CHAPTER – I

INTRODUCTION

Democracy implies the right of the people to self-determination and faith in the rationality and ingenuity of the human mind. The basic premise of true democracy is that every individual irrespective of his caste, creed, colour and even his educational, economic or professional backgrounds, is capable of governing himself and of managing his affairs, the way he deems fit. In a democracy, the people are their own masters.\(^1\) The Constitution is the scheme by which various organs of the Government are regulated and the division and the exercise of state’s power is maintained.\(^2\) The legislature, the executive and the judiciary all are its creation and derive their powers from it. Every institution of the state is expected to be functional and active in discharging its duties in the field assigned to it by the Constitution. Being a representative assembly, the legislature in a democratic government enacts the general rules of society in the form of laws. The laws of the state prescribe the manner in which people are expected to live in a politically organised society. Secondly, there must be some power to see that the laws of the state are duly obeyed by all and there is no infringement. This is the work of the executive. There is, thirdly, the judicial power. The judges determine whether the law is applicable in a particular case or not. It determines the manner in which the work of the executive has been fulfilled. It also sees to it that the exercise of executive authority conforms to the general rules laid down by the legislature.\(^3\)

The legislature makes law and the courts interpret and apply it. This is the most obvious relation between the judiciary and the legislature. The legislature sanctions all appropriations necessary for
the maintenance of the judicial department. In this way, the legislature controls the judiciary. The judiciary may exercise considerable control over legislation, wherever it has the right, either by precedent or by express grant, to review laws in order to determine their constitutionality.

India is a democracy which has adopted the Westminster system or the cabinet system of parliamentary democracy. But, unlike Britain, the Parliament or the legislatures are not supreme under the Indian Constitution. The legislature and judiciary, both discharge different but complementary functions. One makes the laws and the other decides the validity of those laws. The Constitution is supreme, and embodies the supreme law of the land and therefore, all other laws made should conform to it. The validity of the laws is tested by the provisions of the Constitution. An act would be valid only if the legislature concerned has constitutional competence to make an act and the said act does not exceed the permissible limits of enforcement on the fundamental rights.  

Indian polity can be described best as representative parliamentary democracy. The term parliamentary refers specifically to a kind of democratic polity wherein the supreme power vests in the body of people's representatives called Parliament. The parliamentary system is one in which Parliament enjoys a place of primacy and pre-eminence in the governance of the state. Under the Constitution of India, the Union legislature called 'Parliament' is the pivot on which the political system of the country revolves.

The Parliament consists of the President and the two houses namely the Rajya Sabha (Council of states) and the Lok Sabha (House of the people). Though the President of India is a constituent part of Parliament, he does not sit or participate in the discussions in either of the two Houses. There are many functions which he has to perform with respect to the Parliament. The president summons to the two
Houses of Parliament to meet from time to time. He can prorogue the
two Houses of Parliament and dissolve the Lok Sabha. His assent is
essential for a bill passed by both Houses to become a law. Besides,
when both the Houses of Parliament are not in session and he is
satisfied that circumstances exist which render it necessary for him to
take immediate action, he can promulgate Ordinance having the same
force and effect as a law passed by the Parliament.\(^6\)

The Rajya Sabha is, as its name indicates, the Council of states,
represents the people in an indirect way because it is elected by the
members of the legislative assemblies of the states. The term of each
member is six years. It is a continues house not subject to dissolution.

The Lok Sabha is the House of the people and its members are
elected directly by the people from territorial constituencies.
Traditionally the main function of a legislature is to legislate. The
Parliament can make laws for the whole or any part of India within its
area of competence as defined and delimited under the distribution of
legislative powers between the Union and the states vide the seventh
schedule.\(^7\) In regard to the union list, the Parliament’s jurisdiction is
exclusive. Both the Union and the states have concurrent power to
legislate in respect of entires in the concurrent list. In case of conflict
between the Union and the state laws, the former prevails.\(^8\) Also, the
residuary powers vest in the Union Parliament.

The two Houses of Parliament enjoy co-equal power and status
in all spheres except in financial matters and in regard to the
responsibility of the council of Minister, which are exclusively in the
domain of Lok Sabha. The Constitution has assigned some special
powers to the Rajya Sabha.\(^9\)

Under Article 368, Parliament exercise constituent powers in
accordance with the procedure laid down for different categories of
amendments.\(^10\) While a number of articles can be amended by
Parliament itself by a special majority, in many cases concurrence of
the states is required.

