CHAPTER - I
INTRODUCTION:

The dawn of confrontation of Judiciary with the Executive was held in 1803, in the historic case of Marbury v. Madison (1), Justice William Marshall, Chief Justice of United States of America arrogated high constitutional position to the Supreme Court of United States. Two centuries ago, the facts of the case were: The Federalists had lost election of 1800 but before leaving the office they had succeeded in creating several new judicial posts. Among these 42 were Justices of peace to which the retiring Federalist President John Adam appointed 42 federalists. The appointments of commissions were confirmed by the Senate and they were signed and sealed but Adam's Secretary of State John Marshall failed to deliver certain of them. When the new President, Thomas Jefferson, assumed office, he instructed his Secretary of State, James Madison not to deliver seventeen of these commissions including one for William Marbury. Marbury filed a petition in the Supreme Court of United States of America for the issue of a writ mandamus to Secretary Madison ordering him to deliver the commissions. He relied on Section 31 of the Judiciary Act of 1789 which provided, "The Supreme Court shall have the power to issue... writs of mandamus, in cases warranted by the principles and usages of law, to... persons holding office, under the authority of United States". The Court speaking through Marshall, who then become Chief Justice of United States, held that Section 13 of the Judiciary Act 1789 was repugnant to Article III, Section 2 Court's original jurisdiction to cases affecting ambassadors, other public ministers and consultants and those to which a State is a party". Since Marbury fell in none of these categories, the Observations of Marshall, Chief Justice in that case are befitting to note: "The constitution is either superior paramount law unchangeable by ordinary means or it is on a level with ordinary legislative Acts, and like other Acts is alterable when the legislature shall please to alter it... certainly all those who framed written
constitution contemplate them as forming the fundamental and paramount law of the nation and consequently the theory of every such Government must be that an Act of the legislature repugnant to the constitution is void. And further, “it is emphatically the province and duty of the Judicial department to say what the law……”.

In the Indian Constitution, there is an express provision for the judicial review, and in this sense it is on a more solid footing than it is in America. In the State of Madras v. V.G. Rao (2) Patanjali Sastri, C.J. observed, “our constitution contains express provision for the judicial review of legislation as to its conformity with the constitution, unlike in America where the Supreme Court has assumed extensive power of reviewing legislative acts under cover of the widely interpreted “due process” clause in the Fifth and Fourteenth Amendments. If then, the courts in this country face upto such important and crusader’s spirit, but indischarge of duty plainly laid upon them by the constitution. This is specially true as regards the fundamental rights as to which the Court has been assigned the role of sentinel on the qui vive. But even in absence of provision for the judicial review, the courts would have been able to invalidate a law which contravened any constitutional provision, for, such power of judicial review follows from the very nature of constitutional law. In A.K. Gopalan v. State of Madras (3), Kania C.J. pointed out that it was only by way of abundant caution that the framers of our constitution inserted the specific provision in Article-13. He observed: “In India, it is the constitution that is supreme and that a statute law to be valid, must be in all conformity with the constitutional requirements and it is for the judiciary to decide whether any enactment is constitutional or not.”
In *Keshavananda Bharati v. State of Kerala* (4), it has been held that, Judicial Review is the basic features of the constitution and, therefore, it cannot be damaged or destroyed by amending the constitution under Article 368 of the constitution.

That power corrupts a man and absolute power corrupts absolutely which ultimately leads to tyranny, anarchy, and chaos has been sufficiently established in course of evolution of human history, and all round attempts have been made to erect institutional limitations on its exercise. When Montesquieu gave his doctrine of separation of power, he was obviously moved by his desire to put a curb on absolute and uncontrollable power in any one organ of the Government. A legislature, an executive and a judicial power comprehend the whole of what is meant and understood by Government. It is by balancing each of these two powers against the other two that the efforts in human nature towards tyranny can alone be checked and restrained and freedom preserved in the constitution. Indian constitution from its initial inception has assumed Judges of the Supreme Court and High Courts to be Priests of the Temple of Justice. The oath they affirm, the procedure they are appointed, the expectation of independent and impartiality from them and the high constitutional position and powers confer upon them, all taking together make their officers constitutional by sacrosant. The Indian Supreme Court has almost alike character of its counterpart in United States of America. Indian Constitution inherits Rule of Law and Independence of Judiciary as two fundamental features. With a federal polity and separation of powers inbuilt in the constitutional system of India reinforce the assignment of high constitutional dignity to the judiciary. The resolution adopted in the International Commission on Jurists in 1959 in New Delhi and impetus to these constitutional ideas, including
The Indian Judiciary in its initial years rather applied grammatical interpretation to the provision of the constitution. They were not prepared to act as a Supreme Court for interpretation of the constitution in which the contending parties would be Executive, Legislature or the people at large. It was in Golaknath and others v. State of Punjab (5), the Supreme Court behaved to be supreme exercising its responsibility. A theory of committed judiciary was mooted by the Supreme executive that it is the leader of the legislature and thus the judiciary has to remain committed to the principles, ideas and legislations brought by them. This idea of committed judiciary brought from the attempt for negation of independence of the judiciary. The judicial record, the aftermath of Keshavananda Bharati’s case exhibits the wrath of the supreme executive against any voice of dissent. A thought gradually set that a judge needs to be committed to the Governmental powers and policies. This undermined the great constitutional expectation for an independent judiciary.

Soon after the National Emergency, 1975-1977, a liberan ideology developed in the minds of the judges and the Supreme Court kept its door open to ensuring social justice to the mute millions of the nation. This period saw a new devise P.I.L. (Public Interest Litigation), to address to the problems of the population by appreciating the ground realities overriding the legal technicalities.

The constitutional provisions in respect of security of tenure and service condition of the judges, almost an unworkable impeachment system for their dismissal, their immunity from Executive interference have all
made the position of judges not only independent but also as if omnipotent. The sky is the limit. The contempt of court Act and its usage and its abuses by a Court of Record adorns the judiciary a place of highest dignity and immunity. The position becomes inviable. As it appears the Supreme Court and High Courts (and the High judicial officers) are ever infallible; as if they can commit no wrong; as if they are vicarious of the Almighty and are not subject to human virtues and vices.

Can we argue that a complete freedom of action with a weapon of contempt of court and to subjection to norms, the Judges of High Courts should always be presumed that they commit no wrong, that they do not have vices. Judges extend proceeding of case years together contributing to denial of justice because of delay. Judges often forget the facts of the case and arguments of lawyers while dictating a judgement. A wrong appreciation of law goes unremedied.

In recent years reports have appeared that judges have been involved in scams. Thirty six Judges of Higher Judiciary were involved in Rs.23 crores Ghaziabad U.P. Provident funds scam. A scam where Rs.15 lakhs was delivered at the doorstep of a Punjab Judge by a senior law officer of the State. Rs.24 lakhs misappropriation scam by Justice Sumitra Sen of Calcutta High Court. Stories have been tabulated about their appointments and their involvements. A non-caring nature to the judicial process at the time of hearing and whimsical procedural, interim relief or measures granted by judge have all fueled anger of the stakeholder against judicial highhandedness. The appointment procedure need a fresh look. The judges may be reminded their responsibility. This has given rise to both executive and legislative interferences. The Keshavananda ruling was also challenged
in the Supreme Court and a legislation was moved as a bill of attainder in Lok Sabha, both being allowed to lapse.

The recent Ramaswamy case about the impeachment of Supreme Court is being scornfully viewed by the Indian population against the notorocity of the concept imprudence of the legislature. The process of impeachment for removal of a judge under Article 124(4) is an extremely cumbersome, where in two third members both in Lok Sabha and Rajya Sabha must be present and vote for a motion impeachment. The first impeachment motion against Justice V. Ramaswamy, a Judge of the Supreme Court of India for his removal on the ground of financial irregularities committed by him was taken up by Loksabha on 10.05.1993 was defeated on the ground. That there were 196 votes in favour of the motion and none voted against it. Should the judges be accountable, to whom, who can initiate the process and what would be its consequences? What under rules be made to curb the malady of unaccountable judiciary? This is the crux of the problem.

Besides these problems, the politicians have developed a fancy to maligue the judiciary with colourable words, the Chief Executive that is the Council of Ministers often criticise the judiciary as not being responsive to social problems including social justice. Mrs. Indira Gandhi, after Bank Nationalisation in 1970, P.V. Narasimha Rao in the issue of making basic respecting civil code in 1995-1996 expressed their displeasure to judiciary. The speech of Shiva Shankar as Union Minister of Justice on a Law Day function infuriated the judiciary but the Supreme Court refrained itself from imposing a contempt conviction against him but the issue is writ large. That is to what extent a criticism of the judiciary be tolerated?
The independence of the judiciary continued generally to be respected in India, but the judicial system remained overburdened and financially dependant on the executive. At the beginning of 2000, protests by lawyers over proposed changes to the rules of practice turned violent, and the Government appointed a Commission to investigate the extreme response of the police and security forces. Debate continued regarding the imbalance in representation at the higher courts, particularly with respect to lower castes and indigenous populations. Violations of human rights continued throughout the country, especially in the region of Jammu and Kashmir and Bihar, and particularly against religious minorities, members of lower castes and women. The constitution mandates that certain fundamental rights be respected. Part III of the constitution enumerates these rights in Articles 14 to 30. Article 32 guarantees the right to petitions the Supreme Court for the enforcement of the fundamental rights contained in the constitution.

