7. LIMITATIONS OF JUDICIAL REVIEW

The doctrine of judicial review is prevalent where countries have a written Constitution. India is one of them. In India, the Constitution is the superlative rule. In the least rule, which is mismatched by means of the constitutional provisions is declared void. The higher courts have the powers of judicial review, which is highly complex and extraordinary.

The higher court can use the power of judicial review against the public authority, may it be the authority of government, quasi-judicial or constitutional. Now, the concept of judicial review has undergone a big change, the accurate sense of judicial review is no longer effective. The public authorities discharge their duties; they have enough space for suitable discretion. This is the big drawback in our system, that the people, who are unsatisfied from the decision of public authority, take it to the court. The court does not provide benefit to the other affected people.

The judiciary, under the constitutional provisions exercises powers with checks and balances. It means the judiciary is working in an adjustable position to assessment the substance of judiciary, executive and lawmaking authorities. The court never prefers water tight, unyielding, segment. Under India’s constitutional Article one hundred thirty-six and Article thirty-two, the rheostat of review judicially is specified to the Indian Apex Court.

Article 226 and Article 227 provide power of review judicially to the higher courts of states. The Apex Court in *L. Chandra Kumar v. Union of India (1997)*, case has made limitation in the power of review judicially provided under the Constitution. The court is comprised of the influences of judicial review only in three aspects: judicial review for legal pronouncement, judicial review for legislative action and judicial review for executive action.\(^{412}\)

The judicial review contains the powers of higher courts to scrap enforceable or unconstitutional laws passed by the public authority, which create conflict or is unreliable with the rudimentary establishment of legislation, under the Constitution of India. The opportunity and assortment of judicial review differs from case to case. Its roots go back in history. The judicial review is a complex matter. Hence, it itself creates limitations. The courts exercise the powers of judicial review and forcefully guard citizen rights, human rights, fundamental rights and many other statutory and
non-statutory powers of government organizations, such as control over various kind of assets and property.\textsuperscript{413}

The India’s Constitution has adopted numerous limitations within the controls of judicial review right from its inception. The S. C. I., in its several judgements has reflected sovereign powers of law lords, executive and legislature. The controls of judicial review have been so long as to the S. C. I. and the higher judiciary of the states, under the establishment of the Constitution of India. Several people believe that the judicial inquiry is find out validity of legislation. It is a protection against the oppression of the majority of people. The judges never check the social and economic situations of the people. They follow statute strongly.

In case of \textit{J. P. Bansal v. State of Rajasthan} (2003), the appellant was appointed Judicial Member of the Tribunal and subsequently was appointed as acting chairman, until appointing regular chairman. The appellant demanded compensation for termination of function as Chairman.

The Supreme Court stated that the court interprets the Constitution and relish the liberty. Such liberty is not obtainable in the interpretation of the statute. The impartiality of the judiciary threatens public interest, while the partiality is the part of rule of law. If judge, in interpretation provides, its own amendment to the statute, it is injurious to the public interest. There is no ambiguity in the statute, no obscurity, words are clear and intention of legislature clear. In such condition, here is no possibility for law of land to change or alter or modernize the task in statutory provision.

The Supreme Court stated that the judges should not play the role of legislature, only for showing judicial velour. The court stated, the judges should remember that the thin line is available between legislature work and adjudication work, that line should not be crossed by judges. That line must be maintained clearly.

In \textit{State (Govt. of NCT of Delhi) v. Prem Raj} (2003), the respondent raised the question whether the High Court of Delhi acted within the framework of Section 433 of the Cr.PC, 1973. The Indian Supreme Court specified that when the court has forgotten judicial wisdom, it will disturb the work of equilibrium, which was allocated among the three sovereign organs of the state. The Supreme Court takes seriously, when the High Court upsets exercise of commuting sentence, disobeying its restrictions. The court examined that the powers of commutation is completely vested
with appropriate government. The S. C. I. explained the meaning of appropriate government and over ruled the directions of the High Court. 415

In *Union of India v. International Trading Comp. (2003)*, the respondent applied for grant of permit, under Maritime zone. The said permit authorized the respondent to take vessels on lease and operate in foreign deep seas for fishing. The Apex Court detected that when the strategy of the government has failed to gratify the test of reasonableness, the same will be unconstitutional.

