5. CONSTITUTION OF INDIA AND JUDICIAL REVIEW

To safeguard the liberty and rights of individuals, the judicial review is recognized as necessary and a basic requirement for construction up of a novel civilization, which is constructed on the perception of community and wellbeing morals. The powers of judicial review are vested significantly by means of the higher judiciary of states and the S.C.I. The privileges of persons are surefire in the transcription of the Constitution of India. The necessities of judicial assessment were felt necessary post-independence by the Constituent Assembly’s Drafting Committee.

The compulsion of judicial review was described in fundamental rights under Article thirteen (two) in Part III of the Indian Constitution. Therein stated that at all rules, which shortens or take absent the essential right of the people, the Union or State shall not create such rules. It is similarly specified that slightly legislation, which has been made against the contravention of fundamental rights, such law to be declared void.

5.1 Judicial Review and Constitution

The matter related to judicial review of administrative achievement, which generally has complicated the foundation of common law doctrine such as doctrine of proportionality, doctrine of legitimate expectation, doctrine of reasonableness and principle of natural justice. The Indian Constitution has given influences to the state’s higher courts and to the S.C.I. to scrutinize the legitimacy of administrative action and the statutes.

The main objects of judicial review are to guard the rights of the publics and implement the fundamental rights as mentioned in the Indian Constitution. In the difficulty of State and Centre relation, Article 246 and Scheduled 7th of the Constitution has clearly marked the working zone between the regulation construction controls of states lawmakers and the Indian Parliament for Union. The higher courts approach to the Supreme Court of India when a question is raised in the interest of public and the competence of legislation.

The judicial review has evolved in the three dimension, before the Indian courts first, to protect the legality of essential rights surefire underneath the Part three
of the Constitution, second, to authorize the disinterest of organizational achievement and third, the interrogation of public interest and legislative competence between Centre and State relation.

Under Article thirty-two of the Constitution, the S.C.I. has the gear stick to contrivance the indispensable rights. The inhabitants of India have the rights under Article thirty-two to approach directly to the Indian Supreme Court for on the lookout for cure in contrast to the destruction of the essential rights. Nevertheless, the prerogative of the fundamental rights is itself the portion of the essential right of the Indian publics.

Wherever the Indian Supreme Court has the powers to enforce these right in the form of writ, such as writ of *habeas corpus*, which expression the technique the influence to liberation the individual on or after illegitimate confinement, writ of *quo-warranto*, which directs the person to vacate the office they assumed wrongfully, writ of *mandamus* directs the public authority to do his work, writ of *certiorari*, which directs the judiciary to take away the scheduled of subordinate judiciary and transport beforehand itself, writ of *prohibition* which prohibits the lower court from proceeding of a case. Other than S.C.I., the state’s higher courts have the influence under Article two hundred twenty-six of the Constitution to implement the writ, in case of contravention of essential rights in contrast to the inhabitant of India.

In the recent decades, the initiation of Public Interest Litigation, the Article 32 of the Constitution has been interpreted creatively into the shape of innovative remedies for ensuring the executive authorities to comply the judicial direction. In the case of PIL the judges are applying private remedies such as stay orders, injunctions and other remedies, which are essential to enforce in the interest of the public.  

In the first few examples, which begun in the decades of late 1970, the people friendly procedure was associated with the P. I. L. The objective of the judiciary was to progress to right to use to reasonableness in favor of those who cannot approach to court due to poverty or unawareness of legal entitlement.

The court has allowed the social activists and the lawyers to bring problems on their behalf. In some cases, which involved abuse against bonded labours, prisoners and fellow of mental institutions, the court has taken *suo moto* action only on the letter addressed to the sitting judge. On the basis of letter, the practice of initiating proceeding has been rationalized and now it has to be described as jurisdiction of epistolary.
In case of the adversarial litigation, the nature of proceeding does not fit exactly in the common law framework. In PIL, the court procedures are different from ordinary criminal or civil appeal. The adversarial environment can prevail, where actions are highlighted on the abusive practice of government condonation or the administrative apathy. In most P. I. L., the courts performance an additional vigorous protagonist in verbatim intellect. They post questions to the parties to explore the solution especially in the direction of required action for ensuring the environmental protection or government accountability. The usually orientation proceedings are more similar to collective problem solving.

The parties directly file the case to the higher courts of states or to the Indian Supreme Court; they do not takings a little occasion for meaningfully presenting record and evidence before starting proceeding of the court. The court has developed the practice of appointing a fact finding Commission for outcome to such problems. The Commission enquires into the matter on case to case basis and reports feedback to the judiciary. The Commission principally contain of specialists or the committed trial lawyer. Such difficulties involve consideration of complex proceeding, which seek the services of court by appointing counsels on case to case basis.

5.2 Provisions of Judicial Review in the Constitution

The Constitution framers of India made facility for the judicial assessment, on the foundation of the America’s Constitution. The controls of the parliament under the Indian Constitution are divided between Center and States. The S.C.I. has influence to assessment the legislations, which were endorsed by the assemblies of states or by the Indian parliament. The judicial review has been decided by the Indian Constitution to the state’s higher courts and to the S.C.I.

Article thirteen (two) of the Indian Constitution believed that countrywide shall not create any regulation, those abbreviates or take absent the right as deliberated in its Part three, in respect of important rights of the inhabitants of India. If any rule was created against this clause of the Constitution, it will come within the purview of infringement and will be declared as void. The clause denoted meaning of law; it has included usage or custom, ordinance, bye-law, order, notification, regulation and rule, which is enforced in the domain of India. The meaning of law in force, represents that the law made or passed by legislature or authority competent inside the province of India beforehand the Indian Constitution come in force.
law or any part thereof was not cancelled earlier in all or in a particular location is not in operation, it may be called laws in force. 280

The facilities of rights of legitimate remedies have been provided in the Article thirty-two of the Constitution. The injured somebody can travel to the Indian Supreme Court, for a suitable proceeding for execution of the rights deliberated and guaranteed as essential right under Part three of the Constitution. The S.C.I. has the influence to production of writs, order and direction, which might be suitable for the implementation of essential rights by method of any of the writs.

It is the power to issue order, direction and/or writ whichever is suitable for execution of any rights amalgamated in Part three of the Indian Constitution. The Parliament has been capitalized with control or powers to a little additional judiciary, for working out inside their confined parameters, of this one dominion under clause (1) and (2) of Article 32. However, such power given to the S.C.I. under Article thirteen-two shall not be suspended, separately from as otherwise obtainable for, under the Indian Constitution. 281

The S.C.I. has the innovative dominion in any disagreement under Article one hundred thirty-one of the Indian Constitution for dispute between two States or difference amongst Indian government and states one or more or between two or more than two state. If the question involved of law and fact on which the legal rights depend. The judicial review is subject to provision under the Article 131of the Indian Constitution.

Section 5, Constitution Amendment Act, 1956, the seventh amendment of Constitution has made it clear that the provision provided be going to not spread to the argument ascending available of any arrangement, assignation, sanad, treaty, covenant, or additional mechanism of a similar nature, which have been applied or executed beforehand the implementation of the Constitution. But after the Constitution came in force this jurisdiction is available. 282

The Article 132 of the Constitution of India has provides appellate authority to the S.C. I. The person who is not satisfied with direction or verdict of the Higher courts of states, might line of attack over and done with the plea to the Indian Supreme Court, under this Article. The appeal to the Supreme Court of India may be in criminal matter, civil matter or other matters. The appeal can be made against final order, decree or judgment of High Court, within the domain of India.
The word final order refers to order, which has been decided in favor of the appellant. Under Article 132, the concerned High Court has to certify before making the appeal to the Supreme Court under Article 134A stating, that the case encompasses significant interrogation of rule. When the concerned High Court has given such certificate to the party, the party might petition to the S.C.I. on the basis of that, which has been alleged erroneously pronounced by the High Court.

