CONCLUSION

All political systems are embedded in their historical past, they work differently in different political and social settings.¹ Each system has its Constitution as the cornerstone of the nation and its governance. It is central theme which determines and defines the functional parameters of all three branches of Government – legislature, executive and judiciary.

The framers of Indian Constitution adopted the British model of parliamentary government because Independent India is a product of the most massive freedom movement. Hence it could be a mass democracy, based on universal adult franchise. However they did not make it a sovereign law making body like its English counterparts. They placed supremacy in the hand of legislature, but it had to be restricted because unlike Great Britain, India has a lengthy written Constitution, a federal distribution of powers and a list of fundamental rights. Therefore parliamentary law to be valid must confirm in all respects with the constitution.

In the classic parliamentary example of the United Kingdom, the Parliament is the depository of not only the legislative and executive powers but the ultimate judicial authority (the law lords in the House of lords acts as the highest court of appeal). The Indian federal experiment also significantly departs from the classic American federal system in as much as the Indian states neither enjoy the residual legislative power (which belong to Parliament) nor is there equal representation of federating states in the federal second chamber (as in the U.S. Senate). The most important feature of Indian

Constitution is Rule of Law and it is reflected in the fundamental rights of citizens, specially the right to equality, liberty and justice and the concept of “the procedure establish by law” which is explicitly mentioned in the Art. 21, but it actually underlies all rights. In several recent judgement of the Indian Supreme Court, the concept of procedure establish by law has been interpreted in way indistinguishable from the ‘due process of law’ in the U.S.A. (Maneka Gandhi case) Supreme Court satisfy with due process of law whereas in Gopalan case 1950 the Supreme Court satisfied with the procedure establish by law.

Indian Constitution makers adopted parliamentary democratic system, with the conviction that it best suited our ethos and culture and realized that a representative democracy working with the elected representative working in harmony with the executive and the judiciary is best suited to address the challenges of diversity multicultural identity, democratic ethos and the development needs of the people.

The Indian Constitution has adopted a middle course and compromise between the British concept of the sovereignty of Parliament and the supremacy of judiciary in America with its powers of Judicial Review of legislation. They also recognized that if excessive power vested in any of the organ it would undermine the democracy. They adopted the concept of checks and balances determining the functioning of each organ of the government. The separation of power and checks and balances are the two important pillar of Constitution for harmonious coexistence and mutual respects among them.
Indian democratic system presents a peculiar paradox of the fusion of parliamentary and federal features of the governmental functioning. The founding fathers sought to inherit the unique semblance of the Westminster model despite the peculiarities of the indigenous political set up. However, they also attempted to imbibe the dynamism of the American presidential system owing to its distinct characteristics and viability for a vast democratic multiethnic society. This symbolizes between the parliamentary and presidential system has its decisive bearing on the relationship between and among the three important pillars of governmental trinity, namely, legislative, executive and judiciary.

In every democratic system which has rule of law and written Constitution, the Constitution becomes the Supreme law of the land and if it incorporates Judicial Review as a fundamental feature of government, it entrusts to the judiciary a pivotal role as a guardian of those constitutional values which are effective check and safeguard against blatant abuse of governmental power. Like all modern democratic Constitutions the Indian Constitution entrenches Judicial Review as a paramount principle of public law and ultimately it is the Supreme Court which is the final arbitrator of issue of constitutional interpretation. Judicial Review upholds the supremacy of the Constitution, adjusting the Constitution to new condition and needs of the time resulting into social and economic benefits to the people, evolving the consciousness of right and keenness to achieve redress against violation of individual rights.

The separation of power has a great significance. It creates democratic balance in the different branches of the government. In America it form the
basis of its constitutional structure in India, India follows a separation of function, not separation of power. In practical application, three branches of the government have three separate areas of work. Though just like American Constitution in Indian Constitution also, there is express mention that the executive power of the union and of a state is vested by the Constitution in the President and the Governor; respectively by Art. 53(1) and 154(1), but there is no corresponding provision vesting the legislative and judicial powers in any particular organ. It has accordingly been held that there is no rigid separation of power in India.

It is noteworthy that Art. 50 of the Constitution puts an obligation over state to take steps to separate the judiciary from the executive. But, since it is a directive principle of state policy, it is not enforceable.

The doctrine of separation of powers has been accepted in India in its reasonable sense. In India the executive are a part of legislature they are responsible to the legislature for their actions and also it derives its authority from legislature. In India, since it is a parliamentary form of government, therefore its based upon intimate contact and close coordination among the legislative and executive wings. The functional parameters of each branch change overtime with one or two branches gaining more ground or glitter than the others at different times.²

The status of modern state is a lot more different than what it used to be. It has evolved a great deal from a minimal, non-interventionist state to an welfare state, wherein it has multifarious roles to play, like that of a protector,

² Ibid., pp. 19-20.
controller, provider, this omnipresence of the state has rendered its functions becoming diverse and problems, interdependent and any serious attempt to define and separate those functions would cause inefficiency in government. Hence, a distinction is made between 'essential' and incidental powers of an organ. According to this differentiation one organ cannot claim the powers essentially belonging to other organ because that would be a violation of the principle of separation of powers. But, it can claim the exercise of the incidental functions of another organ. This distinction prevents encroachment of an organ into the essential sphere of activity of the other.