India is a party to the International covenant on Civil and Political Rights, the International covenant on the elimination of all forms of discrimination against women, the convention on the elimination of all forms of discrimination against women, the convention on the rights of the child and the convention on the elimination of all forms of racial discrimination India has signed but not yet ratified, the convention, against Tortures and other cruel, Inhuman or regarding treatment or punishment. The role of judiciary has thus increased to manifold for awarding justice to needy persons in the regions where such conflicts continues.
Cl. I (a) (i) THE CONCEPT OF RULE OF LAW:

For a democratic government, the rule of law is a basic requirement and for the maintenance of rule of law, there must be an independent and impartial judiciary. It is embodied in the concept of rule of law that equality before the law or equal protection of laws is ensured to all citizens, and every citizen is protected from arbitrary exercise of power by the State. Thus in a State professing the rule of law, the aim should be to provide for a system which secures to its citizens adequate procedure for the redress of their grievances against the State before forums which are able to administer justice in an impartial manner without any fear or favour. Each country has devised its own system to ensure the maintenance of rule of law. The Indian Constitution embodies the modern concept of rule of law with the establishment of a judicial system which should be able to work impartially and free from all influences. The rule of law pervades from the entire field of administration and every organ of the State is regulated by rule of law. The concept of instrumentalities of the State are not charged with the duty of discharging their function in a fair and just manner as mentioned in the case A.K. Kripak v. Union of India (6). It has been held that the rule of law pervades the constitution as its basic feature and cannot be taken away even by an amendment of the constitution under Article 14 emphasised by Ray, Chief Justice in Indira Nehru Gandhi v. Raj Narain (7) and by Bhagawati. J. in S.P. Gupta v. Union of India (8), P. Sambhamurthy v. State of A.P. (9) and D.C. Wadhwa v. State of Bihar (10) cases.

The Indian Constitution enshrines the fundamental rights to individuals which operate as limitations on the exercise of powers by the government. If there is an infringement of the fundamental rights of a citizen, the rule of law requires that there should be a proper forum for the redress of his/her grievances. For this purpose, it is provided that an
aggrieved person may even move the Supreme Court directly by appropriate proceedings for the enforcement of his/her fundamental rights. The rule of law under the Constitution thus serves the needs of the people. It recognizes the social reality and tries to adjust itself to it from time to time avoiding the authoritarian path.

It is specifically provided that the State shall not deny to any person equality before the law or equal protection of laws. The absence of arbitrary power is the first essential of the rule of law upon which the Indian constitutional system is based. In a system governed by the rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. This means that discussion should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he stands, discussed in the case of S.G. Jaisinghani v. Union of India \(^{(11)}\).

The rule of law imposes a duty upon the State to take special measures to prevent and punish brutality by police methodology as cited in the case, Raghubir Singh v. State of Haryana \(^{(12)}\). Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. As regards subject matter of the legislation their position is the same mentioned in the case, State of West Bengal v. Anwar Ali Sarkar \(^{(13)}\). Thus the rule is that the like should be treated alike and not that unlike should be treated alike as per Dr. V.N. Shukla's definition \(^{(14)}\).

Prof. Dicey \(^{(15)}\) gave three meanings of Rule of law:

1. **Absence of Arbitrary Power or Supremacy of the law**: It means the absolute supremacy of law as opposed to the arbitrary power of the Government. In other words- "a man may be punished for a breach of law, but he can be punished for nothing else."
(2) **Equality before the law**: It means subjection of all classes to the ordinary law courts. This means that no one is above law with the sole exception of the monarch who can do no wrong. Every one in England, whether he is an official of the state or private individual, is bound to obey the same law. Thus public officials do not hold a privileged position in Great Britain. In Great Britain there is one system of law and one system of courts for all i.e. for public officials and private persons.

(3) **The constitution is the result of the ordinary law of the land**: It means that the source of the right of individuals is not the written constitution but the rules as defined and enforced by the courts. The first and the second aspects apply to Indian system as the source of rights of individuals is the Constitution of India. The constitution is the Supreme Law of the land and all laws passed by the legislature must be consistent with the provision of the constitution.

The word “any person” in Article 14 of the constitution denotes that the guarantee of the equal protection of laws is available to any person which includes any company or association or body individuals. The protection of Article 14 extends to both citizens and non-citizens and to natural persons as well as legal persons. The equality before the law is guaranteed to all without regard to race, colour or nationality. Corporations are also juristic persons, are also entitled to the benefit of Article 14 enumerated in the case of Chiranji Lal v. Union of India\(^{(16)}\).
C1. I (a) (ii) CONCEPT OF SEPARATION OF POWERS:

The constitution of India recognizes and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid. The government postulated by the constitution of India is a federal form of government. The subjects in respect of which the Union and the States can make laws are separately set out in List I and List II of the seventh schedule to the constitution respectively. (List III is, of course a concurrent list.) The constitution has invested the Supreme Court and High Courts with the power to invalidate laws made by Parliament and the State Legislatures exceeding the constitutional limitations. Where an Act made by a State Legislature is invalidate by the courts on the ground that the State Legislature was not competent to enact it, the State Legislature can not enact a law declaring that the judgement of the court shall not operate, it can not overrule or annual the decision of the court. But this does not mean that the other legislature which is competent to enact that law cannot enact that law. It can. Similarly, it is open to a legislature to alter the basis of the judgement. The new law or the amended law so made can be challenged on other grounds but not on the ground that it seeks to ineffectuate or circumvent the decision of the court.

This is what is meant by "checks and balances" inherent in a system of government incorporating the concept of separation of powers mentioned in the case, P. Kaunadasan v. State of T.N. (17). The doctrine of separation of powers stated in its rigid form means that each of the powers of the government, namely, executive or administrative, legislative and judicial should be confined exclusively to a separate department or organ of the
government. There should be no overlapping either of functions or of persons. The constitution of the United State is usually quoted as the leading example of a constitution embodying the doctrine of separation of powers. While the constitution of the U.S.A. does not expressly provide for a separation of powers, the doctrine has been incorporated into the constitution.

Under the Indian Constitution only the executive power is ‘vested’ in the President while provisions are simply made for a Parliament and judiciary without vesting the legislative and judicial powers in any person or body. Moreover, we have the same system of parliamentary executive as in England and the Council of Ministers consisting as it does of the members of legislature is, like the British cabinet, “a hyphen which joins a buckle which fastens the legislative part of the state to the executive part”.

Accordingly the Indian Constitution has not recognized the doctrine of separation of powers in its absolute form but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently it can very well be said that our constitution does not contemplate assumption, by one organ or part of the state, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way as discussed in the case, Ram Jawaya v. State of Punjab(18) and in the case, Jayantilal Amritlal Shodhan v. F.N.Rana(19).

Even though the Constitution of India does not accept strict separation of powers it provides for an independent judiciary with extensive jurisdiction over the acts of the legislature and the executive, narrated in the
case Chandra Mohan v. State of U.P.\textsuperscript{(20)}. The Constitution of India encompasses the separation of powers and establishes India as a "Sovereign, Socialist, Secular and Democratic Republic". The constitution creates a federal union of 28 States and Seven Union Territories.

The chief exponent of separation of powers was Montesquieu, the French Philosopher. The purpose of this theory is the preservation of political liberty by preventing the abuse of power. According to Montesquieu "political liberty is to be found only in moderate governments. It is there only when there is no abuse of power". The theory of separation of powers seeks to differentiate the functions of government and to limit each department to its own sphere of action so that each enjoys complete autonomy within its allotted jurisdiction. Each department is entrusted to separate body of persons. No one department will have ruling influence over the other. It naturally involves the principle of "checks and balance". From the very nature of things power should be a check to power. And this is best achieved when each organ of the government is so separated that each organ acts as a check on the other. This theory is thus based on an implicit recognition of equality of powers of all the three departments of government-executive, legislative and judicial.

Article 50 provides separation of judiciary from the executive in the public services of the state. The constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts of the branches have been sufficiently differentiated and consequently it can be very well said that our constitution does not contemplate assumption by one organ or part of the state of functions that essentially belong to another highlighted in the case Ram Jawaya Kapur v. State of Punjab\textsuperscript{(21)}.}
C1. I (a) (iii) CONCEPT OF LIMITED CONSTITUTIONAL GOVERNMENT:

With separation of power provided in the constitution of India, Judiciary cannot be termed to be superior or supreme, over the executive and legislative as the constitution of India provides for a limited constitutional government with defined powers and functions and with inbuilt mechanism of checks and balances. Yet with its responsibility to interpret and protect the constitution, judiciary interdict a governmental fiat to dismiss a legislative measure on the ground of ultra virus and may even with the executive and legislative to take positive steps in order to accomplish the ideal enshrined in the constitution.

The theory about the sovereignty of Parliament in a federal polity is not even a legal fiction. This point was convincingly explained by Motilal Setalvad in the Hamlyn lectures which he delivered at the Inns of Court in London in 1960. He pointed out, “The very purpose of a written constitution is the demarcation of the powers of different departments of Governments so that the exercise of these powers may be limited to their particular fields. In countries governed by a written constitution, as India is, the supreme authority is not Parliament but the Constitution”. Setalvad then explained why the founding fathers had in this regard departed from British practice which they had so closely followed in other respects. The Indian legislatures, he said, “had not the age-old ancestry and traditions of the British Parliament. India is a country of vast distances inhabited by people...... in varying stages of development. A democracy means a government by the majority. In such a government it becomes necessary to safeguard the essential freedoms of citizen, and particularly of the citizens constituting the minorities”. The distinction made by Setalvad have been much forcefully emphasized by an eminent scholar D.W. Brogan. Speaking
about the United States of America, he said, "American law and constitutional practice are designed to minimize inequalities between states, between sections, between minorities and majorities and between individuals, while English practice is designed to give full effect to majority opinion- although there is no greater inequality than that of members". What Brogan says about the United States equally applies to India. In a highly pluralist society as one in India united in a federal polity no single constitutional organ of government can be invested with sovereign power and accordingly, there can be no escape from a system of checks and balances so that there can be no concentration of power in any particular organ of the state. A federation assumes dual polity and it establishes a government of limited and divided powers with a view to safeguarding the encroachment of such powers by any other authority at any level. The arrangement of Government as established by the Indian Constitution was designed to promote cooperation among the three branches i.e. executive, legislative and judiciary as well as checking and balancing them.