The court stated under Article 14 of the Constitution that the change in policy must be fair and reasonable, it should not give any arbitrary effect. To make any change in policy through exercise of executive powers there should not be maintained any ulterior criteria. Every State action is qualified for the standard validity of Article fourteen of the India’s Constitution. The basic inevitability of Article fourteen is non arbitrary, fair in action. The court stated that the state action should be informed through reason. If the act is not in conformity to reason, the matter will be treated as arbitrary.416

7.1 Protest Doctrine of Judicial Review

Where the examination rises of the development of judicial review and its understanding, there are some objections for proper evaluating of judicial review by the genius people. It is always said, that the judges are the unelected organization. It is unfathomable to the public by the instrument of any governmental institution. In many countries, the judges are appointed through nomination or selection, which is far away from the approach of ordinary citizen.

The judiciary is authorized to examine the validity of the statute, which is passed by an authentically elected body of the legislature. It violates the power of separation. *Skepticism* stated against the voice of the judges. He said, the judges use their own discretion in the field; they do not have expertise knowledge. This analysis prefers the role of elected legislatures, who are responsible constitutionally, to make legislation. The analysis also creates the role of judiciary, which resolves the disputes between parties. In the common law jurisdiction, the inherent value of the written Constitution provides the provisions of judicial review and the power of parliamentary sovereignty.417

*Justice Aharon Barak* made his observation that to operate successfully, the Constitution should not be easily amended by normal statute. The judges must be
given powers under the Constitution to review of the legislation. So, the Constitution should enjoy the normative sovereignty. It is compulsory to uphold genuine equality, the actual balance between component of the formal Constitution is desirable. There are no lawful restrictions in legislative sovereignty short of the formal Constitution.

Only the self-restraint of majority of the people can grace by sovereignty of human rights. The Constitution imposes legal limitation on legislature. It also provides guarantee that the human rights can only be protected by self-restraint of the people. The formal Constitution also controls the majority of people. 418

Another considerable objection on judicial review is that the judicious and determined contents of the Constitution assumed by country, during specific time. Which reproduces will of the framers. It is not necessary that the dedicated framers of the Indian Constitution had engaged the will of majority of population before submission.

In the Indian context, it is generally claimed that the Constituent Assembly’s members were drawn tremendously from leading families; they did not represent a general view on many vital issues. It is also stated that contents of the Constitution are pre-commitments, which is adopted as a binding force for the forthcoming age group. 419

The influences arranged to the lawmakers for modification of the Constitution are limited. The higher judiciary works as a guardian of the Constitution, complete judicial review. The structure of judicial review the lot effortlessly, question to the necessities of the Constitution. The higher judiciary performs its duty by scrutinizing actions of coequal organs of the government. Therefore, it is expected that the setting up of judicial review delivers irrational chance in constitutional democracy. 420

In India, the personal laws on religious matters are beyond the range of constitutional scrutiny. The framers of the Constitution have protected this position through customs and usages of religious minorities, as guarantee provided for freedom of religions under the Constitution. There is continuous demand of majority of people to make amendment in the Constitution to remove such conditions by application of uniform civil code.

Such code will help regularization of all religious matters of all Indian citizens, within one umbrella. There can be a respectable decision for making more or less specific modifications in personal laws, with respect to safeguard rights of gender justice. However, the majority of population of some minority religions always reject
such demand. Samuel Isacharoff stated, it is beneficial implement constitutional scheme in the fractured societies in order restrain majority leanings unhelpful.\footnote{421}

\section*{7.2 Doctrine of Checks and Balances}

The check and balances doctrine has planned the influence of restriction to the solitary government organ or the individual. It provides harmonious relation among the people or the organs of government or in social institutions. The checks and balances mechanism has provided flexibility in laws, when judiciary uses this doctrine for solving the inter-state disputes or religious matters.