Under Article 133 judicial review can be made in the civil matters on plea from the higher courts of states to the Supreme Court on receiving its final order, decree of judgment of civil proceeding, within the domain of India. The concerned High Court need to certify, under Article 134A, that the concerned matter is having considerable interrogation of rule, which is of wide-ranging reputation and the High Court should find that it has general importance and required decision by the S.C.I. When a plea from the High Court has been decreed the Indian Supreme Court, will not agree to plea to be made, unless the Parliament of India, by law may remove its effect.

Under Article one hundred thirty-three of the Constitution, the Supreme Court has appellate jurisdiction for judicial review, in respect of criminal matters. Any final order or sentence and judgement, passed by the High Court, the person can file an appeal against this judgment, to the S.C.I.

In case, the state’s higher court, in a plea on or after the subsidiary judiciary, has withdrawn for trial itself or reversed the order of acquittal under which death sentence was awarded by lower court or the state’s higher court has sentenced to the accused and awarded death sentence, who, earlier was acquitted from the lower court, the aggrieved person can move for a plea to the S.C.I. In case, the state’s higher court has particular that the case of criminal nature is fit for an appeal, under Article 134A, to the Supreme Court of India the appeal may be accepted. The appeal necessity be trailed in the appropriate method as arranged under Article one hundred forty-five (one)(c).

The Parliament of India further may, by law, grant to the Supreme Court any other power to hear or entertain, an appeal from at all concluding directive, judgement or decision of criminal proceeding of the state’s higher court, including conditions or limitations, which may be imposed or specified on or after time to time in such legislation.
The obligation of documentation of appeal for the judicial assessment to the S.C.I. has been avowed under the Article 134A. Under this Article, every High Court, which has made or passed the judgment, final order, sentence or decree, as referred to in clause (1) of Article one hundred thirty-three or under Article one hundred thirty-two (one) or under Article one hundred forty-three (one). The state’s higher court might on its personal gesture or if it is deemed fit to do so or if a verbal submission is completed by injured party or on its behalf. The High Court, will determine the matter applicable or not under Article one hundred thirty-two (one), or Article one hundred thirty-three (one), or Article one hundred thirty-four (one) (c). 285

Under Article 135, powers and jurisdiction of the federal court for judicial review, which more than existing one now work out by the Indian Supreme Court. Under this article the Indian Supreme Court likewise has controls and influence in relation to any matter, whether the provisions of the Article 133 or Article 134 are provided or not. The power and influence of the Indian Supreme Court will also be applied on any matter of judicial review, instantly beforehand the implementation of this Constitution under any standing rule.

The Constitution has authorized to the Indian Supreme Court, under Article one hundred thirty-six of the power to grant special leave to plea. The Indian Supreme Court, on its pleasure can award special leave to plea after any order or sentence, decree, determination and judgment of any matter or cause, which has been made by any tribunal or court in the domain of India. In the least tribunal or judiciary established under any legislation in reverence to the Armed Forces, Article 136 of the Constitution is applicable to any order or sentence, determination, and judgment. 286

Under Article one hundred forty-three of the Constitution, requirements are available that Indian President can mention to the S.C.I. The President, if he feels at any time that the question of law and fact is expected to rise or has ascended, which is in the nature of public importance and convenience can take the opinion of S.C.I., and the S.C.I., subsequently enquiry the case can give opinion or recommendation to the president.

The President of India can also send argument between the Centre and the State, as referred to in Article one hundred thirty-one of the Constitution. The Indian Supreme Court, after hearing will grant its opinion to the Indian President for promote achievement. 287
Under *Article one hundred forty-five* make available the legislation of the judiciary. Under this Article Indian Supreme Court is specified controls, subject to the endorsement of the Indian President, making rules and regulations mainly for procedure and practice of the Indian courts from time to time. Therefore, to create some rule on the problem of technique and practice, the Parliament enjoys the supreme authority.

The S.C.I., under *Article one hundred forty-five*, has the controls to create directions, commonly for the procedure and practice of the courts, like rules to proceed in the court for implementation of somewhat essential right, symbolized in Part III of the Indian Constitution, rules related to persons who wants to practice before the court, rules to proceed in the judiciary, under Article one hundred thirty-nine-A in admiration of the transfer of certain cases from the Higher Courts of states to the Indian Supreme Court, law for making procedure of hearing appeal including the time, within which the appeal to be allowed, rules for entertained appeal, under Article 134 (1) (c), rules for granting stay of the court proceeding and rules related to granting the bail, rules in respect of costs and incidental charges of any proceeding or the fee, which will be charged therein, the rules related to procedure of inquiry under Article 317 (1), in respect of removal or suspension of a public servant, rules on the matter of summary determination of the appeal, provided to the court, which may be vexatious or frivolous, which are conveyed to the court for the purpose of delay, rules on the matter of review and the procedure of review including the time within, which the application to be entertained for that the review to be entered by the court. 288

*Article 145 (3)* of the Constitution has made provision of rules for judges for hearing. The Supreme Court is also provided with rules for a single judge and bench of division. The least numeral of judges to hear and decide the case of the substantial question of law shall be five for the purpose of hearing as provided under Article 143.

When the court hears an appeal, it may consist of less than five judges. During the hearing of the appeal wherever the judiciary is pleased that the extensive interrogation of rule exists to be decided, which is essential for the discarding of plea, the unchanged judiciary shall accelerative such interrogation to the another court, as per *Article 143 (3)* for the purpose of determining the issue and there upon the appeal will be disposed of. No opinion and judgment will be transported by the S.C.I., those guards the coordination of the mainstream of the judiciary accessible throughout the
trial of the case. Furthermore, under this clause of this Article nothing will prevent by
the judges, in their dissenting opinion or judgment in any case.  

The High Court has the powers under Article two hundred twenty-six to
certain confidential writs as specified earlier. In case of the violations of the essential
privileges the state’s higher courts have the influence all over the province of India to
issue to any authority, or to any person in appropriate case to direct instruction,
commands or writs for implementation essential rights, which affect the people
surrounded by the authority of the High Court concern.

For issuing orders, direction or writs to in the least authority, to at all
individual or to in the least government, may be work out by any higher court, where
reason of accomplishment partially or entirely stands up whether the person or
government are residing within its jurisdiction.

The High Court may issue injunction, interim order, stay order against any
party, while such party has not furnished all document in support of plea, copy of
petition for the interim judgment beforehand the High Court. Nevertheless, the High
Court will provide chance of hearing to such party. The party may make application
before the High Court for vacating the order and one copy of application may be
furnished to the party in kindness of whom the judgment was completed.

The Higher Courts of states, after receiving the application shall arrange of in
the least such submission, surrounded by a time of two weeks. In case, if the
application is not disposed of within the prescribed period of two weeks, the interim
order is automatically cancelled and the order stands vacated. The powers described
in Article 226 of the High Courts shall not be derogative through the gear stick of the
S.C.I., under Article thirty-two (two).  

Under Article 246, provisions have been made on the subject of law by
legislature of the States and the Parliament of India. Under clause (2) and clause (3) of
this Article the Parliament has only powers to make legislation with admiration to at
all substance declared in the List-first of the Constitutional Seventh Scheduled, which
is denoted as the Union List.