However since emergency there has been a tussle between Parliament and Judiciary. Golaknath and others v. State of Punjab (22) case, three writ petitions were involved. One was filed by the son, daughter, and granddaughters of Golaknath. In this petition, the inclusion of the Punjab Security of Land Tenures Act, 1953 in the Ninth Schedule had been challenged on the ground that the Seventeenth Amendment by which it was so included as well as First and Fourth Amendments abridging the fundamental rights were unconstitutional. In the other two petitions, inclusion of Mysore Land Reforms Act (23) had been attacked on the same grounds. Most of the contentions raised on behalf of the petitioners and respondents summarized in the judgement had already been raised before the Supreme Court in Sankari Prasad (24) and Sajjan Singh (25) cases. The Golaknath case was heard
by an eleven-Judge bench of the Supreme Court which by a majority of 6:5 held that the fundamental rights are outside the amendatory process if amendment takes away or abridges any of the rights. The majority opinion was expressed by two separate judgements; one by the Chief Justice Subba Rao for himself and Justices J.C.Shah, S.M.Sikri, J.N.Shelat and C.A. Vaidialingam, and the other by Justice M.Hidayatullah. The dissenting Judges were JJ. Wanchoo, Bhargava, Bachawal, Ramaswami and Mitter. The Supreme Court by a 6 : 5 ruling on 27.02.1967 reversed its earlier decision in cases of Shankari Prasad and Sajjan Singh mentioned earlier and declared that Parliament has no power to abridge or take away Fundamental Rights by amending the Constitution under Article 368. Chief Justice Subba Rao, speaking for the majority, declared, “The constitution has given by its scheme a place of permanence to the fundamental freedoms. In giving the constitution to themselves, the people have reserved the fundamental freedom to themselves. Article 13 merely incorporates that reservation. The importance attached to the fundamental freedom is so transcendental that a bill enacted by a unanimous vote of all the members of both Houses of Parliament is ineffective to derogate from its guaranteed exercise....”. The court rejected the Government’s argument that if the power to amend the constitution was not all-comprehensive, no way would be left to change the structure of the constitution or to abridge the Fundamental Rights even if the whole country demanded such a change. It was declared that “this visualizes an extremely unforeseeable and extravagant demand; but even if such a contingency arises, the residuary power of the Parliament may be relied upon to call for a Constituent Assembly for making a new constitution or radically changing it”. These discussions clearly indicate limited constitutional power of government at the level of Parliament and the judiciary to review the laws enacted by Parliament. Thus, the precariously
balanced 6 to 5 decisions established the supremacy of the Judiciary so far as Fundamental Rights were involved.

Golaknath asserted that government and parliament have limited power until amendment is brought to safeguard the fundamental rights which clearly indicate supremacy of the constitution. The constitution (Twenty fourth Amendment) Act, 1971 was enacted to get over the difficulty created by the Golaknath case. The amendment empowered the Parliament to abridge or abrogate any of the Fundamental Rights including the right, under Article 32, to move the Supreme Court for the enforcement of fundamental rights. The validity of this amendment was questioned in the Supreme Court through a series of writ petitions. In Kesavananda Bharati v. State of Kerala (26), the Court reversed the Golaknath case judgement by upholding the validity of the 24th Amendment and thereby restored the supremacy of Parliament in regard to legislation on Fundamental Rights, a position that existed prior to 1967. But the court also ruled that the Parliament cannot alter the basic structure or frame work of the constitution. What exactly did the basic structure mean; the court said nothing about it.

C1. I (b) CONSTITUTIONAL PROVISION OF JUDICIARY:

India’s legal system has developed under the influence of the common law traditions of the United Kingdom and India remains essentially a common law jurisdiction. The judiciary plays a central role within the Indian constitutional structure. Article 32 of the constitution guarantees the right to apply to the Supreme Court for the enforcement of those fundamental rights contained in the constitution.

Under the terms of list III, Schedule 7 of the constitution, the central and state governments enjoy concurrent responsibility for the administration
of justice, jurisdiction and powers of all courts (except the Supreme Court, over which the Central Government retains jurisdiction), criminal law and procedure and civil procedure. However, the organization of the Supreme Court and High Courts remain the exclusive jurisdiction of the central government, while the provisions regarding officers and servants of the High Courts fall within state power; In addition, the central government retains exclusive jurisdiction for offences against laws over which it alone has jurisdiction (List I of Schedule 7) and all matters involving the development or use of any armed forces of Union or the use of civil power. Similarly, states have exclusive competence with respect to offences against laws over which states have exclusive jurisdiction (List II of Schedule 7), Police and public order. The Attorney General is responsible for providing advice to the government on all legal matters and for the performance of all duties of a legal character that may be assigned by the President.

Chapter IV of Part V of the Constitution deals with the union judiciary. Article 124 concerns the establishment and constitution of Supreme Court, which is the final court. It is composed of 31 justices, one of whom serves as Chief Justice of India. Its decisions are binding on all lower courts. Article 130 stipulates that the seat of the court is in Delhi. Article 131 gives the Supreme Court original jurisdiction to hear any dispute between the union government and the states, or between states if any so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends”. The Supreme Court has appellate jurisdiction on any judgement, decree or final order of a High Court, if the High Court certifies that a party can appeal under Article 134A in the following cases:

- Civil, criminal or other proceedings, if the case involves a substantial question of law as to the interpretation of the constitution.
- Civil proceedings that involves a substantial question of law of general importance (Article 133).
- Criminal proceedings where the High Court has, on appeal, reversed its order and subsequently convicted the person, and then sentenced the person to death, or if the High Court believes the case to be fit for appeal to the Supreme Court (Article 134). Article 136 provides the Supreme Court with discretionary power to grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed by or made by a court or tribunal in the territory of India. The President may also request any advisory opinion from the Supreme Court pursuant to Article 143, or a question of law or fact that has arisen or is likely to arise. Cases involving the determination of a substantial question of law as to the interpretation of the constitution, and requests for an opinion under Article 143 must be heard by a panel of at least 5 judges. Chapter V and VI of the constitution creates a High Court for each state. Article 241 in party VIII extends the provisions of Chapter V, Part VI to any High Courts created for Union Territories as well. Each existing High Court, subject to the constitution, has the same jurisdiction as it had before the coming into force of the constitution. All High Courts have such jurisdiction as may be conferred on them by the central and state government on subject matters within the latter’s legislative competencies. High Courts also have original jurisdiction to issue writs and orders for the enforcement of the fundamental rights. State courts have a supervisory power over all subordinate courts and tribunals in areas where they exercise jurisdiction. There are currently 21 High Courts.
Chapter VI of Part VI of the constitution relates to the creation and jurisdiction over subordinate courts. The power to establish subordinate courts fall under the jurisdiction of both the central and state governments. Article 235 places the administrative control of all district and other subordinate courts in the High Court of that state. Special Tribunals and courts are under the judicial control of the High Courts and the Supreme Court.

Section 6 of the Criminal Procedure Code, 1973 requires that the following criminal courts, in descending order of superiority, be treated in each state: Courts of Sessions, Judicial Magistrates of the First Class, Judicial Magistrate of the Second Class and Executive Magistrates. Similarly the Civil Procedure Code 1908 requires the establishment of a District Court. The Sessions and the District Courts are the principal courts of original jurisdiction in Criminal and Civil matters subordinate to the High Court. The precise jurisdiction of these courts and their names may vary from state to state.

Despite the numerous constitutional provisions related to the judiciary, in Jammu and Kashmir for the judicial system remains under attack. Judges and witnesses are frequently threatened by militant forces. In addition judges are not always independent and are often tolerant of the Government’s actions. Court orders are not always respected by the security and armed forces. Very few cases involving terrorist crimes are even brought before the courts.

An independent and impartial judiciary is sine qua non for maintaining the supremacy of the constitution. The judiciary occupies the pivotal position in Indian Constitution in order to sustain the judicial
impartiality and objective. It is the main institution which the responsibility of administering justice lies in a democratic country. The higher judiciary in India has been well ordered and well regulated. The primary function of the judiciary is to hear and decide disputes. In accordance of the recognized procedure viz. production of evidence, examination of witnesses etc., the courts determine the facts of a case. Once the facts are ascertained, the courts are simply to apply the appropriate law and give a decision. The judiciary to-day occupies the pride place among the organs of government. It is the watchdog of the rights and liberties of the citizen. In fact, freedom of the individual becomes meaningless unless the system of justice is so constituted as to ensure impartial administration of justice.

There is a great truth in Bryce’s wise remark: “If the lamp of justice goes out in darkness how great is that darkness!”

C1. I(c)(i) ISSUES IN RESPECT OF FUNDAMENTAL RIGHTS:

Constitution of India declares certain fundamental rights of the individual. Some of these can be claimed by a citizen of India; others apply equally to non-citizen also. A fundamental right as defined in the constitution, differs from a non-fundamental right in one vital respect; a fundamental right (subject to the qualifications defined in the constitution itself) is inviolable, where as a non-fundamental right possesses no such characteristic. It is inviolable in the sense that no law, ordinance, custom usage or administrative order can abridge or take away a fundamental right. A law which violates any of the fundamental rights is void. They are binding on the legislature as well as the Executive. A fundamental right can not be taken away even by a constitutional amendment if it forms the basic structure of the constitution. The fundamentals of Indian Constitution are contained in the preamble which secures to its citizens, justice, social,
economic and political; liberty, liberty of thought expression, belief, faith and worship; equality of status and opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity of the nation. Theme of these objectives that Fundamental Rights and Directive Principles of State Policy were enacted in Part III and Part IV of the constitution and through them the dignity of the individual was sought to be achieved and maintained.