The amending process, in fact, has proved itself one of the most ably conceived aspects of the Constitution. The procedure for constituent amendment, as spelt out in Article 368, has certain distinctive features which clearly mark out Parliament’s constituent capacity from its ordinary role as a legislature. A bill to amend the Constitution may be introduced in either House of Parliament. It must be passed by each House by a majority of the total membership to that House and by a majority of not less than 2/3 of the members of that House present and voting. When a bill is passed by both Houses it shall be presented to the President for his assent who shall give his assent to bill and thereupon the Constitution shall stand amended.

There is one unified judicial system for the whole of India—one hierarchy of courts from the subordinate courts to the Supreme Court. The highest court is the Supreme Court. The law laid down by the Supreme Court is final and binding on all courts in India. Independence of the judiciary is ensured in many ways. According to the Constitution, the President is required to appoint the judges of the Supreme Court and the High Courts after consultation with Chief Justice and other judges. The Supreme Court has however ruled in favour of the primacy of the judiciary in the matter of these appointments. Supreme Court judges hold office until 65 years and High Court judges until 62 years of age.

The Supreme Court of India has the original, appellate and advisory jurisdictions. The original jurisdiction is used rarely, though there are a few cases where it has been invoked and exercised. There is another important jurisdiction of the Supreme Court, namely entertainment of writs under Article 32 for the protection of fundamental rights. Under this article every citizen has a right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred in Chapter III. The Supreme Court
can hear the petitions in its original jurisdiction. The Supreme Court has been given the power to issue directions, orders or writs in the name of habeas corpus, mandamus, prohibition, quo-warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred. Under Article 226, state High Courts have been given the similar powers.

Judicial review as it has evolved in the United States means the power of the highest court of the land to finally pronounce upon the legality or otherwise of a legislative act in so far as it conforms, or does not conform, to the provisions of the fundamental law, i.e., the Constitution of the land. Indian Constitution very largely, but not entirely, follows the U.S. practice in this regard. The Constitution being the fundamental law of the land, every legislative enactment, whether of the Union or that of states must conform to this fundamental law except that in India, after a law is declared unconstitutional, in most cases, the Constitution can be amended to take care of the judicial interpretation and make the law permissible.

The doctrine of judicial review which was originated in the United States of America, was declared by the Chief Justice Marshal of the Supreme Court in 1803. He said,

"It is emphatically, the province and duty of the judicial department, to say what the law is, those who apply the rule of particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So if a law be in opposition to the Constitution, if both the law and the Constitution, apply to a particular case, so that the court must either decide that case conforming to law disregarding the Constitution or vice versa. The Court must determine which of these conflicting rules govern the case, this is of the very essence of the judicial duty. If then, the Courts are to regard the Constitution
and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.”

However, the Indian Constitution does not, in so many words, assign the power of judicial review to the judiciary. It is implicit in Articles 13, 32 and 226. Further, there are other Articles 131-136, 143, 145, 246, 251, 254 and 372 from which power of judicial review is also derived. Apart from these Articles, the power of judicial review in India is derived from the position of Supreme Court as the guardian of the Constitution. As such, it has the final say in the interpretation of the Constitution and by such interpretation, the Supreme Court has extended its power of judicial review to almost all the provisions of the Indian Constitution.

The judiciary in India is an authority to co-ordinate with the legislature and the executive. Parliament has the power to make laws regulating the Constitution, organisation, jurisdiction and powers of the Courts. Parliament is, however, empowered to prescribe a larger number of judges by law. According to the Constitution, judges of the Supreme Court shall be appointed by the President after consultation with the Chief justice and such other judges of the Supreme Court and of the High Courts in the states as the president may deem necessary. A judge can be removed from his office by the President on grounds of misbehaviour or incapacity, after an address passed by both houses of parliament with a special majority. The courts have no jurisdiction to issue a writ, direction or order relating to a matter which affects the internal affairs of the House.