In clause (three) of Article two hundred forty-six of the Indian Constitution,
the Lawmakers of in the least state and the Indian Parliament have controls to brand
legislation through reverence to in the least of the question substance assumed in the
List III of Seventh Schedule. In clause (one) and clause (two) of the Article two
hundred forty-six powers are provided to the State Legislatures, to make any law or
part thereof in admiration to in the least of the substances specified in the of Seventh Schedule’s list second. Therefore, the Parliament has the powers to make any law in relation to in the least substance to at all portion of the Indian domain, which has not been involved in the List of the State or has been comprised in the list of the State of the Seventh Scheduled. 291

Under Article 251 provision is made that when there is contradiction between rules made by the Assemblies of the states and the Parliament there shall be no restrictions to state legislature to make law. However, if any law by state legislature proved to be objectionable against the establishment of rule completed and passed by the Parliament either after or before the state regulation, the rule completed by the Parliament shall be prevailed. 292

Under Article 372 Constitution has made provision of protraction in strength of prevailing legislation and version. The legislation was cancelled by the Indian Constitution under Article 395, but in respect of another constitutional provision, all the rule in strength in the Indian domain impartial beforehand the beginning of the Constitution shall be sustained as rule in power while waiting for revised or cancelled or changed by the capable authority or the legislature.

The laws in power in the Indian domain are in harmony through the establishment of the Indian Constitution. The Indian President may, by direction, mark such alteration and version in such legislation by technique of modification or by way of repeal as felt convenient and necessary in the law. That the law will take effect from such date as specified in the direction of the Indian president, substance to the alteration or adaptation. It shall not be interrogated in any judiciary for modification or adaptation of law.

The President under Article 372, is permitted to make the modification or adaptation, in any legislation, afterward the intervene of three years from the beginning of the Constitution. The President is also empowered to prevent other competent authority or the legislature from amending or repealing any law, which was modified or adopted under the said clause of the Article three hundred seventy-two.

The term law in force itemized in Article three hundred seventy-two, shall contain that a legislation complete or approved by knowledgeable authority or by legislature, in the Indian domain, beforehand beginning of this Constitution and was not annulled formerly. However, such law or part of that law at present is not in operation in the domain of India or in the particular location. 293
The law made or passed by the competent authority or the legislature in the India's province just before origination of the Indian Constitution, will have the outcome in the domain of India as well as extra territorial effect. The law will continue to affect subject to aforesaid modification or adaptation in India.

5.3 Strategy of Judicial Review through Writs

The court principally adopts the strategy of judicial review using writs to grant the rights of appeal, or to grant extraordinary relief or to direct the authority to seize the property. However, in Article thirty-two of the Constitutional necessities is completed that the S.C.I. under Article two hundred twenty-six of issue writs in case of infringement of fundamental rights. There are five types of writs; habeas corpus, certiorari, mandamus, quo warranto and prohibition.\(^{294}\)

The *Writ of Certiorari* is an order of higher court issue to the lower court to send all the documents related to the particular case. Hence, the higher court is capable to examination the judgement of the subordinate judiciary, but it is on the preference of the higher court. When the judgment of lower court has gone against the party, the aggrieved party may file the petition for *writ of Certiorari* in the appellate court. Sometimes appellate court grants writ of certiorari to inferior court, called appeal.

The *writ of prohibition* is the counterpart of the *writ of certiorari*; both are issued against the action of inferior court. *Justice V. Iyar* of the Indian Supreme Court has made a difference between them. In case, while hearing a matter of inferior court, when there is no jurisdiction, the person or party against the proceeding is reserved, he may move for a prohibition’s writ to the greater judiciary. The greater judiciary issues order to inferior court to discontinue the proceeding.

In cases where the inferior court has heard the matter and pronounced the judgment, the party against whom the judgment has gone or aggrieved party may move to the higher court for the *writ of certiorari*. In such condition, the higher court will order a *writ of certiorari* to the substandard judiciary to assessment the matter.\(^{295}\)

The *Mandamus Writ* is the command, which is delivered by greater judiciary to the other body commanding the lower court or to public authority or to a corporation for performing or not performing the specific act. The writ of mandamus is the act of three types (i) *alternative mandamus*, which demand from the defendant to appear before the court.
It is in the form of show cause, for not doing an act and is issue to perform the act. (ii) *peremptory mandamus* is issued when the defendant has failed to perform the direction given under alternative mandamus writ. Hence, the *peremptory mandamus* is the absolute command for performance. (iii) *continuing mandamus* is issued to the public authority for performing activity promptly within a perfect schedule of time to avoid the miscarriage of justice.

The *Habeas Corpus Writ* is the astonishing preparation transported to the persons who are arrested unlawfully. The *Habeas corpus* is the Latin word which mean *may you have the body*. For issuing of a *writ of habeas corpus*, which is a permissible accomplishment, the individual under seizure to be carried before the magistrate or before the judge, for taking him on remand. When the person has detention unlawful by the authority, the court may order *writ of habeas corpus* to the concerned authority to make person free from detention.

This right was invented by the English legal system, now it is available in many countries of the world. Where the person is detained on lacking of evidence or insufficient cause by the authority, his representative may approach to the judiciary for delivering *habeas corpus writ*. It is the extra ordinary remedy; it can be required to the prisoner or to the other person who is coming to the aid of prisoner.

When the inferior court exceeds jurisdiction, the *writ of prohibition* is issued to prevent inferior court, acting against the rule of natural justice or a judge is hearing case with personal interest. The *writ of prohibition* is issued to the body, which is working in public functioning as judicial authority such as Commission, Magistrate, Tribunal or other officer who are exercising judicial or quasi-judicial powers. The public functioning judiciary authority distressing the essential rights of the inhabitant of India or distressing the rights of property or working against the common law principles. In such cases the *writ of prohibition* will be issued. The writ will not be issued to restrain legislative powers.

The *writ of prohibition* is *peremptory* and *alternative*. The *alternative* writ directs the inferior court to act immediately or to discontinue its act or to issue show cause why the directives should not be made permanently. The *peremptory* writ directs the inferior court to act immediately or act of return or act of discontinue along with certificate from the inferior court of its compilation, within a specific time. This type of writ is issued only as soon as the records are incomplete in the lesser judiciary.
In case, if the proceeding has matured for awarding the decision, such type of writ will not be performed.

The Writ of Quo-Warranto is ordered in contradiction of the individual holding the government privilege or a public office in some capacity. The term quo warranto means ‘by what authority’. The court issues writ of quo-warranto as legal proceeding, therein has challenged against the person, who holds the government privilege or a public office, where the rights of individual is affected. The court issues writ of quo-warranto to the concerned person, who is expected to explain in what capacity he holds the public office.

Wherever the privileges of individual are detained as a public authority, the court may direct to the person not to carry out any public activity in the office. The court can also pronounce to vacate the public office. The court will issue the writ of quo-warranto afterward the studying the circumstances of the matter.  

To issue the writ of quo-warranto there are few conditions, which must be fulfilled. That the person against whom writ is issued must hold the real control of public office. The office, where the person holds and executes the public duties must be a public office or government unit, such as university official, member of Board or Corporation, etc. That the public office must be in the real existence, it should be permanent, which cannot be terminated. The writ should be issued only when it has been confirmed, that the person is holding a public office in an illegal manner.

5.4 Doctrine of Eclipse

The law, which is unreliable through the essential right assimilated in the Part III of the Indian Constitution, will be preserved as dormant but not dead. Such law is not enforceable. However, it is not void. The doctrine of eclipse refers to the law which has not been declared void is not spread out totally from the book of statute. It is possible that in the subsequent amendment in the Constitution of India the contradiction part, which is unconstitutional will be removed in the future. Afterwards, such law will be free from all frailty or imperfection and may become enforceable.