The fundamental rights have been provided in different forms in the constitution. The incorporation of a formal declaration of fundamental rights in Part-III of the constitution is deemed to be a distinguishing feature of a democratic state. These rights are prohibitions against the state. But mere declaration of certain fundamental rights will be of no use if there is no machinery for their enforcement. Our constitution has therefore conferred on the Supreme Court the power to grant most effective remedies in the nature of writs Habeas Corpus, Mandamus, Prohibition, Quo warrants and Certiorari whenever these rights are violated. Fundamental rights are justifiable by court of law. Legislative as well as executive acts of omission and commission may attract the wrath of judicial scrutiny when laws, delegated legislation, administrative acts, etc. are inconsistent or in derogation of the fundamental rights (Article 13 of the Constitution). Thus offending the rights to Equality as well as Rule of Law (Article 14, of course with the exception of the rule of compensatory or protective discrimination), Rights to Freedom of press and media (Article 19), Right to life and personal liberty except according to procedure established by law (Article 21), Right against arbitrary arrest and detention (Article 20 and Article 22 of the Constitution) etc.

The question of whether an amendment of fundamental rights guaranteed by Part-III of the constitution is permissible under the procedure
prescribed by Art.368 came before the Supreme Court as early as in 1951 in Sankari Prasad v. Union of India. In that case, the court had held that the power to amend the constitution, including the fundamental rights, was contained in Art.368 and that the word 'law' in Art. 13(2) did not include an amendment of the constitution which was made in the exercise of constituent and not legislative power. Sankari Prasad case had raised the validity of the Constitution (First Amendment) Act, 1951 and after the Supreme Court's decision; several amendments were made in the constitution of which the fourth and Seventh Amendments related to Part III of the constitution. The Seventh Amendment which added several Legislations to the Ninth Schedule making them immune from attack on the ground of violation of fundamental rights was challenged in Sajjan Singh v. State of Rajasthan (27). Though three of five judges (Gajendragadkar C.J., Wanchoo and Dayal JJ.) in their separate but concurring opinions expressed serious doubts whether fundamental rights created no limitation on the power of amendment. In Golaknath v. State of Punjab (28) the Supreme Court by a majority of six to five dissented from the view in the earlier cases and held that the fundamental rights were outside the amendatory process, if the amendment took away or abridge any fundamental rights.

C1.I(c)(ii) ISSUES IN RESPECT OF DIRECTIVE PRINCIPLES OF STATE POLICY:

Part (IV) of the constitution enumerates certain Directive Principles of State Policy which are declared as fundamental in the governance of the country. These principles are intended to be the imperative basic state policy. They are really in the nature of instructions issued to future legislatures and executives for their guidance.
The Directive Principles of State Policy differ in one vital respect from the fundamental rights. Whereas the former are non-justiciable rights, the latter are justiciable rights. They have expressly been excluded from the purview of the courts. If the state is unable to take any positive action in furtherance of the directive principles, no action can be brought against it in the law court. This want of enforceability had led a critic to describe them as “little more than manifesto of aims and aspirations”. A directive, which lacks the quality of enforceability is, according to this view, useless, unless or at least not worth forming part of a constitutional document. The constitution should include only those provisions whose enforcement is obligatory on the States. The criticism is unjustified. In the nature of things the rights enumerated in this part can only be directives and cannot be justiciable rights. This is so because directive principles require positive action on the part of the state and therefore, can be guaranteed only so far as practicable. Moreover it is not correct to say that they have no binding force. The authorities of the State may not have to answer for breach in a law court but they will be certainly have to answer for them to the electorate. These principles have great educational value. They are in the nature of moral percepts for the authorities of the state. The significant thing to note about the Directive Principles of State Policy is as Mathew, J. Pointed out in the Kesavananda Bharti case (29), that, although they are expressly made unforceable, that does not effect their fundamental character. They still very much form part of the constitutional law of the land. They are fundamental in the governance of the country.

Some of the directive principles such as the directives on legal aid, free and compulsory education, and protection of weaker sections and provisions for just and humane conditions of work in association with some
of the fundamental rights have also been judicially enforced and made enforceable.

Conflicts between the Directive Principles and the Fundamental Rights may arise due to several reasons and one of the important reasons is the presence of Clause 2 of Article 13 which stipulates that “The State shall not make any law which takes away or abridge the rights conferred by this part (Part III Fundamental Rights) and any law made in contravention of this clause shall, to the extent of contravention be void.” It meant, till the enactment of the Twenty-fourth Amendment and, finally forty-second Amendment, that the state could not, while implementing the Directive Principles, make laws in contravention of the Fundamental Rights. Nor could a citizen invoke the sanction of the Directive Principles in support of his claims under the Fundamental Rights.

C1.I(c)(iii) POLICY OF FEDERALISM:

Indian Constitution possesses all the essential characteristics of a Federal constitution. There are division of powers between the Central & State Governments. Indian Constitution is the supreme law of the country. Supreme Court has been established to decide disputes between the Centre and the State and to work as a watch dog of the Constitution. In a Federal state the legal supremacy of the Constitutions is essential to the existence of the Federal system. It is essential to maintain the division of powers not only between the coordinate branches of the Government but also between the Federal Government and the States themselves. This is secured by vesting in the courts a final power to interpret the constitution and nullify any action on the part of the Federal and State Government or their different organs which violates the provisions of the constitution. There is a division of legislative and administrative powers between the Union and the State
Governments and the Supreme Court stands at the head of our Judiciary to jealously guard this distribution of power and to invalidate any action which violates the limitations imposed by the constitutions. This jurisdiction of the Supreme Court may be resorted to not only by a person who has been effected by a Union or State law which court has violated the constitutional distribution of powers but also by the union and the state themselves by bringing a direct action against each other, before the original jurisdiction of the Supreme Court under Article 131 as per State of West Bengal v. Union of India (30). It is because of these basic federal features that our Supreme Court has described the Constitution as Federal in Atiabari Tea Co. v. State of Assam (31).

The distribution of power is an essential feature of Federalism. As per schedule VII, there is provision of three lists namely Union list, State list and Concurrent list for making legislation

The doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly. In these cases the Court will look in the true nature and character of the legislation and for that its object, purpose or design to make law on a subject is relevant and not its motive. If the legislature has power to make law, motive in making the law is irrelevant. State of Bihar v. Kameshwar Singh (32), is the case where a law has been declared invalid on the ground of colourable legislation. In this case the Bihar Land Reforms Act., 1950, was held void on the ground that though apparently it purported to lay down principle for determining compensations yet in reality, it did not lay down any such principle and thus indirectly sought to deprive the petitioner of any compensation. What is the responsibility of Judiciary? This is how Judiciary protects the Constitution from usurpation of power of one legislature by another legislature.
C1.I(c)(iv) PARLIAMENTARY FORM OF GOVERNMENT:

In the Parliamentary form of Government in India, the chief executive power of the Union is formally vested in the President, as head of the state. In practice, however, executive power rests with the Council of Ministers, headed by Prime Minister, who is the head of the government. The President is obliged to follow the Council of Minister’s advice. Although largely a ceremonial position, the President may exercise influence over the selection of the appropriate candidate for Prime Minister and can require the Government to submit confidence motions, which may result in its dissolution.

The President is elected indirectly by a special electoral college for a five-year term, and is eligible for reelection. The member of the Council of Ministers is composed of members from both the houses of Parliament and is responsible to the House of People or Lok Sabha. Parliament consists of the President and two separate houses, the Council of States (Rajya Sabha) and the House of People (Lok Sabha).

The head of government at the state level is called the Chief Minister and serves the same functions at a state level as the Prime Minister does at the federal level. Article 356 of the constitution allows the President to assume any of the functions of a state’s government, and to declare that the powers of the legislature of a state be exercised by the Union Parliament. In pursuance to Article 356, the President may invoke “President’s rule” upon the receipt of a report from the state governor or if otherwise satisfied “that the government of a state cannot be carried on in accordance with the constitution.” The Central Cabinet of Parliament, which is the real executive, consists of leader of a party or of a coalition parties, who have the support of men and women agree to pursue a common policy under a
common leader, namely the Prime Minister. The Prime Minister occupies a dominant position in the cabinet. He appoints Ministers and assigns to them their offices. He can dismiss any one of them. "The cabinet is the steering of the ship of state and the steerman is the Prime Minister". The tenure of the office of the cabinet is dependent on the will of the legislature, but if the legislature consists of two houses, on support of the lower house. This means that a Ministry which has lost the confidence of the legislature, must retire from office. A government remains in office so long as its policy has the approval of the legislature. The responsibility of the cabinet is collective. The cabinet acts as a body. Ministers stand and fall together. From this it follows that the cabinet must, in all circumstances, agree. If there is a disagreement among the Ministers, either the cabinet as a whole or the dissentient Minister or Ministers must resign. "In no case may a Minister disavow, either expressly or be necessary implication, the policy of his colleagues so long as he remains as their colleague."

The working of the parliamentary system of government in India so far also does not lead to any different conclusion. There have been instances where because of internal party feuds or because of weak and unprincipled coalitions, it has been felt that the Presidential system would have provided more stable and stronger government. At one time during the 1975-1977 Emergency, there appears to be a serious move to amend the constitution to replace the parliamentary system by presidential system. The more, was however, immediately rebuffed presumably by the then Prime Minister, Mrs. Indira Gandhi, who was also initially over enthusiastic and blessed the move. Since then the form of government has never been a seriously debatable issue. Nor has there been any constitutional crisis serious enough to require such a debate. With all constraints, so far, the existing system has worked fairly well in India and instead of dissipating energies in new
experimentation we should find and plug its loopholes, if any, and strengthen parliamentary system of government for its efficiency and effectiveness.

C1.I(d) ROLE OF JUDICIARY IN NATIONAL CRISES:

In Indian Constitution, enacted in Article 32, Clause(4), that the right to move the Supreme Court for the enforcement of fundamental rights shall not be suspended except as otherwise provided by the constitution. It is only Article 359 that the constitution empowers the President to suspend the enforcement of fundamental rights when a proclamation of emergency under Article 352 is in operation.