Judiciary plays a very important role under its power of judicial review. The courts may declare a law made by Parliament ultra-vires the Constitution and as such, null and void and unenforceable. Article 13 of the Constitution clearly prohibits the making of any law which may be inconsistent with, or in derogation of, any of the
fundamental rights contained in Part III of the Constitution. Article 32 confers power on the Supreme court for the enforcement of these rights. If an Act of the Parliament is set aside by the judiciary, the Parliament can re-enact it after the removing the defects for which it was set aside. Also, the Parliament may, within the limits of its constituent powers, amend the Constitution in such a manner that the law no longer remains unconstitutional.

Thus, the Indian Parliament is not as supreme as the British Parliament where no judicial review of legislation is permitted. At the same time Indian Judiciary is not as supreme as in the United States of America which recognises virtually no limit on the scope of judicial review.

The very nature of the duty entrusted to parliament requires formulation of legislative policy and enacting it into a binding rule of conduct. On the other hand, the constitutional duty of the court arising from judiciary is to final all those legislative enactments which are either inconsistent with the provisions of the Constitution or are beyond the legislative competence. This has led to some controversy between the Parliament and the Supreme Court involving questions of relative supremacy of these organs. The idea of supremacy of the Parliament germinated for the first time in the speech of the Prime Minister, Sh. Nehru on the eve of the Constitution Fourth Amendment Bill when he posed a question.

"Why should eight judges in the Supreme Court be permitted to outlaw the Acts passed by elected legislators of the actions of their Ministers or of the officers controlled by the Ministers? Why should this undemocratic process be permitted in the name of judicial review? Why should one have more faith in the Court than in the Parliament?"20

In the field of constitutional amendments, the Supreme Court had many important and historic occasions to deal with the matter
concerning parliamentary supremacy. From early fifties itself, a debate has been going on in the courts as well as inside Parliament, regarding the scope of the amending power of Parliament under Article 368. The Supreme Court has been interpreting Parliament as a creature of the Constitution, exercising powers under and not beyond the Constitution. The Constitution, though expressly confers amending powers on Parliament but it is the Supreme Court which is to finally interpret the scope of such power and to spell out limitations, if any, on such amending power. Early enough after the enforcement of the Constitution in 1950, Article 31-B and the Ninth Schedule were included in the Indian Constitution by the Constitution (First Amendment) Act, 1951 to exclude the power of judicial review. The main purpose of the Ninth Schedule read with Article 31-B was to shield the land reform laws from judicial scrutiny in the early years of independence. It provides that none of the Acts or Regulations included in the Ninth Schedule to the Constitution shall be void on the ground that they are inconsistent with any of the rights conferred by Part III of the Constitution. The validity of this Amendment Act was challenged before the Supreme Court in Shankari Prasad Singh case. The court held that the terms of Article 368 are perfectly general and empower parliament to amend the Constitution without any exception whatever. It also held that the power to amend the Constitution conferred by Article 368 was a constituent power as distinguished from ordinary legislative power and that such an amendment was outside the purview of Article 13 (2), because Article 13 (2) covered laws passed in the exercise of ordinary legislative power. Thereafter the Constitution (Fourth Amendment) Act, 1955 was passed, amending some articles in Part III of fundamental rights but its validity was never challenged.

The matter was raised again in 1965 in Sajjan Singh case when the validity of the Seventeenth Amendment Act, 1964 was called in
question. In this case, the decision of the court in *Shankari Prasad* as regards the relation between Article 13 and 368 was reiterated by the majority. Again the constitutional validity of the Seventeenth Amendment Act was challenged in the famous *Golak Nath* case. The Supreme Court's judgment in that case introduced a new concept of prospective over-ruling which meant that the above mentioned amendments were valid but henceforth the Parliament, from the date of the decision of this judgement, will have no power to amend any provision of the Constitution of India so as to take away or abridge fundamental rights. The judgement of the court created a big controversy and criticism of the Supreme Court. But undeterred by the criticism, the Supreme Court further held the nationalisation of Banks and the President's order derecognising the princes and abolishing their privy purses as unconstitutional. These judgement were again criticised by the Parliament. The then Prime Minister, Indira Gandhi said that the Supreme Court was becoming a stumbling block in her efforts to remove poverty. The wide confrontation between the Parliament and the Supreme Court led to the mid term poll of 1971, in which Mr. Gandhi returned with a absolute majority. The Twenty Fourth Amendment was made to give the Parliament full powers to amend the Constitution including the provisions with regard to fundamental rights. The Parliament also made other amendments to the Constitution for curtailment of the powers of the Judiciary.