The doctrine of eclipse has been pronounced in Bhikaji Narain Dhakras and others v. State of M.P. (1955), case by the S.C.I., where petitioner carried his own business of phase carriage machinists of M.P. State for a considerable quantity of years. He confronted genuine and soundness of C. P. & Berar Motor Vehicles
(Amendment) Act, 1947. The Act twisted domination of motor transport business. Once the Indian Constitution originated interested in power, in the year 1950. This Act violated the fundamental rights under Article nineteen (one) (g) of the Indian Constitution, which was modified as first constitutional amendment in the year 1951. Afterward, the Constitution has permitted to the state government to make monopoly in any business. The Act authorized the state government to do Motor Vehicle transport business in the entire state. The Act was barring the motor transport operation in the state.

The S.C.I., in its conclusion avowed this legislation annullled. The judiciary has pronounced by the said amendment the discrepancy replaced and the disputed Act was revived. The court further stated that this Act was concealed for the period existence by essential rights. The eclipse, as soon as removed through constitutional amendment, the law commences to operate from the date of the amendment. The doctrine is grounded on Article thirteen (one) of the Constitution. Such law is against the citizens of India; they are entitled to the essential privileges under the Constitution, although such legislation is appropriate to the other person, who are not citizen of this country. 297

In *Deep Chand and others v. State of Uttar Pradesh (1959)*, case the appellants were plying own buses along with state government transport buses, on dissimilar roads in Uttar Pradesh. The appellant was the permit holed under Motor Vehicle Act, 1939. However, the state government under the Uttar Pradesh Transport Service (Development) Act, 1955 reported that the said routes were served by state buses.

The Supreme Court stated that the law must be valid since its inception. Hence, the doctrine of eclipse may be applied in the pre constitutional laws in the Article 13 (1) of the Constitution. This doctrine will not be applied in case of post constitutional laws. Such laws are void under Article thirteen (two) of the Constitution. Henceforth, they cannot be invigorated and authenticated by the succeeding modification of the Constitution.

In case, where the Parliament of India has a desire to invalidate post constitutional Act under Article 13(2), in such condition the whole Act is required to be re-enacted for modification and for removing the discrepancies. However, in the exceptional cases, the doctrine of eclipse may be applied in the post constitutional laws. 298

The purpose of the legislation was to generate the account for back happenings for advancement of wellbeing of labour in the state. The S.C.I. specified the rule, which is the post constitutional and unreliable with the essential rights of the Constitution is not nonexistent or nullified for all purposes in all case.

A post statutory rule which abbreviates or takes absent the right deliberated concluded Article nineteen, under Constitution of India. It will be applicable to the non-citizens. They cannot enjoy the fundamental rights. Such law will be void, if applicable against the citizen of India. However, such law will be applicable for the non-citizens only. Under Article 13 (2), the void law means the law reduces or takings away the essential rights of the citizen of India. While the citizen cannot take advantage of void law, the court held that the BombayLaborWelfareFundAct,1953, is valid for the non-citizens only. 299

5.5 PublicInterestLitigation

The P. I. L. is moved to aimed at the defense in community awareness. The Indian rule under Article thirty-two of the Constitution has controlled an instrument, that unswervingly attaches courts through community. The Public Interest Litigation is introduced in the courts by the judiciary this one, relatively than injured party or by additional third celebration. For implementation of the essential right to the person or to the group of the persons who are powerless to line of attack to the judiciary for liberation, due to their economic or social disadvantage situation or due to poverty.

In the Public Interest Litigation, the old fashion rules of locus standi has been relaxed considerably by the S.C.I., subsequently the period of emergency and now court has restored it. The Indian press adopted a more violent posture after the emergency. The press supports social action organizations and intellectuals in the events of the abuse of powers by government officials. The new understanding with poverty class has encouraged growth of growing sense. 300

In S. P.Gupta v. Union of India (1982), case the applicant specified in selection and transference of Supreme Court and High Courts judge. The Chief Justice has recognized view of two senior greatest judges of the S.C.I., under Article two hundred seventeen (one) and Article two hundred twenty-two of the Constitution. The party-political intervention in the problem of appointment and transfer of High Courts and S.C.I. judge is still in existence. The Supreme Court pronounced that the C.J.I. will have to refer two other oldest judges. The court has laid down certain
guideline to make free from political interference.

The Supreme Court of India, in this case has finally made rules in respects of P. I. L. It was detained that in the least individual of the community, who has enough awareness may move to the court for administering permissible or statutory rights of extra individual and remedying the collective objection. This case is usually recognized as transfer of judge case. The judiciary stated, that the individual forthcoming to the judiciary for liberation has satisfactory concentration. Such individual is not act on behalf of with party-political purpose or with malefic intention.

The S.C.I. has preserved the privileges of occupied lawyers and permitted them to maintain writ requisitions under Article thirty-two of the Constitution, in respect to worrying rights of unconventionality of judiciary. Justice Bhagwati said that where the legal injury or legal wrong to the determinate class of persons and such person cannot approach to the court for relief, due to poverty, or disability, or economically or socially backwardness. The court stated that any person having interest in public can maintain application for suitable direction. The judgment of this case has opened the doors of judicial review through P. I. L.

The Indian Supreme Court has taken decision in favor of those, who face social problem. They are unable to access justice, due to oppression. The court permitted such persons who have sufficient interest in depressed class people in providing their rights. The Supreme Court has allowed the Public Interest Litigation by pursuing its constitutional goal for social and economic development, relaxing the rule of standard.

On behalf of depressed and poor people, the court has built the strong Indian tradition to make volunteer community achievement by allowing candy striper groups to line of attack to the judiciary. The PIL enable access to justice. The higher court, by allowing petition process of the PIL, can take people directly to the Indian Supreme Court deprived of commerce with the lower court’s lengthy process and expensive appeal.

The Supreme Court of India has gone quite consciously in respect of relaxing the *locus standi* rules. This liberalization has made new term called *representative standing* and it permitted to in the least inhabitant to create application on behalf of
alternative individual or assemblage of person. Hence, more Public Interest Litigation can be heard.

Clark Cunningham has pointed out representative standing can view as creative development as well as accepted rules, which permit the third party to file the writ petition of habeas corpus, before the authority in the court, on the basis of the injured party, when he himself cannot approach to the court. The creativity has found in the delay to follow the standard rule of the court, when the person moves normally to the court. However, PIL is representing the person or group of the persons, who do not feel free to use court procedure due to socio-economic causes.

The other form of P.I.L. is citizen standing, it is the modification of the representativestanding. In this case, the one who has made petition, under the citizen standing will not litigate as the representative of the others. However, he will litigate for the worthy of the public. In the case of citizen standing, the aim of the petitioner is not to serve the poor or disable, he serves to the people at large for defending rights, which are so diffused among the common public. The citizen standing has covered cases such as the case of gas leaks, form chemical plant, environmental impact through wrong policy of the government, adoption of Indian children.

In Municipal Council, Ratlam v. Vardhichand (1980), case the respondents in their complaint stated the Municipality had failed to provide basic facilities to the locality of the people such as public convenience to slum dwellers, sanitary facilities on road and malodorous fluids prevention, which was discharging nearby Alcohol Plant on Public Street. The Municipality was in statutory obligation to provide good environment to their residents. The S.C.I. has bound for to the government to discontinue stream of malodorous fluids on Public Street and provide all good facilities, which are under statutory obligation.

The court permitted to the social organization of activist or individuals that they can file the petition on behalf of the poor, socially and economically depressed people. The person who are not having knowledge or means of resources or unable to adopt legal process in the court, they may take advantage, where the right of such people have been declined by the government. The court stated further that the silent majority of the people is against the bad governance. However, court has permitted to the citizens, they can speak on behalf of the large unorganized groups of the people.