Twice, once in 1962 and again in 1971, emergency was proclaimed by external aggression and once in 1975, it was proclaimed on ground of internal disturbances. On all the three occasions, enforcement of some of the fundamental rights was suspended under Article 359. Twice the question of the scope of the Presidential order under Article 359 came before the court. Though the Court was divided on other issues, no doubt was entertained either by the court or by the parties that the right to move the Supreme Court for enforcement of such of the fundamental rights whose enforcement is suspended remain suspended even without express mention of Article 32 in the order under Article 359.

During operation of proclamation of Emergency the right to move the Supreme Court by appropriate proceedings for the enforcement of right to the protection of life and liberty conferred in Article 21 can not be suspended. By inserting this provision the Constitution (Forty-fourth Amendment) Act, 1978, nullified the effects of the Supreme Court decision during the emergency in what came to be known as the Habeas Corpus case,
A.D.M., Jabalpur v. S. Shukla (33). In this case, the Court ruled the view that in view of the President order under Article 359 of the Constitution suspending the enforcement of fundamental rights no person has any locus standi to move any writ petition for habeas corpus or any other writ, or order or direction to challenge the legality of an order of detention on the ground that the order was not under or in compliance with the statute or was illegal or was vitiated by malafides, factual or legal, or was based on extraneous considerations. Justice, H.R. Khanna had dissented from the majority opinion of the Court.

Article 32 of the constitution gives certain constitutional rights to arrested persons and also lays down certain fundamental rules with regard to preventive detention. It may, however, be noted that provisions relating to prevention of detention are peculiar in as much as the constitution of India permits resort to preventive detention even in peace time. In other democratic countries, preventive detention is usually a method resorted to in emergencies like war. Preventive detention in India for reasons connected with the security of the State, or the maintenance of public order, or maintenance of supplies and services essential for the community, is on the concurrent list but preventive detention for reasons connected with defence, foreign affairs, or the security of India is within the exclusive competence of Parliament. Preventive detention has been given a constitutional sanction. Justice Patanjali Sastri observed in A.K.Gopalan v. State of Madras (34). This sinister looking feature, so strangely invests personal liberty with the sacrosanct of a fundamental right, and so incompatible with the promises of its preamble, is doubtless designed to prevent an abuse of freedom by anti-social and subversive elements which might imperil the national welfare of the republic of India.
When the country was in the throes of internal emergency, Forty Second Amendment was rushed through a mutilated Parliament and most of the members of the opposition parties in the Parliament were languishing in jails rather than sitting in Parliament and debating the Amendment that, inter alia, sought to establish the sovereignty of Parliament. Even the myth that Parliament that endorsed internal emergency, voted for its continuance in force, extended its own life and enacted the Forty Second Amendment represented the will of the people was exploded in March, 1977 Parliamentary election when the Party that commanded massive majority in Parliament was rejected by the electorate wholesale including its leader, Mrs. Indira Gandhi.

In India in August 1975 the council of states passed the Constitution Forty first Amendment Bill which sought to grant life-long immunity to the President, the Prime Minister and the Governor of a state in respect of any and every crime committed before assuming office or during the term of their office. This obnoxious Bill would have passed in the House of peoples too, with the massive majority of the ruling party but for certain developments. Again, the same representatives of the peoples, who claimed to represent their will passed measures in 1975-1976 which prescribed that no citizen could claim the right to personal liberty on the ground of common law, natural law or rules of natural justice. A person imprisoned without trial could not know the grounds of his detention and the detaining authority could refuse to disclose such grounds to the Advisory Board or to a Court of law for the satisfaction of the presiding officer. And a person who had been set at liberty by the Advisory Board or a court could be rearrested on the same grounds which had been found unsustainable. Half a century ago the Supreme Court had quoted with approval the dictum: “A Government which holds the life, liberty and property of its citizens subject to all times to the
absolute disposition and unlimited control of even the most democratic depository of power is after all but a despotism”. The first two, life and liberty were taken away by the Congress Government with its massive majority in Parliament. The Janata Government took away the third, though in a disguised manner. The Forty-fourth Amendment dropped the Right to property from Chapter III on Fundamental Rights.

In June 1975 Mrs. Indira Gandhi suddenly declared a national state of emergency in the country after the Supreme Court had declined to fully stay her disqualification as a Member of Parliament following a successful challenge to her election on grounds of corrupt practices. It was about this time some stern measures were taken to control the opposition, which had started a campaign of destabilisation and disobedience of laws and obstruction of the meetings of state legislatures. But as the brutal suppression of freedom of speech and other civil liberties and the incarceration of hundreds of persons under preventive detention laws came to be known, the lawyers fraternity including the great giant Hormusji Maneekji Seervai Padmabibhusan vehemently criticized government move because 16 judges were punitively transferred from one Court to another for their fearless judgements in civil liberties cases and with a view to terrorizing other judges into submission, Seervai took up the cause in a petition which challenged such transfers in the Gujarat High Court and argued that the government’s power to transfer a judge was not unlimited as the government had claimed and that the transfers were a malafide exercise of power. The Gujarat High Court in case of Union of India v. Sankalchand (35) held that the transfer of Justice S.H. Sheth, the petitioner in the case was invalid because there was no consultation between the President and the Chief Justice of India. The Government of India carried the case in appeal to the Supreme Court. The appeal was heard after the emergency had been
lifted. In the Supreme Court, the new Janata Dal government conceded that there had been no justification for transferring Justice Sheth from Gujarat High Court and agreed to transfer him back to that High Court. Seervai made a significant contribution to the Independence of judiciary as the Supreme Court's judgement held that there was no unfettered right of the government to transfer a judge and it was proved that the mass transfer of 16 judges was an attempt to terrorise independent judges, the like of which would never be repeated in future (36).

Under Indian Constitution fundamental rights, including freedom of speech and expression and the freedom of the press, stand suspended during the period of national emergency. Censorship, which in normal times would be struck down, becomes immune from constitutional challenge. Taking advantage of the emergency, numerous repressive measures were adopted in the form of executive non-statutory guidelines and instructions were issued by the Censor to the Press. One of the instructions of the Censor was the following: “nothing is to be published that is likely to convey the impression of a protest or disapproval of a government measure. Some of the Censor's directives were sinister, like the ones prohibiting transfer of High Court Judges, banning publication of judgements of High Courts which rules against the Censor, “Killing” news of the opposition of certain state governments to amendments that were proposed to the national constitution, banning reports of alleged illegal pay-offs made during the purchase of Boeing aircraft and suppressing criticism of family planning programmes. The object was not merely withholding of information but manipulation of news and views to legitimize the emergency and make it acceptable. One tragic consequence was that in human practices such as forcible sterilisation of young men after removing them from buses and other excesses of over-enthusiastic family planning officials came to light much later after the
events, by which time family planning had become an anthema to the rural masses. An urgent and important programme suffered a serious setback, thanks to suppression of freedom of expression by the Censor (37).

Indian Judiciary, especially the State High Courts, displayed commendable courage in striking down the Censor’s orders and upheld the right of dissent even during emergency. The High Court of Bombay in its landmark judgement in Binod Rao v. M.R. Masani (38) delivered on 10th February, 1976. declared: “It is not the function of the censor acting under the Censorship order to make all newspapers and periodicals trim their sails to one wind or to tow along in a single file or to speak in chorus with one voice. It is not for him to exercise his statutory powers to force public opinion into a single mould or to turn the Press into an instrument for brainwashing the public. Under the Censorship Order, the Censor is appointed the nursemaid of democracy and not its gravedigger, merely because dissent, disapproval or criticism is expressed in strong language is no ground for banning its publication”.

The court however cautioned that the voice of dissent cannot take the form of incitement of revolutionary or subversive activities, for then instead of serving democracy it would subvert it. The High Court of Gujarat in its judgement in C.Vaidya v. H.D.Penha (39) castigated the censorship directives for imposing upon the people, “a mask of suffocation and strangulation”. In construing the expression “Prejudicial report”, the Court observed, “To peacefully protest against any government action with the immediate object of education public opinion and the ultimate object of getting the ruling party voted out of power at the next general elections is not a ‘prejudicial report’ at all. Such a public education is the primary need of every democracy.”
C 1.II (a) OBJECTIVE OF THE STUDY:

The objectives of the study are designed considering Judiciary as the protector of the Constitution. The people of India have formed the Constitution but to protect the Constitution, judiciary is essential to give guidance and solve any dispute between the States, between Centre and States, between people themselves, between the people and the Government, between people and legislatures and to decide unsatisfied decisions of lower courts by the higher courts. Judiciary is the sole authority to interpret the Constitution. An independent and impartial Judiciary is sine qua non for maintaining supremacy of the Constitution:

(1) An innovative measure is necessary to inject efficiency in the judicial system is to set up a new institution which may be named Audit-General, Judicial whose function would be to carry out audit of judicial work of all Courts except the Supreme Court of India because of its apex nature to interpret the Constitution.

(2) There is a difference of perception but it is healthy for Judiciary. Relationship among Judiciary, Legislature and Executive should not be cosy as it may come in the way of taking independent decision. The acts of Parliament were amenable to judicial scrutiny in view of “cash for query scam”. Legislatures have accepted that they lay down laws and judges are entitled to interpret laws. Limits are there in the Constitution but the interpretation has to be done by the Judiciary. Executives are required to carry out the orders of the Government. Therefore the three wings – Legislative, Executive and Judiciary have to work in coordination with other for the Democracy to survive without interfering in each other’s jurisdiction.

(3) Judicial independence is not absolute. Judicial independence and accountability are two sides of the same coin. They (minor measures)
aught not to be viewed as an encroachment on Judicial Independence by the Executive or by the Legislature.

(4) The purpose to set up a National Judicial Council’s power among others to impose withdrawal of judicial work from errant judges of higher judiciary is constitutional.

(5) The (Criminal Procedure Code) Amendment Act, 2008 is to pass into a law to divest police of usual powers in cases where maximum possible sentence is seven years or less. This shall create lot of problems in management of crime cases because crimes covered under new liberal norms include attempt to commit culpable homicide or robbery, voluntarily causing grievous hurt, cheating, outraging a women’s modesty and death sentence by negligence.

