ABSTRACT

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.

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.

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.

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.

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.

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.

In *Golakhnath case 1967* Supreme Court curb the power of Parliament in relation to Part III of the Constitution on fundamental rights. In *Keshav Nanda Bharti case* the Supreme Court held that Parliament cannot amend the Basic Structure of Constitution. Besides basic structure doctrine the Supreme Court in *Maneka Gandhi case 1978* declared that all fundamental rights were inter-related. Law for taking away the life and personal liberty of an individual under Art. 21 (Procedure establish by law) to be valid, must also satisfy the requirement of Art. 19 (equality before law), that procedure establish by law must be reasonable, fair and just.

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 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.

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. 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.

India is in emergent need to adopt judicial reform as public trust and confidence is at its lowest point. With the increase in pending cases it is said that judge to people ratio in Indian context is very different from that of developed countries. The judges enquiry Bill 2008 provides for creation of National Judicial Council. The central government proposes to set up more than five thousand Gram Nayalas under Gram Nayalas Act 2008. Hence an attempt is also made to regulate the appointment of judges. The Judges
Accountability Bill 2010 aims at establishing a mechanism to deal with complaint of misbehaviour of a judge of the Supreme Court or High Court and also make provision for declaration of assets and liabilities of judges.

Indian Constitution treats Parliament as the supreme institution of the people but there has been a downslide of Parliament. The presence of one party dominance system has decreased the capability of Parliament to control executive. The decline of moral values, political corruption and use of money power is also responsible for decline of Parliament. Necessary electoral reform should come into existence that can stop the impact of criminalization in parliamentary politics. Role of media should also be regulated. Parliament may also devote more time for debate and discussions and may make an attempt to maintain the dignity of the Houses by their regularity and efficiency in their duties, integrity in their character and dedication toward the nation and people.

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.