There are at least two reasons as to why conflict arose between the two wings of government. In the first place, the supremacy of Parliament over judiciary as sought to be established by means of amendments. Secondly, conflict arose over the issues of nature and extent of fundamental rights, particularly the right to property, centering around the question of payment of compensation.

The Constitution defines the powers and functions of the Parliament and the Supreme Court, yet they do not function in isolation, keeping apart from each other. There is deep interrelationship between the two organ of the government. The Constitution of India is the supreme law of the land. The framers of the Constitution adopted neither too rigid Constitution so that amendment cannot be made nor too flexible that ruling party misuses its power. The law making power of legislature is not absolute the judiciary has power to adjudicate upon the constitutional validity of laws.
From 1950s to 1960s and 70s were a period that transformed the pattern of judicial behaviour in a significant way – as Zamindari Abolition and Land Reform in 1950-52 and Shankari Prasad v. Union of India in 1951; Sajjan Singh v. State of Rajasthan, 1965. The amendments which have been enacted to override judicial decision have also restricted the authority of the courts to safeguard property. But in I.R. Coelho v. State of Tamil Nadu Supreme Court has expanded its power of Judicial Review and Agrarian law are no more immune from judicial scrutiny.

The Supreme Court is regarded by the people of India as the greatest institutional watchdog of people’s fundamental rights and the most assertive organ that the nation possess. The judicial activism of the Supreme Court has contributed immensely for the development of specific areas in constitutional law after 1980 which ultimately helped the weaker section downtrodden and oppressed section of the society in the long run.

Parliamentary form of government hints at legislative supremacy. But the federal nature of the Constitution makes it imperative that the highest judiciary is able to exercise the power of Judicial Review. The roots of the present problem also lie in the design of the Indian Constitution. In Indian democracy rule of law aims to protect fundamental rights as well as socio-economic rights of its citizens. Success of rule of law depends upon administration of justice. Unlike the other two branches of government – policy making and policy implementation which draw their strength from their representative character, judiciary is placed on a different pedestal. It draws its strength from its professionalism and jurisprudential competence. 

3. Ibid., p. 20.
Supreme Court for the first time resisted in Golaknath case 1967 in curbing the amending power of Parliament in relation to Part III of the Constitution on fundamental rights. In another landmark judgement in Keshavananda Bharti case Supreme Court opened new horizons of Judicial Review by conceding Parliament's power to amend the entire Constitution. Enjoying a majority in the Parliament, the ruling party sought to bury the recognized rights of citizens in the dust of self-proclaimed socialist ideals discovered in the Directive Principles. The judicial response to this parliamentary audacity was the invention of the Basic Structure doctrine. It meant that Parliament could not damage the basic elements or framework of the Constitution.

Besides the basic structure doctrine, the Supreme Court has invented another example to determine the constitutionality of any legislation and executive action. In Maneka Gandhi 1978 the court declared all fundamental rights were inter-related. Law for taking away the life and personal liberty of an individual under Article 21 (Procedure established by law) to be valid, must also satisfy the requirements of Art. 19 (equality before law), that the procedure established by law must be reasonable, fair and just.4

In democratic form of government, no organ has the last word, and it is not appropriate that the authority of any one organ of democracy should be absolute and final. The decision even of the apex Court can be altered by ‘popular judgement’ of the legislature if it is found to thwart legislative intent. Similarly the Court in exercise of the power of Judicial Review can void

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executive action and even legislation found to be inconsistent with the Constitution. It does not matter that the legislation was passed by unanimous popular vote, i.e. by one voice, by the Parliament. There is, so to say, an understanding between each organ of democracy that its decision is not final and may be altered. However, the action by which it is altered must also satisfy the test of constitutionality. This is the balance struck by the Constitution.

So far as the Parliament is concerned, Art 105(2) provides that no member of Parliament shall be liable to any proceedings in any court in respect of anything said in Parliament. Art 121 restricts Parliament from discussing the conduct of any judge of the Supreme Court or the High Court in the discharge of his duties, except upon a motion addressed to the President for his removal. On the other hand, Art. 122 provides that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure. These Articles show the ‘mutual restrained’ to be exercised by the two organs, namely the legislature and the judiciary.

The provision of the Chapter IV of Part V of Indian Constitution provides for a close relationship between the judiciary and the legislature.