Therefore, the Indian Supreme Court has legalized to the communal forward-
looking or individuals on behalf of poor and socially depressed person that they can enjoy their legal rights through judicial review.

In case of *Azad Rickshaw Pullers Union v. State of Punjab* (1981), the Punjab Cycle Rickshaw (Regulation of Rickshaws) Act, 1975, the licenses for the purpose of rickshaws was only given to those, who run the rickshaws. The rickshaw licenses cannot be given to those, who own but rent it to other person for plying. This act has susceptible to cause joblessness among the number of rickshaw pullers. It was challenged under the fundamental rights in respect of right to transmit on in the least professional, occupation or livelihood as surefire under Article nineteen (one) (g) of the Constitution of India.

The S.C.I., strikes down law and provide a scheme to the rickshaw pullers that they can take loan from Punjab National Bank and obtain their own rickshaws. Hence, the object was achieved without causing suffering to rickshaw pullers. 306 It is clear through this positive judicial review that several Rickshaw Pullers have taken benefits of it, who otherwise were unable to purchase their own Rickshaw by paying hard cash.

### 5.6 Judiciary as Protector of People

To ensure the constitutional control over the executive and the legislative organs of the government, it is necessary for the higher judiciary to make its record impressive. It creates confidence among people in the Constitution and in the judicial system. The judicial control also communicates the message that the *rule of law* is a respectable alternative against the extremism and tendency of violence. Such advance methods of constitutional control are necessary to achieve the goal of the fairness of the Constitution, which relives the people of the India. The other is that the citizen are ensured that the court is working as the guardian of the all fundamental freedom provided under the Indian Constitution.

The valedictory of controls amongst the Union and states the compulsory workout of judicial review in contrast to the statutory achievement and the executive authority of the government. It maintains belief in independence of judiciary in democratic system of the government. The essential rights assimilated in the Indian Constitution, which deliver the statutory controls to the courts with concrete exercise of judicial review over government structures and uphold the *powers of separation* calculated in the Indian Constitution.
The principle of powers of separation are obligatory amongst the three body of the government. It is the judiciary, the legislative and the executive. Hence, there is no sole authority to have control over the government. The three branches of the government have no absolute authority to dominate over the other organs, nor the power is given to each branch of the government to exercise over other organs.

The Article 13 of the Constitution has provided direct provision of judicial review, therein clause (1) stated that all legislations, which be situated compulsory just beforehand beginning of the India’s Constitution, will be unconstitutional, if such laws are not compatible with the provision of the essential rights specified in the India’s Constitution. Under clause (2) of Article thirteen, explained that the States or Center shall not create in the least legislation, which abbreviate or take vague the essential features and privileges of the inhabitants. If any such law is made which is against breach of this mandate, it must be avowed unconstitutional. It is the accountability of the court to resolve whether the administrators and the lawmakers have act on behalf of in the contradiction of the constitutional restrictions or acted in surplus of its rule. Such provisions are provided in the Part III of the India’s Constitution.

In directive to keep the right of the Indian citizens, the controls of judicial review have been as long as to the higher judiciary under the Constitution. While the commencement of judicial review was established through approximately exceptional reprieve over the manner of the S.C.I., on the difficulties of right to property, which is incorporated under the fundamental rights of the Constitution, it was created most projecting contest to the possibility of judicial review in India. It is required to learn that there was massive dissimilarity due to division of caste in the pattern of land ownership during the pre-independent India. Most agricultural land in the rural setting was controlled and owned by the upper caste Indians.

The colonial government received the prompt collection of land revenue in respect to the support of such land owners. This zamindari system was very deep-rooted in India, because the cultivators of lower caste were small land holders or they were forced laborers under the mechanism of these Zamindars. It unfair arrangement was dissimilar in many ways between land owners and the small cultivators.

The policy of agrarian land reforms was initiated by the state government and the Parliament, with considerable degree of urgency. The land reform policy had overlooked several questions such as payment to the land owner as adequate
compensation, whose land was assimilated for re-distribution among the small cultivators or among bonded labour or such property acquired for public purpose. Such accesses of government encouraged the land owners; they repeatedly approached to the court to defend their rights to purchase material goods, allotment and dispose of the material goods, which was reckoned under Article nineteen (one) (f) of the Constitution of India.

The higher judiciary secure commonly the rights of the land owners, over the acquisition by the state. The Parliament of India has made legislation and amended the Constitution. The legislations in respect to the agrarian land reform was placed in the Ninth Scheduled that was inserted in the Constitution in the year 1951. This was the scrutiny of the court, which was injected by parliament with situation to the control of judicial assessment under Article thirteen of the Indian Constitution. 308

In Golaknath v. State of Punjab (1967), case the applicant confronted the legitimacy of the Mysore Land Reforms Act, 1962 and the Punjab Security of Land Tenures Act, 1953, under constitutional Article thirty-two. The seventeenth Constitution Amendment Act, 1964, made these legislations comprised in the 9th constitutional Scheduled of the Indian. Hence, legitimacy of seventeenth Constitution modification was likewise confronted. The Apex Court of India whispered that the essential privileges cannot be taken apart or curtailed through amending procedure, under constitutional Article 368 of the India. Therefore, altering technique under Article thirteen (two) will be applicable subject to Part three of the India’s Constitution.

This case was heard by the eleven judges bench, in which the Supreme Court of India gave judgment by mainstream of six by five, specified that the control to modify the Constitution by Parliament is limited and court has the control to request interested in such alterations. Subsequently, the Indian Parliament with the legitimate alteration has protracted its peculiar control, which approved to the Parliament to alter any portion of Constitution under the prearranged technique in the Article three hundred sixty-eight of the Indian Constitution. 309

In Keshavanand Bharethi v. State of Kerala (1973), case the petitioner prayed that provisions of Kerala Land Reforms Act, 1963, as altered by the Kerala Land Reforms (Amendment) Act, 1969, to be declared unconstitutional and void. The petitioner challenged 29th, 25th and 24th Constitution Amendments Act. The petitioner
also prayed to enforce his fundamental rights, under Articles 31, 19 (1) (f), 25, and Article 26 of the Indian Constitution.

The S.C.I. has placed down the *doctrine of Basic structure* wherein the court has limited controls of Parliament to modify the Indian Constitution. The thirteen judge bench of the S.C.I. announced majority judgment of seven by six and administrated that the convinced structures of the Indian Constitution were essential and will not be amended by the legislature. The Supreme Court also stated that the judiciary has the powers to inquiry into the amendments to save the basic structure from the legislative action. In this case, the court has not identified the part of elementary construction of the Constitution.

In *Minerva Mills v. U. O. I.* (1980), case the Central government, through an order, authorized to National Textile Corporation, to takings over administration of Minerva Mill, on the ground that the dealings of the mill are highly damaging to public interest under Sick Textile Undertakings (Nationalization) Act, 1974. The requester confronted the legitimacy of this legislation and the government order. The petitioner also challenged legitimacy of Article Thirty-One-B of the Constitution and legitimacy of forty-two Constitution Amendment Act.

The Indian Supreme Court, in its judgment has identified and elaborated the *doctrine of basic structure*. The judiciary has recognized the elementary feature of the Constitution such as fundamental rights, federalism, secularism and democracy. However, many commentators have given advice on the elementary structure doctrine. The S.C.I., in case of *Keshavanand Bharethi*, reaffirmed the rule of courts as the guardian of the Indian Constitution. Afterward, it was suitable to eliminate the *right to assets* from the Part three of essential rights of the Indian Constitution in the forty-four amendment in the year 1978.