(6) People are losing faith in judiciary because of inordinate delay in disposal of around three crores pending cases in various courts in India, hence modernization of judiciary is essential for quicker disposal.

C1.II(b) IMPORTANCE OF THE STUDY:

The study on judiciary is very important because within the first three decades of formation of constitution, no body was thinking that the word ‘bribe’ will be incorporated within judicial circle. The disease of corruption among certain judges has to be prevented to uphold the prestige of the Indian Constitution.

The judiciary has therefore becomes a burning topic of the day. The advisory function of Supreme Court has added an important dimension for appointment and transfer of judges by the colloquium of judges planned, designed and introduced after 1993 and again modified in 1998.
Reformation in judiciary both at infrastructure and working pattern have become another issue to find out ways and means to adjudicate nearly three crores backlog of cases pending and also to ensure further prevention of cases to be newly added to this huge numbers in the future. Finally transparency in independence and accountability have to be maintained for the dignity of Indian Judiciary so highly praised in India and abroad.

(i) The Judicial Standards and Accountability Bill, 2010 laying down a code to deal with corruption cases against judges of the Supreme Court and High Courts and to repeal the four decades old Judges Inquiry Act, 1968 which deals with the process of impeachment of senior judges was discussed on 15-03-2010 at the cabinet meeting and deferred.

The Bill had provision for allowing common men to complain about alleged misconduct of a judge revealing the source of information but a final decision on whether action should be taken against the erring judges remain with the Government.

The study on this account is important to observe how far the Bill passed by Parliament will bring changes in Judiciary to set right the errant judges.

(ii) The role of Judiciary as an Advisor to the Executive or Legislative branch of the Government was for the first time introduced in India by Section 213 of India Act 1935. The Apex Court was asked to give advisory opinions. The word advisory in actual practices regarded as having the same efficiency and value as a decision of highest court of the country should be consulted as and when in exceptional circumstances there is need of its wisdom and expertise. To give timely guidance and to remove the cloud of uncertainty in the minds of the executive and legislature and public as
a whole regarding the legislation or executive action or the judicial
pronouncement under certain unprecedential circumstances. The
Advisory function of the Supreme Court has added an important
dimension to the study of constitutional jurisprudence particularly on
the doctrine of judicial review, federalism and Rule of Law in India.

(iii) The body of polity of the country has been witnessing
degeneration and administration anarchy in the absence of clear-cut
mandate for the three organs-legislative, Executive and Judiciary. It is
often noticed that these organs of democracy are encroaching on each
other's space. Powers of the three organs should be clearly defined
said Moily Veerappa -2007(40).

(iv) On the vital issue of 27% quota and demarcation of creamy
layer limit of Other Backward Classes (OBC) category, the limit from
rupees two and a half lakhs has increased to rupees four and a half
lakhs. The Notification if not struck down, the creamy layer class
among the OBC who have attained the level to compete with forward
classes would continue to derive benefits of reservation by such
unreasonable increase in income limit, the Petitioners filed their
petitions to Supreme Court of India. The Supreme Court on
15.12.2008 issued notices to Ministry of Human Resource
Development. Union of India and the National Commission for
Backward Classes to appear in the Court, this issue is discussed.

(v) The backlog of cases was more than 2.82 crores in the Country
said Justice Arijit Pasayat would take years together to arrive at
conclusion. A plea bargaining is an agreement between the
prosecutions and the defendant in a criminal case will be able to plead
guilty in exchange for a reduced sentence. The jails are becoming
over crowded by under trial prisoners for petty offices. Plea bargaining
can be put to fruitful use in deciding such cases and thereby lessoning
pendency as well as improving jail administration said A.K. Ganguly (41) Chief Justice of Odisha High Court. Plea bargaining is discussed in the study regarding reformation of judiciary and jail administration.

(vi) Unlike Britain where no law can be declared invalid by the British Parliament because that country has no written constitution. Here, the Supreme Court of India has as in United States of America, not only the right but also the duty to review laws passed by Parliament and declare invalid those violating constitutional provisions as per the opinion of political commentator, Indu Malhotra (42), is analysed and incorporated in the study.

(vii) An independent Judiciary and a Free Press in their own way perform the vital functions of ensuring transparency and enforcing accountability of the wielders of public power. While one has the right to criticize judicial orders, it is certainly not right to attribute extraneous motives opined Soli J. Sorabjee (43) is analysed in the study.

C1.II(c) HYPOTHESIS:
The Doctrinaire Research Study shall prosecute around the following hypotheses:

(a) In what manner justification for conferring protection but not blanket protection on the laws included in the Ninth Schedule by constitutional amendments shall be a matter of constitutional adjudication by examining the nature and extent of infraction of fundamental rights by a statue sought to be constitutionally protected?

(b) Should Judicial activism not degenerate into judicial authoritarianism? If much of what judiciary does becomes more like discretionary and arbitrary exercises of policy choices rather then
enforcement of Rule of Law, the whole dignity of law should let be undermined?

(c) Why not every matter of public interest can not be the basis of a PIL (Public Interest Litigation)? How can the PIL becomes a pill for every ill? Should judges instill in themselves that they can solve all the problems afflicting the country?

(d) Should the Independence of Judiciary be a cardinal principle for an effective judicial system? Should not the Legislative and the Executive have to rise above their self-compliances in all their interactions with the judiciary just as the judiciary should not pose itself to be supreme and has to have to devote heart and soul for deviating itself to enjoy the reverence of the nation?

(e) In a State observing separation of power, should we have to supplicate judicial independence by relevant machinery for accountability of the judges to achieve excellent of Rule of Law?

C1.II(D) REVIEW OF LITERATURE:

(1) Justice Satyabrata Sinha, presented his paper on “Judicial Independence, Fiscal Autonomy and Accountability” at the international conference and show case on Judicial Reforms at Makati City, Philippines on 28-30 November 2005. The honorable Justice of Supreme Court of India emphasis that judiciary alone is unified institution. The Chief Justice of India is parens patrias of Indian Judiciary. The Judges are not employee of State. The Judiciary upholds the rules of law and prevents the state form violating rights of the individuals and compelling the state to discharge its duties. It is part of their accountability factor that they stand as impenetrable bulwark against every assumption of power. The Eleventh Finance Commission
has sanctioned in two terms Rs. 1002.90 Crore during 2000-2010 to bring reformation in Judiciary (44).

(2) Justice Arijit Pasayat, Supreme Court of India in his presentation at the First South Asian Regional Judicial Colloquium on Access to Justice on “Safeguarding Judicial Independence” held at New Delhi from 1st to 3rd November, 2002 questioned whether the Independence of Judiciary is a reality? If the answer is no, where has the system gone wrong? According to him, “Committed Judiciary” is a misnomer, a contradiction in terms because a judge cannot worship two shrines of justice and of economic ideology. Independence of judiciary is sine qua non of democracy (45).

(3) Lord Phillips of Worth Matravers, Lord Chief Justice of England and Wales addressed on “Judicial Independence” at the Commonwealth law conference, 2007, Nairobi, Kenya on 12/09/2007. He said with satisfaction that, “The Authority of Supreme Court of India, which is second to none, is I believe firmly founded on the respect that people of India have for that court”. He further stressed, Judicial Accountability does not require absence of accountability, but there is nonetheless sometimes a tension between independence and accountability. “A code of ethics and conduct should be developed and adopted by each judiciary as means of ensuring the accountability of Judges” (46).

(4) Manmohan Singh, Prime Minister of India addressed at the conference of Chief Ministers and Chief Justices with the theme, “Justice in 21st Century” at New Delhi on 18.09.2004. The Supreme Court of India is a shining symbol of the great faith our people have in our Judiciary and to our great pride. The Supreme Court has earned high praise all over the World. Justice delayed for a common men is justice denied. The total backlog in subordinate courts exceeds 20
million. This could be reduced by reducing the load on courts and judges. The other way is to improving the productivity and efficiency of our courts. I assure you additional resources will not be found wanting in this regard (47).

(5) Manoj Mitta wrote on “PM for Executive inputs in Judge appointments” stressed the PM showed executive supremacy over judiciary on appointment of Supreme Court and High Court judges (48).

(6) Prashant Bhusan commented on “Committee on Judicial Accountability on Judges Enquiry Bill, 2006”. The bill creates another statutory procedure for initiating an enquiry into misconduct of a judge while earlier it could be done only by an impeachment motion. The other positive features is the restatement of judicial values of 1999 adopted by Chief Justices Conference is given statutory status by the Bill. The other emphasises, five members National Judicial Commission to work very well if amended constitutionally (49).

(7) Nagendra Sharma commented “Judges cannot escape RTI”, on the opinion of K.G. Balakrishnan, CJI that judges are “Constitutional functionaries and not covered under RTI Act.” MPs trash CJI’s views. Fresh round of conflict arouse between Parliament and Judiciary. People have every right to seek details of a Judge’s wealth. The House Panel of Rajya Sabha on 29/04/2008 examined in details every clause of RTI Bill, 2004 and all three wings, State Executive, Legislative and Judiciary are fully covered under RTI Act (50).

(8) Navin Upadhyay, published an article on “Kin make hay” as Judges Sinha following the controversy between two judges, Justice B.J. Shethana and Justice P.B. Majumdar of Gujarat High Court. The local Bar council demanded transfer of 13 judges whose relative practice in the same Court. This is contrary to the moral code of
conduct. The Supreme Court Bar Association on 18/03/2007 took a serious note of the issues. Such practices must be condemned (51).

(9) Times News Network published editorial on “Are CJIs following rules in appointment of Judges?” Former Law Minister Shanti Bhusan questioned Justice Ashok Kumar’s appointment as a permanent judge of Madras High Court during the tenure of CJI K.G. Balakrishnan allegedly following the norms laid down by The Apex Court. Anil Divan visibly discomfited and said the guidelines laid down by the Apex court in 1998 was patently violated in case of Justice Kumar. He said these should be accountability in each sphere of governance in a democracy while raising the issue of impropriety by the head of the judiciary (52).