The smooth functioning of democracy depends on the extent to which each branch of the government is not only supreme in its own sphere. Also it is vigorous and strong enough to perform its constitutionality sanctioned functions effectively as well as to prevent the other branches from encroaching on or usurping its jurisdiction and authority. Thus, each of the branches of the government is expected, not, constitutionally found to, remain true to its responsibility laid down upon it by the constitution and discharge it to the best
of its capacity. It is only by performing assigned responsibilities that each branch can cooperate with each other and be, in real sense of the term partners in a collective endeavour of working a democratic constitution.

In India, the Supreme Court of India has never been consistent in its judicial behaviour, in the fifties, it obediently interpreted and applied the laws made in the sixties, the judiciary remained the same as before. Thus the Supreme Court of India has become quite active late in the 1970s and early in the 1980s. The present Supreme Court is an example of an active judiciary in a democratic set up. The expansion of the scope of life and personal liberty under Article 21, the advent of public interest litigation and the changing facet of judicially unenforceable directive principle are a few examples in the said direction. The Supreme Court has expanded its power in Keshavananda Bharti case. However immediately thereafter the Supreme Court became subdued and silent, due to the emergency imposed by Prime Minister Indira Gandhi, from 1974 to 1977, the Supreme Court was almost obedient to ruling government. The change of government in 1977, has promoted the judiciary to resurrect itself and the spate decision starting with Maneka Gandhi vs. Union of India support this view. Presently the Supreme Court has also expanded its role by entering into the areas which are known as preserver of executive e.g. the Ninth Schedule is no more immune from judicial scrutiny, and expulsion of eleven MPs from the Parliament.

According to the modern theory of government all political structure are multifunctional. Almond and Powell in their structural functional approach have given that judiciary performs both administrative as well as legislative
function. Thus from this point of view there is nothing wrong when judiciary questions the policy of Parliament or directs government to perform some acts. All the three branches of government together constitute an organic whole. It’s the responsibility of all the branches to provide meaningful life to citizens. Sometimes tensions and frictions among these leads to some negative developments in the political system as –

- De-stabilization of political system
- Deficit in the trust of people toward government
- Multiple amendment in the Constitution
- Fight for supremacy among organs.
- Independence of judiciary curtailed.

1. It is expected that in a successful democratic system – whether Parliamentary or any other – all related institution work with coordination. They remain free in their area of function but maintain a positive ‘inter-relation’. When institutions/organs too much interfere in each others’ area conflict starts. The conflict destabilizes the running of the system.

2. People are not ignorant with all these developments. They know very well who encroaches what and when. They gradually lack trust and confidence in these institutions.

3. Parliamentary effort to have an upper hand over others – has long been observed. If judiciary interferes or scrutinizes any law – lately Parliament amends the particular clause. This not in rare cases but it has become frequent practice. These regular amendments diminish the sanctity and piety of the Constitution.
4. It seems that ultimately, Parliament surpasses by moulding / amending the Constitution accordingly. Consequently independence of judiciary is at stake. Wherever judiciary sometimes became active in executive sphere or legislative the other two do not want to tolerate always this practice sometimes there seems a kind of fight for supremacy among them. Not only judicial activism but executive and legislative activism is also seen. To avoid all these circumstances few steps can be taken while giving importance to all three according to the situation and time. Reforms are required everywhere even in judiciary.

In contemporary times healthy judicial system is treated as one of the indicators of good governance. But India is in emergent need to adopt judicial reform as public trust and confidence in Indian judiciary is at its lowest point. With the increase in rate of pending cases and declination of pronouncement of justice, society now considers, justice delayed process loosing faith of its people to whom it is obliged to provide justice. It is said that judge to people ratio in Indian context is very different from that of developed countries. Prime Minister Manmohan Singh said that delayed justice and corruption is the most important challenge faced by Indian judiciary.

Reform of legal profession is also necessary. The impact of delay is more on the marginal section of society, they are not in a position to pay the sum required for granting bail, hence judicial system should be democratized besides this alternative dispute resolution mechanism like Lokadalats family courts, etc. have been introduced. The judges enquiry (Amendment) Bill 2008 provides for creation of National judicial Council (NJC). This Council will
undertake investigation and enquiry into the allegations of misbehaviour or incapacity of judges of Supreme Court or High court.

In recent years there have been measures to improve functioning of courts, for application of information and communication technology (ICT) to the justice delivery system for better management a scheme for computerizing all the district and subordinate courts was approved by the central government in 2007. The Central government proposes to set up more than five thousand Gram Nayayalas at intermediate panchayat level under the Gram Nayalayas Act 2008, to bring justice at the door step of rural population.

