PREFACE

The framers of Indian Constitution, who were much concerned with the consolidation of democratic set up were committed to an independent and strong judiciary. The basic principle of parliamentary democracy envisages supremacy of Parliament but with the emergence of idea of parliamentary democracy with federal structure complete sovereignty of Parliament is no more the accepted norm, therefore, judiciary has a significant role even in parliamentary democracy.

India has opted parliamentary form of government after gaining freedom from colonial power. The reason was a little bit of training in parliamentary democracy during the colonial power.

Parliamentary system is form of political system where executive is responsible to the legislature in other words one can say that executive is also drawn from legislature. Thus, in a system where there is clear majority there is always a possibility of power abuse. Judiciary in this context plays a significant role i.e. of a watch dog. As a guardian of Constitution judiciary is in a position to check any transgression or violation of constitutional norms.

In Indian Constitution judiciary particularly Apex Court has been given special power and special role, judiciary is guardian of the Constitution. In this capacity judiciary is empowered to examine the legislative and the executive function of the Government, further Article 13 puts a special responsibilities on the judiciary “the court would have the power to declare any enactment which transgresses a fundamental right as invalid”.

Thus judiciary has an implicit power of judicial review. While Parliament has been assigned the role of law making, judiciary has simultaneously been given the power to check this legislation. The decade of 1970s has been a watershed in judiciary’s role.

This thesis is examination of the relationship between two bodies - law making and law adjudicating of Indian political system under the changed socio-economic and political scenario. The beginning of which can be traced back to late 1970 or post emergency era.

The Constitution accords an important place to the judiciary, with the Supreme Court at its apex of judicial system. The Supreme Court in addition, being the final court of appeals civil and criminal has exclusive original jurisdiction in dispute between the union and the state and between two or more state and is the ultimate arbiter in all matters involving the interpretation of the Constitution. It has also writ jurisdiction for the enforcement of fundamental rights and advisory jurisdiction on a question of law fact referred to it by the President. Both Supreme Court and High Court have been given the power to review and reconsider their own judgements. According to Art. 137, subject to the provision of any law made by Parliament or any rule made under Art. 145, the Supreme Court shall have power to review any judgement pronounced or order made by it.

The purpose of Judicial Review is to maintain the supremacy of the Constitution. The idea of judicial review refers to the power of the Court to declare null and void those laws of the legislature and those orders of executive, which go against the provision of the Constitution.
The power of judicial review was restricted by the Forty second Amendment Act 1976, but the situation was restored back by the Forty third constitutional Amendment 1978. At present the Supreme Court has declared (Minerva Mill Case 1980) that the Judicial Review is the basic feature of the Constitution and thus its not subject to modification by constitutional amendment.

The power of Judicial Review has come under criticism from various quarter. Its hold that the judicial review violates the supremacy of the Parliament, which goes against the spirit of democracy. This has also resulted in continuous struggle between the Judiciary and Parliament for supremacy in the field of law. The appropriate course is to strike a balance between the powers of both the Supreme Court and the Parliament so that these two pillars of Indian democracy may function in perfect harmony and strengthen the roots of Indian democracy. While the Constitution has not recognized the doctrine of separation of power in its absolute rigidity, the functions of the three organs of state viz., the legislature, the judiciary and the executive have been sufficiently demarcated.

In the present study by and large all the dimensions, related to the relationship between Parliament and Supreme Court – have been touched.

The first chapter consists of introduction of the present study. It traces out the history of Indian Constitution and institutions of democracy.

The second chapter sheds light on the comparative analysis of judicial review in India and United States. It covers the dimensions and practices of Judicial Review whenever applied by the Supreme Court.
The third chapter analyses the land reform and response of judiciary in India.

The fourth chapter discusses the relationship between Parliament and Supreme Court. It has illustrated their relations through different cases.

The fifth one highlights the judicial activism and its implication in India. It also touches different contours, merits and demerits of Judicial Activism.

Finally in sixth chapter an attempt has been made to conclude the study. It explores the entire panorama of the relationship of Parliament and Supreme Court. It also touches the problems of governance that come up due to the tensions between these institutions. Besides all above, a maiden effort has been made to present some suggestions for their smooth running.