All these amendments were challenged in the Supreme Court in the *Keshavanand Bharti* case which constitutes a watershed in the history of judicial review. The court reversed its judgement given in the early case and stated that the Parliament had the right to amend the Constitution. The court further held that the Parliament cannot amend or alter the basic structure of the Constitution as Chief Justice Sikri opined that every provision of the Constitution can be amended
provided the basic structure and foundation of the Constitution remains the same. Thus, although the Supreme Court reversed the earlier judgment of *Golak Nath* case but in fact it extended its jurisdiction even beyond the *Golak Nath* case. Because the Supreme Court by evolving the doctrine of basic structure of the Constitution limited the power of the Parliament to amend the Constitution.

During the emergency period, the authority of the Supreme Court was undermined and was made subservient to the legislature and executive. The fear psychosis generated by emergency also affected the working of Supreme Court in the famous *Habeas Corpus* case in which the people arrested or detained under MISA could not get relief from the Supreme Court. The Forty Second Amendment was also passed by the Parliament which put new limitations of the judiciary.

After the end of emergency, the Forty Fourth Amendment Act was passed which restored the judiciary’s position as it had existed before the emergency. The 1980’s saw a change in the working of judiciary which is known as judicial activism. In judicial activism, the Supreme Court has devised new ways and tools in dealing with the cases. Judicial activism has taken place through the *suo moto* initiative by the courts, there are many instances when the courts have taken up cases on their own on the basis of newspapers reports. The PIL system has an expanded form of judicial review and courts have been able to grant relief to the prisoners, provide legal aid, direct speedy trial, maintain human dignity and insulate education and health from politicisation and communalisation.

The main reason that why judicial activism has arisen, is due to the failure of executive and legislatures to act and for this the main culprits have been the politicians. Instead of working for the general welfare of the people, they have been involved in self aggrandisement and corruption. In 2002, the petrol pump scam rocked the Parliament
as well as the nation and it was revealed that close kins and relatives of the politicians belonging to the ruling parties were the beneficiaries of allotment of petrol pump and gas agencies and this had been going on for a long time. The politicians also influenced. There has been a growing feeling that criminal laws are being applied selectively and the politicians are immune from criminal proceedings. As a result, a vacuum was created in which the governmental machinery seemed to be totally helpless or even connived with the corrupt politicians. The vacuum was filled in by the Supreme Court. Many scams came out as a result of a public interest litigation filled in the Supreme Court.

Before emergency the main area of tussle between the Parliament and Supreme Court was on the constitutional provisions relating to judicial review, amending power and right to property. But after emergency the confrontation is on the constitutional and social issues like Ninth Schedule, reservations, environmental pollution and parliamentary privileges etc. On the issue of Ninth Schedule and Article 31-B the Supreme Court held that all laws which have been placed in the Ninth Schedule after April 24, 1973 will also be prone to challenge now. A nine Judge Constitutional Bench has been set up to examine the power of Parliament to amend the Ninth Schedule of the Constitution from time to time to facilitate placing of at least 30 odd laws passed by different state Assemblies in it, including the extroversion Tamil Nadu Reservation Act, 1993 which had raised the ceiling limit of reservation to 69% in the state overreaching the Supreme Court verdict in Mandal case fixing it at 50% to strike a balance between Article 16 (1) and Article 16 (4).

In another case, taking note of starvation deaths of tribals in Orissa, the Supreme Court wondered why the food grains stock rotting in godowns or in the open could not be taken over to feed the starving population. When the food Minister demurred publicly stating that free distribution of foodgrains was a practical proposition, the
Supreme Court severely reprimanded the Minister and asked him to take specific action. Thereupon the government was compelled to make some announcement. Seeing that the work of the CBI, the premier investigating agency, was interfered with by the government, Supreme Court directed that the CBI would work under the supervision of the CVC.

The difference between the Constitution and the ordinary laws is the hallmark of the legal systems in countries with written constitutions, thus in India as well. From Shankari Prasad case, passing through the road of Kesavananda and ultimately enunciated in I.R. Coelho, to the present times, it has been the long battle on part of the institutions in India to maintain their respective supremacy while Parliament and Supreme Court got their shares.