In India, the judiciary is having absolute monopoly with respect to the appointment of judges in Supreme Court and High Court. Hence, an attempt is being made to regulate the system of appointment. The Supreme Court goes on summer vacations for seven weeks, vacations in the higher judiciary must be curtailed and the court’s working hours should be extended by at least half an hour. Mr. Verappa Moily Law Minister of India also ensure that rule of law also touch every individual including the last man in queue would go a long way to realize simple, speedy, cheap, effective and substantial justice.

The judges Accountability Bill 2010 aims at laying down judicial standards and establishing a mechanism to deal with complaints of misbehaviour or incapacity of a judge of the Supreme Court or High Court or the Bill also proposes to make provisions for declaration of assets and liabilities of judges. The members of the higher judiciary should have no bias in judicial work or judgement on the basis of religion race, caste, sex or place of birth. The other guide lines include not contesting election of any club or society; not
having close association with individual members of the bar and no judge should give an interview to the media regarding any of the judgement delivered. The judiciary is in urgent need of radical reform. A speedy trial is not only required to impart quick justice but also to ensure enduring faith in the judiciary for which the government and the judiciary have to work together.

Indian Constitution treats Parliament as the supreme institution of the people. It is envisaged as instrument for nation building, social engineering, democratic governance and rule of law. It was to reflect popular sovereignty. It was hoped that Parliament will reflect the wishes of all sections of Indian society. Irrespective of class or gender or religion people will have chance to get represented in the system but there has been a downslide of Parliament.

The presence of one party dominance system has decreased the capability of Parliament to control executive. It actually happens the other way round executive started controlling Parliament both in terms of legislative, financial policies as well as the life of the House. The Indian political system suffered from the crisis of moral values. The phenomenon of political corruption made it possible for executive to gain the support of parliamentarian and by using money power or by its ability to give ministerial posts. Efforts were made to stop cross voting by strengthening the system of party whips and bringing out antideflection laws.

The parliamentarian doesnot take sufficient interest and neither participate in the meeting of house. Parliament is a platform for debate and discussion. The democratic way of resolution of conflicts is discussion and voting on the floor of the House but because of decrease in the number of
sittings the ability of Parliament in this context has declined. The Parliament power of amendment has been reduced because of the emergence of coalition politics, judicial activism and emergence of the doctrine of basic structure. Parliament could not provide effective opposition because of decline of number of meetings as well as increase in political corruption, opposition has underlined itself by disrupting the proceedings.

There is also decline in the role of Parliament in quantitative and qualitative sense over the years. The standard of parliamentarians coming from different backgrounds especially from criminal and uneducated background have significantly affected the legitimacy and sanctity of Parliament.

It is necessary to restore the dignity of Parliament coalition era has given an opportunity to Parliament to reasserts itself. However coalition era has also increased those type of situation which results into the decline in the prestige. It is important to restore the dignity of Parliament to maintain the legitimacy of the system in the eyes of Indian people, several steps has been taken in this context e.g. Fifty second amendment and ninety first amendment act were passed to stop the phenomenon of defections. Indian Parliament itself has taken strong measures in cases like cash query scam. Expulsion of 11 members of Parliament in the scam is a watershed event in the parliamentary history of India. It is necessary to make laws for making certain minimum number of sittings mandatory. Necessary electoral reform should come into existence that can stop the impact of criminalization in parliamentary politics. Role of media may also be regulated because of sensational journalism media tends to telecast those aspects of parliamentary life which are more negative. Decline of
Parliament is not completely divorced from decline of moral values in Indian society at broad level. Parliament may also devote more time for debate and discussions. Opposition may stop undermining the parliamentary politics and disrupting its proceedings. The members of Parliament may make an attempt to maintain the dignity of the Houses by their regularity and efficiency in their duties, integrity in their character, punctuality in their presence and dedication toward the nation and people.

The success of any political/democratic system is inherent in the efficiency and coordination of its institutions and their functions (given sphere). The law making, enforcing and adjudicating all are important in a governance but their balance and sense to give respect each other brings good governance. If institutional crisis come up it can be handled and managed by each other’s understanding. But if it intensifies and they fight to surpass each other while humiliating each other – that leads to political decay.

The Indian experience has been a mixed experience – pleasant and unpleasant both. The country has an excellent system (if practice good). The democracy, people’s representation, institutions and organs their coordination with slight separation of powers and checks to maintain balance, independence of judiciary and its strong review etc. – all are instruments which have been operative in Indian political system. But ever-since the judicial review came into the light – a sort of bitterness between Parliament and Supreme Court started to infiltrate therein. One is original place of constitution and other is custodian of it, both are important but most important is Constitution – to be ever respected and enshrined. It determines the pros and cons of political
institutions and organs; gives light to good governance and guides toward the success of governance. It is obligatory to all institution/ organs to abide by Constitution which is supreme. There is no need of very frequent amendments, no need of unnecessary interference in law making but need and demand of time is to maintain cooperation with each other and pay respect to other’s area of jurisdictions. It is expected that India would experience some better results in the time to come.