(10) International Commission of Justice reported “India—Attacks on Justice”. The independence of judiciary continued generally to be respected in India but the judicial system remained over burdened and financially dependent on the executive. Violation of human rights continued in the regions of Jammu & Kashmir and Bihar. Lawyers in New Delhi protested on 21-12-1999 and 24-02-2000. Attacks on lawyers were vehemently opposed (53).

(11) President K.R. Narayanan on 28-07-1998 made a reference of Judges known as “President’s nine questions to Supreme Court”. Confrontation was brewing between the executive and the judiciary over the primacy of CJI. In appointment and transfer of Judges and sought its opinion in the context of SC Advocates on Record Association v. Union of India (54).

(12) Soli J. Sorabjee said there was no question of questioning the recommendatory power of CJI as regards to “the appointment and transfer of judges” were concerned. It is not known whether President’s nine questions were answered or not by the CJI (55).
(13) **Justice V.R. Krishna Iyar** published one Article on “Majesty of
the Judiciary”. The judiciary is the most sublime instrumentality in the
country. There is a need to scan the candidates for the selection of
judges. Many “Lordship” hardly deserve the high office, since in their
ruling they do not share the basic values of their oath, being under the
illusion of irremovable office and aristocratic class bias. The earliest,
oligarchic and delinquent brethren must be subjected to disciplinary
action

(14) **Judge Markandey Katju** delivered a lecture on “Contempt of
Court: need for a second look”. In a democracy people should have
the right to criticize. The purpose of contempt power should not be to
uphold the majesty and dignity of the court but only to enable it to
function. An upright judge will hardly ever need the contempt power in
his judicial carrier

(15) **J.L Gupta**, former Chief Justice of Kerela High Court published
an Article, “No to a Judicial Council”. Should a judge who fouls the
fountain of justice be allowed to sit in judgement? No. should a judge
whose conduct is questionable be tolerated by the society? Not for a
moment. Should there be a judicial council with power to keep
surveillance and to ensure a judge, as the centre now plans to
constitute? An equally emphatic “no”. The impeachment procedure
was politicized by the Parliamentarian themselves. Can we blame the
constitution for this? At least Parliament can not say that impeachment
is impossible

(16) **Soli J. Sorabjee** contributed an article “Political will to tackle
corruption is sadly lacking”, Corruption is not rampant in higher
echelons of our Judiciary as has been exaggeratedly portray. However
criminal prosecution of a sittings judge of Delhi High Court,
Justice Shamit Mukherjee, for corruption would have been unthinkable.
It is hoped that in making judicial appointment, the decision makers should have in their minds the Late Justice K.S. Hegde as a role model.

(17) *The New Indian Express* published, “Hang Corrupt Persons in Public: SC Judge”. The only way to rid the country of corruption is to hang a few of you on a lamp post. Unfortunately the law does not permit us to do that, a Bench of Justice S.B. Sinha and justice M. Katju remarked.

(18) Soli J. Sorabjee published an article, “Criticism and Contempt”. Criticism of a judgement of apex court is not contempt, why? Because the path of criticism is a public way. Criticism is permissible because free and frank debate about judgements constitute a democratic check on the judiciary and ensures judicial accountability.

(19) *The Hindu* published, “Balakrishnan: Not for compulsory declaration of assets by judges”. No self respecting judge would accept the idea of compulsory declaration or have any lay persons’ committee to probe the conduct of judiciary. He welcomes proposed National Judicial Council, however rejected the idea of involving any lay persons in the council. It will cause serious encroachment in to the independence of judiciary Justice Balakrishnan said.

(20) A statement by Asian Human Rights Commission on India: “Lack of Accountability has corrupted the Judiciary” issued. The impeachment procedure for Justice V. Ramaswami in 1991 failed. Justice Soumitra Sen’s impeachment procedure has not even started by now. The accountability of judges particularly in the context of increasing allegations of malpractices resorted to by judges is a grave concern in India. Justice Verma said in a court of 20 judges, two by default are corrupt. It implies that the justice quotient of Indian Judiciary is only 90%.
Punyapriya Dasgupta published, "Warning from the Supreme Court – who will judge our Judges"? The Supreme Court has confirmed that its comparison with Nero is intended to be seen as a brand on those responsible for communal carnage in Gujarat two years ago – the worst of its kind in independent India. The judiciary in Gujarat had become so undependable that the Supreme Court ordered a retrial of the Best Bakery case outside the state in Maharastra. When corruption is growing, it is illogical to expect that the judges can stay immune from the evil. V.N. Khare, a retired Chief Justice questioned crisply: "Who will judge our Judges".

Y. Prakash posted a resume, "Judicial Independence" at the confederation of India Bar International Seminar. Courts cannot be immune from criticism. The judgement of the court should be scrutinized and critically evaluated. The constitution of India insulates the Supreme Court and High Courts form political criticism. Neither in Parliament nor in a State Legislature the conduct of a Supreme Court or High Court judge in discharge of his duties can be discussed. One method of ensuring judicial accountabilities is to ensure speedy and relatively transparent method of dealing with complaints against judiciary.

Salar M. Khan released “Endemic delays bring down Delhi Justice System”, emphasized endemic delays in criminal trials as to how India’s legal system is failing to cope with the immense number of cases brought before it daily on hearing cases concerning crimes committed over 20 years earlier. Though the report was on Delhi, it could be read as indicative of the conditions across the whole of India, Fernando emphasized. Courts working days in 2007 were 280, deducting leave and other reasons the actual number of working days come to 220 in 2007.
(24) **Times of India** reported Media Overreach? “Sting Ops. on trials court tarnished judiciary’s image”. Supreme Court asks scribes to apologies for publication in Times of India 27-07-2007. The Supreme Court on 26.07-2007 blamed the journalist for bring the entire judiciary to disrepute by doing sting operation in 2004 in a Gujarat Trial Court, which on their fictitious complaint issued arrest warrants against the President and the Chief Justice of India (67).

(25) **Shoma Choudhury** published “Silence Lies”. Eminent journalist called a press conference in Delhi on 03-08-2007 and discussed by CJI Shabharwal’s order how thousands of people lost their livelihood in which he has an personal interest for his sons to develop profitable partnership with powerful Mall builders. Judiciary has so far protected itself against the security with the dreaded contempt of court law. It is time it has integrity to let this clause die to make our democracy more robust (68).

(26) **Nagendra Sharma** published “Jurists frown at CJI’s refusal to reveal details of judges”. Top Jurists slammed CJI KG Balakrishnan for trying to undermine the importance of transparency in judiciary by refusing to make public details of assets of Supreme Court and High Court judges. CJI contradicts a resolution of full bench Supreme Court, six of whom later went of become CJI. The resolution stated “Every judge of Supreme Court and High Courts would declare all assets owned by him / her and the family, within a reasonable period of assuming office” (69).

(27) **Zeenews.com** published “Probe against sitting judges in Ghaziabad Treasury Scam”: CJI on 04-07-2008. K.G. Balakrishnan, CJI agreed to subject 12 judges of higher judiciary to interrogation in Rs. Seven Crorers Ghaziabad District Courts’ Treasury Scam. The
scandal is Rs. 23 crores and not Rs. 7 crores by 36 judges. There are 83 accused in the case.

(28) Press Trust of India (PTI) reported in major English dailies, "Except Judicial Decision making, judiciary under RTI". K.G. Balakrishnan CJI recently said that the CJI is a constitutional authority and does not come within the preview of RTI Act. The committee headed by Natchiapparam, discussed the interpretation of section 20(h) of the RTI Act, i.e. definition of public authority, said the provision is very clear that all the constitutional authorities come under the definition of public authority.

(29) Dhananjaya Mohapatra, "I am a public Servant": CJI published, declared K.G. Balkrishhan, CJI on 06-05-2008. CJI allowed TV cameras to video graph the "People Court" held inside Supreme Court's room which are always out of bound for cameras. Balakrishnan counter questioned, "How can any judge argue that he is not a public servant"?

(30) Nagendra Sharma published an article, "Top Jurists want Indian jurists more accountable". Why won't judges of India's Supreme Court and High Court be willing to declare their wealth while their counterparts in other democratic countries such as U.S. and UK do it as a routine? There is a resistance from within the judiciary here to enforce transparency measures, former Law Minister Shanti Bhusan said. Rajiv Dhavan said there was complete transparencies in functioning of judiciary in western countries, and judges in India should shed their hesitation towards having a transparent system.

(31) Prof D.V.N. Reddy, Nagarjuna University, Guntur, A.P. presented a paper, "Judicial Independence, Appointment of Judges" at Bhubaneswar. Judiciary interprets the constitution and acts as its protector and guardian by keeping all authorities - legislatives,
executives, judiciary within their bounds. The judiciary is entitled to scrutinize any governmental action in order to assess whether or not it confirms with the Constitution and the valid laws made under it. The President's power to appoint a judge is however formal but the effective power rests with the Law Minister and Prime Minister. The law Commission in its 14th report states that the best talents have not been mobilized for the appointment of Judges. A National Judicial Commission to serve as a consultative body to President for the appointment of High Court & Supreme Court judges needs suitable amendments in the Constitution (74).

(32) Prof G. Varandani, Kurukeshatra University presented a paper on “Independence, Accountability and Credibility of judiciary - an impartial assessment” at a National conference, Bhubaneswar. Judiciary should be accountable but there is no statutory enactment which provides as to whom judiciary is accountable. The apex court has held that judges of Supreme Court and High Court can be prosecuted and convicted for criminal misconduct. The judges inquiry Act 1968 is not in practice. It is high time for proper implementation of the Act so that accountability of judges may be maintained (75).

(33) Justice Sarat Chandra Mohapatra presented a paper on “Appointment of Judges: A New Thinking” at the National Conference on Accountability and Responsibility of Indian Judiciary at Bhubaneswar. In Spite of a working principle (for appointment of judges), consulting colloquium by CJI, the best available talents are at times forgotten. High Court judges are either from Bar or from subordinate judiciary. A feeling has gained ground that percentage from each group is maintained to fill up the vacancies (76).