**REVIEW OF EXISTING LITERATURE:**

No doubt a number of theoretical and empirical studies relating to the powers, functions and working of the Parliament and Supreme Court of India have been undertaken by various scholars. The learned scholars have dealt with some aspect of the relationship between these two organs, i.e., the Parliament and Supreme Court of India but these studies are not up to date. The present study has been undertaken to fill up this gap. The following literature has been reviewed:

The book, *Basic structure of the Indian Constitution* (1993) written by M. K. Bhandari, is a comprehensive study of basic structure doctrine which has vital bearing on the future development of constitutional jurisprudence in India. The author has critically examined and analysed the multidimensional aspects of the concept of basic structure. It is an attempt to explore the specific provisions which could be identified with the essential features such as; independence of judiciary, rule of law, federal character,
parliamentary democracy and judicial review. The author has made an indepth study of the preamble, Part III, Part IV and the remaining provisions of the Constitution. The intention of founding fathers and debates of constituent assembly have prominently figured in the work.

The book, *Amending powers and constitutional Amendments* (1990) by Paras Diwan and Rayoshi Diwan\(^\text{22}\) is an attempt to examine critically the amending powers and process as laid down in the Indian Constitution in the light of constitutional developments and distortions. The first part of book deals with this theme. The second part is devoted to the topic wise survey of all the amendments. The primary purpose of this book is to inform the reader about Indian amending process and power. It also helps the reader to located the amendment on any area that he wants to know and the text of amendments and objects and reasons behind them, helps him to know the exact text and the object of the amendments.

T. Suryanarayana Sastry (ed.)\(^\text{23}\) in his book, *Fifty years of Indian Independence and the policy* (2000) contains articles of various scholars on the functioning of the democratic polity in India during the past. It describes the functioning of various constitutional bodies, such as legislative, executive and judiciary. The emerging trends of Indian political system are also discussed.

U. C. Jain's\(^\text{24}\) book, *Judiciary in India* (2000) provides an overview of the Indian judicial system in its entirely form the district through the state to the national level. It concentrates on the powers of the Supreme Court which it has used many times to alleviate potential or actual injury to society resulting from executive and legislative decisions. Another aspect which this book emphasises is the system of PIL. While all modern democratic allow such litigation, probably nowhere else in the world has it been used as largely or with such significant impact on the polity and the lives of the common people as in India.
The book, *Institution of Governance in South Asia* (2000) written by S. C. Kashyap analyses the institutions of governance the legislature, judiciary and Executive in the five South Asian Countries including India. It also seeks to examine whether notwithstanding the differences, there emerge areas of commonality of experiences, interests, problems and possible policy option in the matter of building of institutions and their inter-relationships as contributing to good governance.

Sampat Jain in his book, *Public Interest litigation* (2002) presents the historical perspective of public Interest and social Action Litigation in a scholarly and analytical narrative which helps in a systematic understanding of the circumstances, areas and innovations which have imparted strong credibility to judicial activism. The author discusses that the public servants were not performing their statutory duties towards the poor sections of the people. The traditional legal or constitutional system has failed to provide quick remedy even in cases where interest of large number of people was involved.

The book entitled, *Our Constitution, Government and Politics* (2002) by M. V. Pylee deals with the question that to what extent India has achieved the objectives so eloquently proclaimed by the Constitution with covering all aspects of working of the various organs of the Government. It also discusses the weaknesses of legislative and judicial institutions in the country.

B. D. Dua et. al. (eds.) in book, *Indian Judiciary and Politics-the Changing Landscape* (2007) covers a variety of topics-judicial activism, judiciary and ecology, secularism, parliamentary institutions, central executive, new economy, and judicial reforms that focus primarily though not exclusively, on the ramifications of judicial activism for Indian politics. The author describes that the post emergency higher judiciary in India has earned widespread public
acclaim for its innovative and creative jurisprudence, notwithstanding the argument advanced by some critics that it has exercised excessive jurisdiction, transgressing at times the executive and legislative domains, contrary to the original checks and balances design of the Constitution.

A. S. Altekar in his book, State and Government in Ancient India (2005) discusses different views on the origin and nature of the state in ancient India along with stages and processes of state formation. The various chapters of the book isolates the different links of the administrative machinery like the king, the ministry, the secretariat and discuss their origin and trace their development during the different periods. It also examines the relationship between different organs of government during Ancient India.