In *I.R. Coelho (Dead) v. State of Tamil Nadu & Others* (2007), case the interrogation was elevated beforehand the Indian Supreme Court, whether the judiciary review the performance of Parliament, which remained positioned in the ninth Scheduled of the Constitution of India. The judiciary believed that if any law is conflicting to the requirements of the Indian Constitution, the Supreme Court may strike down and declare such law to be void, as it is inserted into the ninth Scheduled of the Indian Constitution. The S.C.I., added that the growth and jurisprudence altogether over the place, where fundamental rights, under the Constitution has completed strong that the controls are not restricted, nor has thin rights. However, the
Constitution has provided comprehensive checks in contrast to the overindulgences or destruction by the State establishments.

In statement, the essential privileges have the greatest significant constitutional control over the legislative powers and on the governmental activities. The court stated further that it cannot be supposed that the Constitution make available instructions on legislative controls. It will resolve whether similar checks are necessary or not, if so it would be invalidation of the Constitutional provision. 311 In the recent decade, the Indian Supreme Court has elaborate the aforementioned to assessment the legislative and non-legislative function of the Parliament. It has established that the higher court has entered in a new era of judicial review.

In Raja Ram Pal v. Hon’ble Speaker, Lok Sabha & Others (2007), the case is about removal of Member of Parliament unconstitutionally. The Indian Supreme Court has willing of the problem. However, the judiciary simultaneously has kept the doctrine of judicial assessment. The judiciary held the Indian Constitution is the excellent influence in the country. The Parliament is the coordinate organ and the view of Parliament deserves deference. While the act of Parliament is willing to judicial analysis.

The Indian Apex Court has elucidated it is not the question of correctness of material or substitute of truth. It is for the legislature, that the proceeding of the Parliament that has contaminated in respect of gross illegality or substantive or unconstitutionality is required for review by the judiciary. The court further said that the mere coordinating of constitutional status by Parliament, this court cannot declare disentitlement the function of exercising of the judicial review. 312

5.7 DoctrineofBasicStructure

The Supreme Court of India in case of Kesavanand Bharethi v. State of Kerala (1973), thirteen judge bench claim superiority in its previous verdict, in I. C. Golaknath (1967) case. The Indian Supreme Court, with mainstream decision pronounced that the controls to alter the Constitution has provided enough opportunity under Article three hundred sixty-eight of the Constitution. The mainstream of seven judges of Supreme Court further observed that the essential rights declared under Part three of the Indian Constitution might be reformed. Therefore, a certain elementary features of the Indian Constitution cannot be reformed. 313
In the case of *Keshavananda Bharathi* the court had limited powers of constitutional amendment. While Parliament in 25th constitutional amendment has added new Article 31C, to protect rules from the judicial analysis. Therefore, the legislature has professed unconventional directive principles under equivalence, right to assets, liberty to exercise in personal vocation and freedom of expression. It is stated that the phrase of *basic structure* was former time presented by M.K. Nambiar and other counsels through the argument in the *Golaknath case*. While the Indian Supreme Court has make known to the basic structure perception in the case of *Keshavanand Bharati*.

The principle of basic structure was demarcated by the S.C.I. in case of *Keshavanand Bharethi*, that the control to modify the Constitution by Parliament of India is limited and channelized. *Justice Khanna* along with other six judge agreed with this theory. While the other six judges in minority were not agreed with this theory, they agreed on it as the absolute power in the hands of Parliament. Hence, the Supreme Court with majority decision of 7:6 held that some part of the Constitution of India, which gives the meaning of basic structure cannot be changed or modified by the Parliament.

The middle-of-the-road with *Justice Khanna* agreed that the essential rights is the share of *basic structure* of the Constitution, so it cannot be amended. The basic philosophy of doctrine of basic structure is unamendable. It has been introduced by majority decision in this case.

*Justice Mukharji* and *Justice Hedge* explained beautifully that our Constitution is not impartial a party-political manuscript. It is fundamentally a community article grounded on community viewpoint. Every one community philosophy, unbiased like all religious conviction, has two foremost structures. It is the elementary and the contingent, the elementary structure continues relentless while the contingent structures are subject to modification with the change in situations. In case the core of religion is unchanged while the practices associated with religion may change. Similarly, the core of our Constitution contained certain important features and is related to elementary structure of the Constitution. They are so important that they cannot be destroyed or amended by the Parliament.

**5.7.1 Verdict after Kesavananda**

After Kesavananda verdict, the principle of basic structure has once more
originated up in *IndiraNehruGandhiv.Rajnarian (1975)*, case which was challenged in respect to open and impartial voting, to procedure a self-governing Parliamentary arrangement of government. The government amended 39th Constitution modification Act, 1975 introducing Article three hundred twenty-nine-A in the Constitution of India. The clause (four) of Article three hundred twenty-nine-A specified that the determination of the candidate cannot be challenged in the court of law. This modification remained approved by the Parliament when the petition in contrast to the direction of the High Court of Allahabad verdict was awaiting in the S.C.I. In this case the thirty-nine modification of the Constitution was also confronted beforehand the Indian Supreme Court.

In this case, for the opening time, legitimate alteration was confronted in the problem of social welfare. The political opponent counsel has argued that the 39th modification of the Constitution has exaggerated the code of elementary features of the Indian Constitution for showing at liberty and fair-minded election in democratic system. It has also affected the control of judicial review. The challenger counsel also contended that when the voting was avowed invalid by the Allahabad High Court, the Parliament of India is not a capable authority to use its integral power for legalizing an election.  

The election case has introduced new aspect from the judgment. It is the desecration of the right of judicial assessment and demolition of principle of separation of power. It is stated that both are the core principles of the Indian Constitution. The judiciary has declared that the open and fair-minded voting is the share of elementary configuration under the Constitution, so it cannot be amended. In this case each judge has expressed his view on what quantities to the elementary construction to be the requirement of the Constitution.

*Justice K.K. Thomas*, stated the supremacy of judicial review is the important feature of elementary structure; *Justice Khanna* stated that the social equality is the elementary feature of the Constitution, he also included open and impartial election as a elementary part of the Constitution. *Justice Chandrachud* included rule of law, freedom of conscience, secularism and religion, sovereign democratic republic status and equal opportunity status of individual together from the elementary configuration of the Indian Constitution.
5.7.2 The Basic Structure Doctrine Restated

The judgment of Supreme Court, in election case in which government had passed amendment in the Constitution. The government declared that the power of Parliament has no limit, forewarning what could have developed into another constitutional deadlock. Thereafter, the government in 42\textsuperscript{nd} amendment introduced two novel sections in the Article three hundred sixty-eight, in which clause (four) specified that no legitimate alteration can be confronted in the judiciary and clause (5) stated that no limitation can be forced on the control of the lawmakers. In the year 1978, the government had barred right to property from the essential rights of the Constitution. The 44\textsuperscript{th} amendment removed to the Article 31 and Article 300A was inserted in the Indian Constitution.

