhi etc.
- **Police and jail reforms:** One of the earliest PILs, the Hussainara Khatoon case dealt with the issue of undertrials and their conditions. In 2014 the Supreme Court ordered that overcrowded prisons be freed of all undertrials, who have served half their maximum term.
- **Keeping a check on executive, legislature and laws:** One of the core values of good governance is keeping a check on executive and legislature power to ensure their integrity and responsibility. The judiciary through judicial review keeps a check which has been shown through numerous cases.

While the judiciary has been a contributor to good governance there are also issues involved when the courts assume this role:

- Violation of separation of powers: The Courts are seen as performing the role accorded to executive and legislature.
- Judicial overreach: Cases such as the ban on liquor have been regarded as an example of judicial over-reach (Pratap Bhanu Mehta).
- Lack of accountability: The Judiciary is a non-democratic organization that works on the opinion of judges, rather than understanding the problems of masses.
- •Lack of consistency: The judiciary is inconsistent leading to review of numerous judgments as well as on deciding which issue it decides to accept such as the issue with regard to migrants during pandemic.
- Corruption and mis-governance within judiciary: With large pendency, lack of transparency and growing fears about committed judiciary, there is a need for a restrained rather than enthusiastic judiciary.

While the judiciary has played a commendable role in furthering the task of governance in the country, it is important that it does not over-step its boundaries so as to not assume roles of other branches of government which is a basic requirement of a well governed country.


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