(34) Dr. A. David Ambrose, University of Madras, Chennai Presented a paper on “Obligations of High judiciary, judicial power and
Accountability” at Bhubaneswar. The judiciary has constitutional obligation. The High Court has an obligation to control the subordinate judiciary. The Supreme Court by Art. 129 and High Courts by Art. 215 have inherent power to punish for contempt. Ambrose quotes Krishna Iyar’s observation: “All public power is a people’s trust…… judiciary must be answerable to the people. The oath of office implies this responsibility”. The earlier the National Judicial commission is implemented it is better for the country (77).

(35) Dr. A. Raghunath Reddy, S.K. University, Anantapur, A.P. presented his paper on “Is appointment and transfer of judges at the mercy of the executive” at Bhubaneswar. Dr. Reddy emphasis that the executive was in a position to manipulate the judicial system so that at least a percentage of judges were persons who shared the philosophy of the government in power. Suppression of seniority of judges took place twice in appointment of CJI and on both these occasion, they were blatantly political decision, sending a signal to the judiciary that if they did not toe the government line, they would lose the prized office of the CJI. The appointment of CJI, judges, their transfer were at the mercy of the executive. Even all Indian judicial commission is set up it is left with the executive (78).

(36) Dr. Vijaya Chandra Tenneti, Kakatiya University, Warrangal, A.P. presented a paper on “Judicial Accountability – A case for Judicial reforms” at Bhubaneswar. Indian Judiciary has gained public confidence and has commanded respect from the people. This high regards is based on impartiality, independence and integrity of judiciary. The actions of judges are transparent and constitutionally sound. A judicial commission is better than cumbersome impeachment procedure to remove errant judges (79).
(37) **Dr. G.S. Prakash Rao**, Dr. B.R. Ambedkar college of Law, Andhra University, Visakhapatnam, A.P. presented a paper on "Judicial Accountability vis-à-vis Rule of Law" at Bhubaneswar. Man’s love for justice makes democracy possible but man’s inclination to injustice makes democracy necessary. Dr. Rao suggested that academicians, jurists like Law teachers must be allowed to practice in the courts as vogue in Maharastra so that they can participate in the judicial process. Judicial Officers should improve their skills and academic standards by part time teaching in Law colleges (80).

(38) **Prof. G.K. Rath**, Sambalpur University contributed on "Independence on Judiciary" at a National Conference at Bhubaneswar. The paper deals with a distrust on the executive mounted up after the suppression of 3 judges in 1973 and another judge in 1976 while appointing CJI then. Indiscriminate transfer of judges during 1975-77 gave added apprehension on executive interference in the matter of judicial appointment and transfers. During 1970-77, the executive mooted the idea of committed judiciary. To overcome political and executive interferences the alternate machinery like National Judicial Commission should be formed (81).

(39) **Prof N.S.J. Rao**, Berhampur University presented a paper "Appointment of Judges and Judicial Accountability under Indian Constitution." At National conference of Accountability and Responsibility by Indian Judiciary, Bhubaneswar on 24-25 June 2001. President should not give scope for appointing judges with unsatisfactory records and weak moral character. Except in few instances, Indian Judiciary is maintaining high standards and no way inferior to US or UK judiciary (82).

(40) **Dr. Raghunath Patnaik**, Utkal University, Bhubaneswar presented his paper on "Delay in Adjudicative process and judicial
accountability” at National Conference of Accountability and responsibility by Indian Judiciary, Bhubaneswar. Judicial delays is due to heavy caseload on the part of the judges and not due to laziness or professionalism of advocates. Two third of cases get adjourned. The other reason is judiciary in India is under stabbed. The 20th Report of Law Commission in 1987 with the chairperson of Justice D.A. Desai suggested India requires 50 judges per million population instead of 10.5 and recommended five fold increase. He also suggested to overcome judicial delay to expedite Lok Adalat Movement (83).

(41) Dr. P.K. Padhi, Utkal University, Bhubaneswar made his presentation on “Accountability of the Judiciary and Indian Constitution” at Bhubaneswar. The accountability of Judiciary means the lower court is accountable to the State High Court, the State High Court is accountable to the apex court and the apex court is accountable to the constitution, that means, to the people of India because the first sentence of the preamble to the Constitution is we, the People (84).

(42) Dr. P.C. Pati, M.S. Law College, Cuttack made his presentation on “A study on advisory function of the Supreme Court of India” at Bhubaneswar. The recommendation made by CJI on the appointment of judges of Supreme Court and High Court and without following the consultation process are not binding on Government. The advisory function of Indian Supreme Court has added an important dimension to the study of constitutional jurisprudence particularly on the doctrines of judicial review federation and rule of law in India (85).

(43) Dr. Prabir Kumar Patnaik, M.S. Law College, Cuttack contributed on “The Individual and System Accountability of Indian Judiciary” at a National conference, Bhubaneswar. Accountability has two aspects, Legal and moral. Judicial accountability has two dimension, individual and system. Every body knows how majority of
our law students obtain professional degree from Universities and how without proper quality control, they are being inducted into Bar.

(44) Fali S. Nariman, a Former Additional Solicitor-General of India and a Senior advocate of Supreme Court of India contributed an essay on "New Vision of Art 14: The right to equality under Indian Constitution" He quotes Justice Vivian Bose (in 1952) that the words of Art.14 are not dull lifeless static words: but living flames intended to give a great nation and order its being tongues of dynamic fire potent to mould the future as well as guide the present. He supports saying that this is the direction in which our courts should move in the future also.


(46) Atul M. Setalvad, a senior advocate of Supreme Court of India, qualified as a barrister from Gray's Inn, contributed an essay on "Indian's Higher Judiciary: some significant failures". In 1975, PM Indira Gandhi declared emergency after she was unseated by Allahabad High Court. Her government detained tens of thousand of political opponents. Janata Government in 1977 made 44th amendment to curve wide powers. The Supreme Court by 3:2 declined to issue a writ of mandamus compelling government to do so. This astonishing decision has enabled the executive to flout the command of Parliament expressed in its constituent capacity.
Richard E. Messick, the world Bank Contributed one article in Website “Regulating Conflict of Interest: International experience with Asset Declaration and Disclosure”. Asset disclosure should be made public. It helps boost confidence in Government, giving civil society groups and journalist to play a role in policing accuracy of disclosures. The dishonest simply hide their assets, putting them in spouse’s name or the name of an unrelated person. This may result an aggressive campaign to root out bribery.

Advocate Hemanta Kumar prepared a write up on “Judiciary v. Media-Avoidable Confrontation” published as cover story in “Lawyers Update”. The text details that the Judiciary and the Media are the third and fourth pillars of a Democratic setup. Both are indispensable for the smooth functioning of the system. While the former should duly regard the freedom and right of the later to cover and disseminate news about proceedings in an open justice system, the later on its part also ought to show its due digilence and extreme caution while reporting the same so as to preserve the sanctity of the former as well as for ensuring a free and fair trial. Any confrontation between the two over reportage of news in subjudice matter is indeed unwarranted. On the contrary, they both rather ought to work in tandem respecting each other domain and independence.

T.R. Andhyarujina, senior advocate of Supreme Court entitled “The Keshavananda Bharati Case”–The unfold story of struggle for supremacy by the Supreme Court and Parliament. The book consist of 12 chapters each one of absorbing interest, what culminated into Keshavananda was not a struggle for supremacy as the author would describe, but an effort by the Parliament and the Supreme Court to contain each other within limits. It all happened due to the thought less interpretation of the right to property with the aid of the right to
equality which frustrated the attempts of parliament to fulfill the
promises made to the people by our leaders during the freedom struggle
to usher in agrarian reforms for the benefit of the land less poor(92).

(50) **V.R. Krishna Iyar**, former Judge, Supreme Court, with his vast
experiences, authored a book, "**Justice at Cross Roads**", the last
chapter on judicial accountability necessitated by infiltrating the
judicial system, In India some judges foster favourities and have close
relatives at the Bar which factor leads to many improper practices.
There are factions among Judges which inflict moral wounds on
justice. The Bench cannot be corrupt if the Bar is forthright. If the
members of the Bench commit crimes, they are amenable to the Panel
Code even as they are amendable to traffic laws, immoral traffic laws
and other punitive measures. It is wrong to think that there is a
vaccination against prosecution of judges and of the abetting lawyers if
they commit common crimes from their professional eminence. Justice
has a global dimension in our age of human rights and the twin
components of Independence and Accountability are also matters of
universal concern (93).

**C1. II(e) RESEARCH METHODOLOGY:**

Methodologically it shall be a doctrinaire documentation
research project based on content analysis and interpretation of Law
Reports, Law Books, Juristic Essay, Committee Reports, Souvenirs,
Journals, Write-ups, Views, Opinions contributed by scholars, judges,
retired judges, advocates, jurists, sitting and retire chief justices of
India, sitting and retire chief justice of High Courts, teaching faculty of
Law Department of Universities. The content analysis and
interpretations like articles, editorials, letters to editors, news of
National and International Conferences, papers presented by eminent
scholars and views by Political Commentators, legal activists published in daily newspapers like Indian Express, Times of India etc. have been analysed in the form of the clippings, collecting as secondary data over a period of last ten years and incorporating, wherever necessary in the study project to emphasize the involvement of judiciary for the benefit of society at large with up-to-date modern 21st century issue of the people relating to the judiciary in India.

The entire research work is divided into seven chapters on various aspects of the Independence of Judiciary and its Accountability in India, the last one consisting of appraisal, suggestions and conclusion along with table of cases and references chapter wise for ready references and also the entire references in a compiled form in the Bibliography section as Books, Journals / Reports, Newspapers / Magazines etc. and websites in separate sub sections, which may be of immense help and useful for the students of law and future researchers.
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