S. K. Verma in his book (ed.), Fifty years of the Supreme Court of India (2006) looks at fifty eventful years of the apex court of justice. The essays comprehensively cover all major areas of law and explore the ramifications of the court’s judgments on the law of the land. It also evaluate the role of Supreme Court as the custodian and defender of the Constitution and the principles enshrined therein.

The book, Our Parliament (2007) by S. C. Kashyap presents in easy, non-technical language, basic facts and authentic upto-date information about Indian Parliament. It seeks to briefly narrate the story of how Indian Parliament came to its present form, what it is, what it does, why it s needed, how it is constituted and how it functions. In fact, it covers the entire gamut of facts pertaining to the Indian Parliament. The concluding chapter is a resume of the working of Parliament during the last half-e-century and more.

The book, Judicial Activism in India (2008) authored by S. P. Sathe spans a veritable vastness of constitutional law and a reasonable bit of administrative law, even while it ranges the expanses of PIL in India. It traces the evolution of the Supreme Court of India
from a passive, positivist court into an activist institution, articulating counter majoritarian checks on democracy. The author critically analyses recent judgments of the Supreme Court on issues such as secularism, the right to education, the new economic policy on disinvestment and contempt of court.

B. R. Agarwala in his book entitled, *Our Judiciary* (2008) traces the development of the judiciary in India from ancient times to the present day. While the first part of the book traces the development of the judiciary historically, the second examines the different courts, commissions and tribunals in details. It also deals with other fora for adjudication of disputes such as arbitration, Lok Adalats and Panchayats and the positive role of Public Interest Litigation in India. The book is informative as well as instructive. It will go a very long way in helping the reader to have precise knowledge about the functioning of the judicial system in India.

Book entitled, *The Indian Constitution-Cornerstone of a Nation* (2008) authored by Granville Austin's examines the ideals, motivations, and vision of the founders of the Indian Constitution. It analyses the extent to which they were successful in articulating India's goals and in designing the necessary governing structures. The book shows how the Constitution has been a socially revolutionary and modernizing force. The contends that the seeds of solutions to existing the future problems can be found within the document's principles and that it is misguided to say that the Constitution has not worked.

S. C. Kashyap in his book, *Our Constitution* (2009) analyses the Constitution as it has grown and worked, and the constitutional law as it has developed through judicial interpretations. Every part, chapter and article of the Constitution has been covered by the commentary. The concluding chapters suggest the need for a review of the working of the Constitution. At once comprehensive and concise,
it fulfils a long felt need for a handy but authoritative study of the Constitution.

B. M. Gandhi’s book, V. D. Kulshreshtha’s *Landmark’s Indian Legal and Constitutional History* (2009) is a classic and popular work, which is a comprehensive treatise on legal and constitutional history of India, has been thoroughly revised and updated by B.M Gandhi. An analytical survey of the present legal developments and lucid account of the important in India are the highlights of the book. The book also discusses landmark decisions given by the Supreme Court of India and the High Courts. Further, the author has systematically arranged and rewritten many parts of this book expanding on pre-existing topics, and introducing the new developments and challenges faced by Country.

The book, *The Constitution of India* (1999) written by Varinder Grover critically examine the Constitution of India. The book discusses in detail and examine the functioning of the constituent Assembly of India, various rights guaranteed in the Constitution of India such as the Right to Liberty, Right to equality and legislative process in Parliament. The last part contains articles on various constitutional amendments such as effect of the amendments to the Indian Constitution on the civil liberties of Indian, citizens, the forty second amendment and the Basic structure of the Constitution etc.

The book, *Supreme But Not Infallible* (2000) written by B.N. Kirpal (ed.) is an edited work. This volume commemorates fifty essays by eminent Jurists, Legal Academics and Journalists who critically evaluate the working of this institution over the last five decades. The essays in this volume are concerned with the work of the court in areas relating to Public Law and the Constitution. Appreciative in their tone, and often powerfully unsparing in their criticism, these essays, hopefully, constitute the beginning of a process to evaluate the on going work of the court in all areas of its
many jurisdictions. It is through such efforts that the court learns about itself.

B.P. Singh Sehgal in this Book, *Law, Judiciary and Justice in India* (1993) comments that, Judiciary is the main institution on which the responsibility of administering justice lies in a democratic country. The quality of excellence of a Govt. is determined on the basis of the efficiency of its.