The doctrine of checks and balances is significant for religious institutions, NGO’s, corporations, partnership and social institutions. The mechanism provides flexibility and harmonious construction, where the judiciary applies laws in the judgments. The doctrine of checks and balances avoids water tight unyielding segments of laws. Hence the judgments of judiciary are changing on or after case to case in judicial review.\footnote{422}

The elementary concept of checks and balances doctrine is made on the observation that several persons perform selfishly; they need to increase their own affluence and powers in comparison to others. Lord Acton quoted “powers dishonest, and unconditional power dishonest unconstitutionally,” which is applicable everywhere in daily life. The abusive position for power creates adverse effect to maintain relationship in society as well as in government organization.

The parting of controls, which is dissimilar as of the principle of checks and balances. The parting of powers operates under parliamentary structure by exercise of Parliament assuming confidence and no-confidence votes. The powers provide to the legislatures under the democratic form of government. They can turn the government, cabinet or may dissolve the parliament. The British Parliament is supreme against judiciary. The laws enacted by parliament are not applicable to check the constitutionality by British judiciary. However, under Indian democratic system, judiciary has the powers to checked the legitimacy of legislations indorsed by the Parliament.\footnote{423}

\subsection*{7.2.1 Separation of Powers}

In the circumstantial of India, the separation of powers is very much important. There are three structures of government i.e., legislature, executive and judiciary. The India’s Constitution has clearly identified functions of all three organs.
In the democratic context the scope of judicial review plays important role over others independent organs of state.

Article thirteen of the India’s Constitution positions that national shall not produce to some extent rule, which take absent or condenses the rights as pondered in its Part three, in respect of essential rights of the Indian inhabitants. If any legislation was created against this clause of the Constitution, it will come within the purview of infringement and will be declared as void. This Article has given a responsibility of legislatures as well as judiciary, while in the doctrine of separation of powers only judiciary has the powers to check and keep the legislation valid.

It is limitation against the separation of powers that there is no clear definition of this doctrine. Everybody in normal working life interprets definition of separation of powers with his own views. So, it is difficult to find out exact possible definition.

Aristotle tried to define the separation of powers, in his book Politics, as follows. He stated there are three components in every Constitution and every thoughtful lawmaker needs to take advantage of it. Where these components are well fashioned and differences reflected in the Constitution, that components describe all clearly with collective importance and it will be considered.\textsuperscript{424}

Montesquieu, in his book The Spirit of Laws, specified around the doctrine of separation of powers, where the executive powers are united with the legislature powers in a single body or to the single person, there is no liberty. It will fear that the single body makes tyrannical laws, that may be executed dictatorially. In attendance is no independence, where the control of lawmakers is not unglued on or after the power of judiciary. In such conditions the judges will be legislatures and the powers over liberty and life may be arbitrary. In situations, where the judges power joins with the executive powers, the judges may turn to be that of oppressor. All will be lost if single body of principal men exercises these three powers like executing of public powers, judging for dispute or crime and making of laws from single window.\textsuperscript{425}

It is true, these separation of powers are distributed to all the three structures of the regime, under the Indian Constitution. The three organs overlap in their powers and they always interfere with the powers of other organs. In such situations dishonesty, corruption, misuse of powers, take place generally. The judiciary is one of them, where the judgments in cases found erroneous, conflicting and frame time to time reverse their judgments through judicial review.
There are several others taking disadvantages in the measures of judicial review. Wherever the judges are supreme, there is no other authority to supervise over them. The judicial procedure may delay easily, which will affect the judicial review. Where all organs of state have provided independent powers, the possibilities of supremacy and competition over other organs, overlapping of powers among independent organs may increase efficacy in work but question may be raised for rights, which cause adverse effect in judicial process.

The S. C. I. has the influences to scrutinize legislation. Where the law violates the necessities of the Constitution, the judiciary will pronounce it annulled. The Supreme Court also has the powers to examine the executive action, if it violated the law or the provision of the Constitution. In such conditions, the court will declare executive action as null and void.

The Indian constitutional under Article one hundred forty-two and Article one hundred forty-five has sufficient powers to declare constitutional amendment void, if such amendment has taken away the elementary features of the India’s Constitution. The Supreme court has the joysticks unswerving the regime to issue direction, order, or direct to make policy on disputed matter.