The Supreme Court has definite numerous cases connecting their elementary structural doctrine. In case of Minerva Mills Ltd. v. Union of India (1980), the legitimate soundness of 42\textsuperscript{nd} amendment was challenged. The Supreme Court of India has struck down with majority of four by one clause (four) and clause (five) of Article three hundred sixty-eight, which was inserted in forty-two alterations of the Constitution, on the elementary ground that these clauses of Article three hundred sixty-eight demolished the important features of fundamental character of the Constitution of India. The Apex Court had administrated that the imperfect alteration control of the India’s Constitution is absolute together with the elementary features of the Constitution.\textsuperscript{316}

In the case of Waman Rao v. Union of India (1981), the Apex Court of India has declared clause (4) and clause (5) of Article 368 as void. The Apex Court of India further specified the laws made by government in the ninth Scheduled of the India’s Constitution, after KeshavanandBharthi judgment are open for judicial review.\textsuperscript{317}

The S. C. I., in S.P. Sampath Kumar v. U. O. I. (1987),\textsuperscript{318} case and in P. Sambamurthy v. State of Andhra Pradesh (1987), case pronounced that the rule of law, which is laid down by judges through judicial review both, are the integral portion of the India’s Constitution. Hence, they would be comprised of the elementary characters of the Constitution of India. In Central Coal Fields Ltd. v. Jaiswal Coal Co. (1980),\textsuperscript{319} case and in case of Bhim Singh v. U. O. I. (1981), Justice Sen and justice Krishna Iyer of the Apex Court proclaimed the thought of economic and social justice, in the India’s
Constitution. They have specified that construction of the wellbeing state of India, is the elementary organization of the Constitution.  

In the case of *DelhiJudicialServiceAssn.v.StateofGujarat (1991)*, the Supreme Court explained that the Constitution deputized controls to the higher judiciary, under Articles 32, 136, 141 and Article 142, are a portion of elementary structure, under the India’s Constitution.  

The S. C. I., in the case of *L. Chandrakumar v. Union of India (1997)*, observed that the Preamble, free and fair election, separation of powers, independence of judiciary, federalism and secularism, all are stated to be the straightforward structures of the Indian Constitution. The liberation of judiciary, within their limit, under Article two hundred twenty-six, Article thirty-two and Article two hundred twenty-seven of the India’s Constitution and the controls of High Courts, to workout judicial review, over substandard judiciary within the High Court’s relevant dominion, is also the portion of basic structures of the Indian Constitution.  

The judiciary has stated in the matter of basic features of the Constitution, the occurrence that the elementary structure of Constitution portion is not changeable by the Parliament. The Apex Court, in the case of *M.Nagrajv.UnionofIndia (2007)*, specified that the amendments, which have done by the government, would not be destroying the identity of the India’s Constitution. The elementary organization is to lookout the legitimacy of Constitutional alteration by the government.  

The Supreme Court of India, in the case of *I.R.Coelhov.StateofTamilNadu (2007)*, has established clarification of Article thirty-one-B, to defend the particular laws from the fundamental rights, which created under the ninth constitutional Scheduled. The Supreme Court specified that there are only thirteen reform land laws, which keep on located in the 9th Scheduled and now many more laws were added, through constitutional amendment; most of them are concerned with land reforms. Yet, many of them are related to security laws and laws related to caste based reservations.  

The court has, in undisputed decision, stated the current health is also the serving of the primary structure. The judiciary reasserted many areas under the portion of elementary structure in the Constitution. The Apex Court of India more specified that the essential rights remained portion of elementary features of the India’s Constitution. That the laws come under constitutional ninth Scheduled, would have to be tested from the important rights, whether that law comes under basic structure doctrine or not.
5.8 Judicial Review Reformed the People

In the case of Champakam Dorairajan v. State of Madras (1951) the State of Madras had reserved some seats of Medical and Engineering educational institutions especially for backward classes and weaker sections of society. This was confronted in the S. C. I. The law lords pragmatic that the problem of reserved seat on the source of caste is banned, under Article fifteen (one) of the Constitution. The judiciary moreover stated that Article forty-six of the Constitution of India, cannot overbear on Article 15. Hence, court declared such provision of reservation as unconstitutional. 325

The government, in its first amendment in the year 1951 of the Constitution has inserted clause (4), under Article fifteen of the India Constitution. In that facility was completed for educational and social advancement of Scheduled Caste and Scheduled Tribe or backward classes of citizens. Only through this judicial review, the government had made provisions for advancement of educationally and socially weaker citizens of India, in the India Constitution.

In Himmat Lal Shah v. Commissioner of Police (1973), case the complainant had transcribed submission to the Commissioner of Police, therein requesting for permission to hold public meeting, in respect of all India students strike, on a public street. The permission was refused by the Commissioner of Police of Bombay, under Bombay Police Act, 1951. The appellant claimed the Bombay Police Act, 1951, disturb the essential rights, under Article nineteen (one) (a) and (b). The complainant confronted the legitimacy of Bombay Police Act. The matter was related to common privileges of the residents.

The S.C.I. specified that the Police Commissioner imposed unreasonable restriction. However, under Article nineteen (one) (a) & (b) of the Indian Constitution provided constitutional rights to a mass, peacefully without arms. The court has nullified and refused the order of Police Commissioner. 326 The judicial review, in this case ratified common rights of the people, under the Constitution and imposed the prohibition on unreasonable power of police.

In A.D.M. Jabalpur v. S. Shukla (1976), case the defendant was incarcerated under the Internal Security Act, 1975, in the course of the Emergency. When a habeas corpus writ remained gather in a line on behalf of the defendant, in contrast to the judgement of the High Court, stimulating the ordinance, delivered by the Indian President, on 27th June 1975 as defective in rule and illegitimate. He pleaded for
The Indian Supreme Court gave a verdict, in respect of Presidential order of Emergency, by five judge bench, on the matter of detention of a person. The judiciary stated that the right to travel to law court, under Article fourteen, Article twenty-one, and Article twenty-two has been suspended by President Order. The Supreme Court further pronounced that even if life was taken away illegally by the Presidential order during Emergency, the courts are helpless. The Supreme Court had not gone beyond the Power of President of India. However, the court identified illegality through judicial review.

In *Maneka Gandhi v. Union of India* (1978), case the petitioner received a letter from Regional Passport Authority, Delhi, in which stated was that the Indian government has categorical to grab her Passport, under clause (three) (c) of section 10 of Passport Act, in the community importance. The requester remained essential to submit her Passport within seven days. The requester instantaneously addressed a communication to Passport Authority of region, demanding therein, to provide declaration of purpose. However, the government did not provide statement of reason. The petitioner filed writ, perplexing the exploit of government for seizing her Passport.

The Supreme Court believed that the rights to transportable and go to external of the country, comes under right to individual liberty definite under Article twenty-one of the Constitution. Therefore, the order issued by Passport authority, under section (three) (c) of ten of the Passport Act is imperfect. The court in this case laid down number of propositions, which made right to life and individual freedom, further expressive. The case of Maneka Gandhi has decided several common rights, under Article 21of the Constitution of India, in favor of common people, through judicial review.

In case of *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), appellant was married to the respondent, in the year 1932. The respondent borne five children i.e., two daughters and three sons, from this marriage. In the year 1975, the appellant divorced to respondent from matrimonial home. The respondent filed a petition, under Section one hundred twenty-five of Cr.PC, in the Judicial officer Court of Indore, in the year 1978, asking for maintenance @ Rs.500/- per month. The appellant claimed that, he divorced the respondent by the irrevocable ‘talaq’ by which respondent
ceased to be his wife. Hence, the appellant is no longer under obligation to provide her maintenance.

The Supreme Court, in their order directed for maintenance, which is applicable to all citizens regardless of religion and caste. This judgment of Supreme Court is seen as secular, judgment in favor of people at large by a judicial review action. However, it raised a strong reaction from the Muslim community and threatened the Sharia law. After several debates on constitutionality of different personal laws of different religions in respect of marriages. The government approved the Muslim Women (Protection of Rights on Divorce) Act, 1986.