SLA Khan’s book, *justice Bhagwati on Fundamental Rights and Directive Principles*, (1996) examines the cases relating to "fundamental rights and directives principles, decided by justice Bhagwati. This work is based on the judgements of Justice Bhagwati. Also discussed latest cases based on the judgements of justice Bhagwati. He liberalised standing pattern by initiating PIL which the most outstanding work.

P.S. Narayana in his book, *Public Interest Litigation* (2001) provides valuable guidelines for "bar, bench, and litigant public alike. The concept of PIL came into being to accommodate the weaker sections of the society for redressed of their genuine grievances. The author has taken up the sensational topic and had discussed at length PIL in general and also classified and categorised the subject taken by persons under the garb of PIL. The author has discussed the matter in detail covering topics, illustrating the same by ample case laws This book discusses in detail the summaries of the judgement delivered by the Supreme Courts concerning Public Interest Litigations or varied subjects.

Subhash Chandra Gupta in his book, *The Supreme Court of India* (1995) makes an attempt to evaluate the role of Supreme Court as an institution of justice reformation. The author believes that through announcements of new rights and entitlements the judiciary is slowly and steadily emerging as the peoples Court promising to wipe every tear from every eye. The book contains various aspects of
Supreme Court towards social justice. This book includes a large number of cases related of Public Interest Litigation.

Mamta Rao\textsuperscript{43} in her book, \textit{Public Interest Litigation} (2002) asserts that Public Interest Litigation appeared in the Indian Judicial scene in mid seventies when the rigid concept of standing proved to be an obstacle in achieving the great ideals of socio-economic justice. The judiciary under such circumstances had to involve new methods and devised new strategies for providing access to justice to large section of society which was deprived and vulnerable. This way it could be an instrument of distributive justice.

The book entitled, \textit{Human Rights under the Indian Constitution: The Philosophy and Judicial Gerrymandering} (1999) authored by P.L. Mehta and Neena Verma\textsuperscript{44} focuses attention on the origin and development of human rights jurisprudence since pre-vedic times with special emphasis on its subsequent up an down journey of different time periods of Indian history. It also discusses the various constitutional provisions meant to provide human rights to the people of India. Finally, a detailed scrutiny of the judicial decisions of the India judiciary has been introduced in the book with a view to know as how far the Indian courts have succeeded in hampering out a novel human rights jurisprudence in the light of philosophy envisaged in the Constitution of India.

The research article, \textit{Judicial Review and the Ninth Schedule of the Constitution} by Sarbjeet Kaur\textsuperscript{45} traces the historical background of Ninth Schedule the Constitution of India. It also examines the working of the judicial review in India and discusses the impact of judicial decisions on the working of amending power of the Parliament. The article also describes the relationship between the judiciary and the legislature in India.

The article, \textit{Basic structure of the Indian Constitution-Doctrine of constitutionally controlled governance} written by Varinder Kumar\textsuperscript{46}
analyses the effect of Basic structure doctrine on the working relationship of Parliament and Supreme Court of India. The article discusses the evolution and development of basic structure with special reference to the judgments of Supreme Court in which the basic structure features were evolved by the court.

The Paper, *Democracy: An Equilibrium between legislature Judiciary and Executive* authored by T. N. Dhar\(^47\) discusses the functioning of different organs of state in a democratic set up. It also examine the working and relationship of Parliament, Supreme Court and Cabinet or executive in India.

The article, *Judicial Legislation and Judicial Restraint* authored by A. K. Agarwal\(^48\) describes the role of judiciary in democracy. It analyses the impact of judicial activism on the relationship between Parliament and Supreme Court of India. It also tells that Indian courts have increasingly been enacting 'judicial legislation' taking on a task that is meant for the legislature and elected representatives.

The research article, *Judiciary as change Agent : some insights into the changing role of judiciary in India* by P. N. Joshi\(^49\) describes the controversies regarding the emerging proactive role being played by the judiciary in India. It also evaluated the impact of judicial activism on the system of separation of powers in India.

Walekar Dasharath\(^50\) in his article, *Changing Equation between Indian Parliament and Judiciary* aims to study the changing relations between Indian Parliament & Indian Judiciary. It examines the nature of separation of powers between the Parliament and judiciary in the Indian Constitution, which is a critical area that needs careful attention in the future.