In this context, there are some limitations, the court never makes approach to victims. It is the duty of victims to approach direct or through social activist under Public Interest litigation, where the affected person is in large number.426

In case of executive powers, the Indian President is the superlative decision-making authority. The Indian President has the power of law-making, under Article 123 of the Constitution; he has judicial controls under Article two hundred seventeen and Article one hundred three of the Constitution.

The Indian President has the advisory powers under Article 143 and powers of pardon under Article 72 of the Constitution. He may take advice from the Supreme Court on any matter. The Indian President also has the authorities to assign the India’s Chief Justice and the judges of the S. C. I.

Wherever, the legislative supremacies are disseminated to the legislatures under the India’s Constitution, the Council of Ministers is accountable for assembly. The legislatures are responsible for making the legislation. They are also responsible for exercising the judicial power, where there is breach of privilege. The legislature has the punitive powers, impeachment powers for judges as well as for President of India.
In case of *I. R. Coelho v. U. O. I.* (2007), the interrogation remained raised up beforehand the Indian Apex Court, whether the regular legislation or the constitutional amendment can put aside the purview of judicial review. It is mentioned in the Constitution that the judiciary has the power to justify every action of independent structures of the national. The court has the controls to construe the Constitution.

The Indian Apex Court, nine judge bench have construed on the leave-taking of controls. The judiciary observed that the one important feature of the separation of powers is the independent of judiciary. It is believed that the State has constructed three independent organs and rule of law, provides equal status of the organs. The Indian Constitution has as long as enough requirements to uphold the legislation for the judiciary.

The S. C. I. specified individualistically of the judiciary, as reputation of sanctuary of the separation of power, as stated by Alexander Hamilton. In the limited constitutional powers, the comprehensive freedom to court is necessary for justice. In the limitations of Constitution, it creates several specific immunities to the law making authority. For instance, it cannot pass ex-post facto law.

In the court of justice, such kind of limitations may be preserved through exercise. It is the duty of the court that all conflicting acts in the exhibition mood of the Constitution must be declared void. In short of this all uncertainties of particular privileges or right would be nothings.\(^{427}\)

If there is no separation of powers, there will be oppression. In the word of Montesquieu when the same body or the same man exercises all three powers, the powers of exercising public resolution, making legislation and entering into the individuals causes. In such circumstances there will be the end of everything.

The Indian Apex Court marked the reputation of separation of influences in the legislative privileged case of special reference no 1of 1964. Afterward, the S. C. I., in the case of *Kesavanand Bharethi v. State of Kerala* (1973), has noticeable that the separation of powers is the feature of primary building of the India’s Constitution.\(^{428}\)

### 7.3 Constitutional Limitation in Judicial Review

If any statute is endorsed in contradiction of Article thirteen (two) of the India’s Constitution. The statute shall come within the area of violation of the
constitutional Article and it shall be pronounced unconstitutional. In respect to several limitations, the fact is that the judiciary has pronounced illogical statute. The constitutional Article thirteen (two) express that the State will not make any law, which reduce or absent the privilege of Indian inhabitants under Part three of the essential rights of the Constitution. There is no direct way, there are several other limitations of the Constitution, which must be follow to make the legislation, otherwise law will be declared unconstitutional.

Under privileged of the Indian inhabitants, the authentic remedies are provided under the India’s ConstitutionArticle thirty-two subject to several limitations. The affected inhabitant of India, which injured or taken away their rights expressed in the Part three of the Constitution as essential rights may move to the S. C. I. for justice and recovery. The affected person has to be crossed several procedural limitation before moving to the court.