In *St. Stephen's College v. University of Delhi* (1992), case where St. Stephen College is a government assisted instructive organization. The college has its own admission programme, and preference for admission to the Christian students. The petitioner, in their petition claimed own admission programme due to religious minority institution. The Vice-Chancellor of Delhi University constituted an advisory committee to consider and recommend dates of admission and other related matters concerning the admission, in various colleges of Delhi University. The petitioner claimed that he is entitled to his own admission programme because, the college comes under minority religious institution.

The Supreme Court held the educational institution for taking grant from government. They could not change their character like minority character or other, in respect to deciding the fees from students. The court further held that any minority institution, receiving grant in aid from state fund is entitle to accord performance. They reserve seats for their community on the basis of language or religion. The court has allowed that such institution may reserve seats up to 50% of their community subject to university standard. The court further held the differential treatment of students in admissions did not violate the Article 29 (2) or Article 14. The court has allowed to maintain minority character in the institution. In this case the S.C.I. has work out controls of judicial review for the benefits of all minority institutions in country.

The case of *S.R. Bommai v. Union of India* (1994), the plaintiff remained the C. M. of Karnataka. The case is related to provision, where there is failure of legitimate system in the State. The Supreme Court has given landmark decision in the history of the indian Constitution. The judiciary has laid down guidelines under Article three hundred fifty-six of the Constitution, on the trouble of miscarriage of constitutional
machinery in the State.\textsuperscript{331} Sorabjee the former Solicitor General of India, stated that the Article three hundred fifty-six has exciting control and is to be secondhand as a last option in the evident when there is standstill or collapse of the constitutional machinery in the state.

In \textit{P. A. Inamdar v. State of Maharashtra (2005)}, case the petitioner, raised several questions in regard to fixation of quota of reservation, as per government policy, for admissions to students, regulation and control by state, fee structure and the role of committees in respect of fees and admissions in unassisted minority and non-minority, private educational organizations, as well as proficient institutes, of advanced schooling. The Supreme Court, in the matters of reservation policy stated that the state cannot enforce policy of reservation or percentage in admission or any quota. In the matters of admission policy, the court stated that the minority unaided educational institution can enjoy total freedom up to the level of undergraduate level of institutions.

In case of fee structure, the Supreme Court observed that a rational emolument arrangement is the portion of the right to establish, control and make reasonable surplus, which can vary from six percent to fifteen percent, for utilization and development of education system.

In the question of regulation and control by the state, the court stated that the essential characters of minority institution will not be taken away, as conferred under Article thirty (one) of the Indian Constitution. In the interrogation, with respect to committee role in admission and determination of fees, the court stated that the committee ought to go through accounts, scheme, budget and plans, of the separate establishment to find out a reasonable remuneration structure.\textsuperscript{332}

In \textit{Sarla Mudgal v. Union of India (1995)}, case where, one Hindu couple married in the year 1978 and had three children. In the year 1988, the petitioner learned that her husband has solemnized a second marriage, with a Muslim woman, after converting himself to Islam. The interrogation remained elevated whether Hindu husband, wedded under Hindu rule, know how to go for another wedding by embracing to Islam. Whether such marriage without divorce of first wife is valid under Hindu law or such husband is awkward for the crime under Section 494 of I.P.C. The petitioner filed a writ, under Article 26, Article 27, Article 14, Article 25 and Article twenty-eight of the Indian Constitution.
The S.C.I. clarified that the Hindu husband, who has not taken divorce from the first marriage cannot go for second marriage by converting himself into Muslim. In such a case, the second marriage will be null and void, in term of section 494 of IPC. The court ruling in this is considered as disrepute on certain points that infringe the right to self-determination of integrity and confessing of belief granted under fundamental rights given in Article twenty-five of the Constitution.

In *Samatha v.State of Andhra Pradesh (1997)*, case where the land of lease by 14 villages of tribal people was granted to the non-tribal people, for mining activities by the Andhra Pradesh state government. The plaintiffs, in their special leave petition requested that agriculture is the main source of tribal people; he stated that the fifth Scheduled of Constitution of India, objects to transfer immovable tribal property to non-tribal people.

The Supreme Court of India has declared mining lease as illegal. The three judge bench of the S.C.I., has specified milestone conclusion and overturned the judgement of Andhra Pradesh High Court. The judiciary specified that no person, who is not a member Schedule tribal community cannot take the land of tribal community by way of transfer. However, only tribal may take land of tribal community by stay transfer. This judgment of court has helped to prohibit the use of tribal land by other persons throughout the country. This judicial review has saved the rights of the socially depressed and weaker sections of people in respect of the transfer of immovable property from tribal persons to non-tribal persons.

In case of *Dr. Gulshan Prakash & others v. State of Haryana (2010)*, the appellants in their appeal, stated that the Maharishi Dayanand University of Rohtak, Haryana, has not provided reservation in admission for Scheduled Caste and Scheduled Tribe candidates in PG Diploma, MDS courses and in MD/MS courses for the session of the year 2007-08. The appellants in their appeal also submitted prospectus on the same matter of the said university, for the academic session of the year 2009-10. The Indian Supreme Court three judge bench marked decision in favor of reservation. The court has examined the issue on reservation in respect of other backward class, Scheduled Caste and Scheduled Tribe candidates, in admissions of Post graduate level in the scholastic organizations.

The judiciary believed that the government of state is the superlative reviewer for yielding the reservation in post graduate level of education in admissions for the SC/ST and backward class categories. The court said that every state government can
take its own decision based on various factors of state. The Supreme Court of India further pronounced that Article 15 (4) has provided fundamental rights as discretionary, not mandatory provision. Hence, no writ can be issued to make provision in reservation.\textsuperscript{335}

In case of \textit{Hari Bansh Lal v. Sahodar Prasad Mahto (2010)}, the appellant was appointed and joined as Chairman, in the Electricity Board of Jharkhand. There is no maximum age limit in their appointment of the Chairman of Electricity Board. The court has pronounced that under Article two hundred twenty-six of the Constitution the P.I.L. is not sustainable on the base of service matters, only writ of \textit{quo warranto} is permissible. The High Court must be satisfied before issuance of writ that the appointment is contrary with the statutory rules. The court permitted to the appellant for rejoining, subject to ultimate decision of the Jharkhand government, under electricity board laws.

The Supreme Court stated that the suitability of a candidate for appointment to as particular post in government service, is the duty of the appointing authority. The court will interfere only where the appointment is conflicting under the law or under constitutional establishment.\textsuperscript{336}

In case of \textit{Lily Thomas v. Union of India (2013)}, where the petitioners in their petition raised question of disqualification of MPs/MLAs, under Representation of Peoples Act, 1951. The Supreme Court of India has declared section eight (four) of the Peoples Representation Act, 1951, as unconstitutional. The Act allowed the M. Ps and M.L.As convicted by lower court to continue in his/her office, till his/her appeal is disposed of by higher court.

The Indian Supreme Court in its revolutionary conclusion marked that the M.Ps/ M.L.As, who are convicted in criminal cases by the court for more than two years, will be disqualified. The disqualification will be effective from the day when the sentence is awarded. The court has declared Section eight (four) of the Representation of Peoples Act, as unconstitutional.\textsuperscript{337} This judicial review has empowered the people to choose the right person for M.Ps and M.L.As in their constituency. The person who is corrupt, when he has been elected as M.P./M.L.A., the court will throw them out.

Thus, the judicial review has helped people to get their legitimate rights and privileges granted under the Indian Constitution. The vicious and illegitimate legislations of the states assemblies or the Parliament can be struck down by the
higher judiciary in favor of the people’s rights and welfare. The spirit of the explanation of the legitimate requirements by the judiciary has to be completed for the welfare and advancement of people, which is well reflected in the cases decided by the Indian judiciary under judicial review.