The paper, *Parliamentary sovereignty versus judicial supremacy* Written by S.K. Jain\(^51\) deals with the conflicts between Indian Parliament and Supreme Court over the interpretation of the Constitution.
The article, *Judicial Activism As Constitutional Panacea: An Appraisal* authored by Bata K. Dey\(^5\) analytically examines the nature of judicial Activism, areas of operation, justification, charges of its transgression in the domains of legislature and Executive.

**SIGNIFICANCE OF THE STUDY:**

There have been controversies regarding the emerging proactive role being played by the judiciary. It is termed as judicial over-reach and transgression of the principles of separation of powers and a delicate jurisdictional balance between the three organs of the government because such directions come to mean an intrusion in the domains of the legislature and the Executive. It is a fact at the same time, that judiciary has earned an increasing public trust and support for its active role in course of its correction of the government policies. Frustrated with the indifference to and negligence of the present and future needs of the society, inefficiency, ineffectiveness and corruption on the part of the public service and the policies, people see a ray of hope in the responsive judiciary, which is seeking to fill the gaps between promise and performance. Keeping this fact in mind, it becomes necessary to take an overview of emerging relationship of the working between the Parliament and the Supreme Court of India.

**OBJECTIVES OF THE STUDY:**

1. To trace out the history of relationship between the institutions of legislature and judiciary in India.
2. To study the constitutional provisions, relating to the powers and functions of the Parliament and the Supreme Court of India.
3. To examine the amending power of the Parliament vis-a-vis the Supreme Court's power of judicial review.
4. To examine the factors that have led towards the evolution of
Judicial Activism in India.

5. To analyse the emerging relationship between the Parliament and the Supreme Court of India.

HYPOTHESIS:

1. In early times, there used to be a cordial relationship between the legislative and judicial bodies. All the functions of Government were being performed by the same supreme authority, i.e., the King.

2. The Constitution lays down the structure and defines the limits and demarcates the role and functions of each and every organ of the state, and establishes the norms for their inter-relationship.

3. The Supreme Court has developed the basic structure doctrine in order to keep a check on the amending power of the Parliament but the Parliament is nullifying the Supreme Court decisions by making laws or amending the Constitution.

4. Failure of executive and legislature to perform their assigned duties efficiently, indifferent attitude of political leadership, violation of human rights, misuse of some of the constitutional provisions, corruption among top bureaucrats and political leaders and increasing expectations of common man from judiciary are the main factors that have led towards judicial activism.

5. There is a sea change in the relationship between the Parliament and the Supreme Court in post emergency period. This is a period when social as well as constitutional issues like reservation, ninth schedule, violation of human rights, environmental pollution, criminalisation of politics, etc. have become prominent. In a coalition government, the legislature as
well as the executive are becoming weak. So the Supreme Court is becoming more and more active and assertive.

**METHODOLOGY:**

The study is based on both primary as well as secondary sources. The primary sources include the case laws reported from the Supreme Court and the High Courts, the Constitution Amendment Acts and the Constituent Assembly debates. The secondary sources comprise the information obtained from books, journals, newspapers and research articles. Historical, descriptive, comparative and analytical approaches have been used in this study.

**CHAPTERISATION SCHEME**

**Chapter I : Introduction**

First chapter deals with the introduction of topic. It takes a brief overview of changing relationship between Parliament and Supreme Court of India since the commencement of Indian Constitution. It includes review of literature, the significance of study, objectives, hypothesis and research methodology and chapterisation scheme.

**Chapter II : Institutions of Legislature and Judiciary: A Historical Perspectives**

In second chapter an attempt has been made to trace the historical background of representative institutions and administration of justice in India. In this chapter after tracing the origin and growth of the organisation of the Parliament and Supreme Court in Ancient, Mughal and British period, the relationship between these institutions has been also discussed.

The third chapter deals with the Constitutional provisions related to the working of the Parliament and the Supreme Court of India. It also analyses the working relationship between the Parliament and the Supreme Court during the time period of 1950 to 1980.

Chapter IV : Emerging Relationship between the Parliament and the Supreme Court of India

This chapter deals with the origin and development of judicial activism in India. It also analyses its impact on the working relationship between the Parliament and the Supreme Court of India.

Chapter V : Conclusion

The last chapter summarises the findings of the study.
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