Where the essential privileged of an individual deprived under constitutional part three by the government organs, the S. C. I. has to be guaranteed to issue direction, writ and order as legal remedies. The Apex Court is bound as the supreme authority to direct writ, order, and suitable direction for application of essential rights. When the essential rights have not infringed under part three, the S. C. I. has the limited powers under the Constitution. The court is not in a position to legal remedies under Article thirty-two. 429

Under Article thirty-two (one), the Parliament of India is consigned with additional judiciary powers within the four wall of the Parliament. In the matter of dispute or injury of its member, the Parliament has the powers to issue direction or order or writ in case of infringement of any privilege available in essential rights under Part three of the Constitution. The constitutional powers have the certain laminations, which must be follow before issuing any writ, order and directions

When the views of the court are differing in any disputed matter among Central government and States or State among states or State between State. The S. C. I. underconstitutional Article one hundred thirty-one has the jurisdiction of original to solve the such matter. In case, where the question is difficult under one legislation to other legislations and resources are limited within the legal rights. The court has the limited powers for judicial review under Article one hundred thirty-one. It is the constitutional limitation, which may solve the matter through principle of harmonious construction.
The instrument like covenant, sanad, treaty, engagement, agreement or other such type legal instrument, which has similar characters. Those instruments will be effective for apply previously before Constitution of India implementation. Such instrument also will be applied after independent of India and implementation of the fresh Constitution. It is the constitutional limitation that the such provisions have been made in 7th constitutional alteration in India. 430

The inhabitant of India, which is not pleased with the judgment of the higher court of the state or where the party of the government, who is not pleased with judgment of the court may proceed to the S. C. I. under Article one hundred thirty-two of the Constitution subject to several constitutional limitations. This Article of the Constitution is provided powers to make appeal on civil, criminal and other matter. The appeal cannot be made on instream order, it will be made in decree, final verdict of the higher court of the state.

The concerned higher court of state has right to provide a certificate that the question involved law and fact for making appeal to the S. C. I. under Article one hundred thirty-four-A. Then aggrieved party is not free to move for appeal to S. C. I. without taking said certificate, it is the constitutional limitation on the aggrieved party. In cases, wherever the higher court of the state is not in a position technically to certify under Article 134A, the person who is unsatisfied with the direction or judgment has no right to make appeal in the Indian Apex Court.

The Constitution has the powers that the aggrieved inhabitant can move to the S. C. I. for appeal where the matter related to civil nature under Article one hundred thirty-three. In case, when the judgment and order of the civil proceeding has been pronounced by the higher court of the state. The unsatisfied party may move to the Apex Court subject to several constitutional limitations. The High Court under Article one hundred thirty-four-A is need to provide certificate to the unsatisfied party. Where the High Court is unable to provide certificate, the unsatisfied party has no right to move under this Article of the Constitution to the Supreme Court for their rights. In case, where the higher court of state has issued the decree on civil matter, the S. C. I. has not permitted for an appeal. Although, if the Parliament of India may remove such effect by law, the S. C. I. can accept decree on civil matter for hearing the appeal. 431

Where the matter is criminal nature, the India’s Constitution has provided powers and rights to aggrieved inhabitant or aggrieved government against the
The judgment of the higher court of the state to walk to the S. C. I. for their suitable judgment under Article one hundred thirty-four. It is the constitutional limitation, that the concerned higher court of the state has to be provided a certificate, that the case is criminal nature and suitable for plea under constitutional Article one hundred thirty-four-A. In case, if the concerned higher court of state has not in a position to provide certificate, then there is no way to move to the S. C. I. for making the appeal for aggrieved party. This is constitutional restriction to the S. C. I., without providing the certificate from the higher court of state, the S. C. I. cannot endorse appeal from aggrieved party under this constitutional Article.

The special power has been provided to the S. C. I. within the province of India under the constitutional Article one hundred thirty-five. The S. C. I. under this Article can take any matter for judicial review related with civil, criminal or other nature. Under the Article one hundred thirty-three and Article one hundred thirty-four, whether higher court of the state has provided certificate of importance that the matter is fit for appeal or not. In case where the S. C. I. has applied this Article power, the powers of the higher courts of the state is limited and S. C. I. can take over any criminal, civil or other nature matter for judicial review subject to several constitutional limitations. In every location of the higher court, the adjudicators are not free to make decision in their own mind, they are bounded by the constitutional limitations.

The powers of special leave on appeal has been provided by the Constitution under Article one hundred thirty-six. The S. C. I. under the power of special leave granting leave on appeal to the inhabitant subject to several constitutional limitations under Article one hundred thirty-six. This power has not provided to the petitioner, while the S. C. I. where require necessity may grant special leave on the appeal in case of any matter of decree, judgment, sentence or order. The special leave can also be granted on judgment of tribunals or judgment of any court within province of India. Any quasi or semi judiciary or tribunal including approved by Armed Force has come under the preview of constitutional Article one hundred thirty-six. The judgment, sentence, order and determination of any tribunal, the aggrieved party has the powers can make appeal to S. C. I. under special leave provision subject to certain constitutional limitations.

Under the consent of the President of India, the S. C. I. has the constitutional powers under Article one hundred forty-five to make regulations, law, procedural
practices and rules for the Indian courts. The S. C. I. is not free to make rules and regulation for Indian courts, it has bounded by certain constitutional limitations and also limitations related to human rights and legal rights. The laws and procedural regulation, which are against the constitutional provisions, the S. C. I. cannot make such procedural regulation and laws for implementation of the Indian courts. 433

The constitutional Article one hundred forty-five (three) has powers to make laws and procedural rule and regulations to the hearing for judges in the Indian courts including higher courts of the states. The S. C. I. also provided procedural rule and guidelines to the division bench of the court and the procedure of single judge. In case, where the considerable question of important law, the number of judges in division bench will be five subject to several constitutional limitations that must be followed. The S. C. I. is not free to make procedural rule, laws and regulation for the Indian courts, the court must be followed certain rules, regulations, guidelines provided under constitutional Articles. It is also to mention that the Parliament of India is the supreme authority to make any legislation, while on the procedural matter such powers has been provided under constitutional provision Articles to the S. C. I. 434

The powers to issue writs, constitutional has provided powers to higher courts of states under Article two hundred twenty-six. The any unsatisfied party may move to the higher court of state against the decision of the independent organ of the government, where the constitutional essential rights of the person deprived. The higher court of the state has the powers subject to certain constitutional limitations to take the matter for hearing. It is observed by the higher court of the state that the essential rights of the party have been deprived after hearing, the court may provide constitutional remedies in the form of writs to implements for the concerned government organ. The higher court of the state is not free to issue writ from his own mind, the court bound under certain constitutional limitation of procedural guidelines, laws and regulations.

In case, where the essential rights of the constitutional have not deprived, the aggrieved person cannot approach direct to the higher court of the state under this Article two hundred twenty-six. The higher court after examined the matter may issue instream order, injunction, stay order while the other party has not furnished all essential and supportive document to the higher court. For taking action by higher
court of states, the court is bound with certain rule, regulations and laws within the constitutional limitations.

When the higher court of the state under constitutional Article two hundred twenty-six has issued stay order under the constitutional provisions, the other party has the opportunity to make vacating the stay order with certain limitation of the court. The higher court of state will provide short of time of two weeks in stay order, where the higher court of state has not final hearing the matter within the two-week time the stay order or interim order shall be cancelled. The power of the High Court has provided under Article two hundred twenty-six of the Constitution, the court is not free to use this power with own position, the court is also bound with constitutional limitation of other Articles. 435

Under the List First of the seventh scheduled in constitutional provisions, the Parliament has the full powers to make statutes and law. Such powers have been provided to the Parliament under the Article two hundred forty-six of the Constitution. The S. C. I. under this Article has not power to provide rule and laws under List First of the seventh scheduled of the Constitution., it is constitutional limitations and duty of the Parliament to make law and rules.

Under the List three of the seventh scheduled of the Constitution, the lawmaker of the States and the legislature of the Parliament have the powers to make rule and laws under Article two hundred forty-six (three). In this Article the powers of S. C. I. are restricted through constitutional limitations. Under this Article the Constitution has not authorized to the S. C. I. to make any law while any dispute between Center and State the court may interfere subject to certain limitations. The constitutional powers have been provided only to the states in List second of the seventh scheduled of the Constitution. The higher court of states and the S. C. I. have not powers to interfere in making law under which the matter incorporated in the second list. The provision of the Constitution has made transparent, that the State and the Center have not overlaps its powers. If any case occurred, the S. C. I. has the powers to make interfere subject to several constitutional limitations.

The S. C. I. has constitutional restrictions, the Parliament of India and the State legislature have the powers to make any legislation in their respective list mentioned in the seventh scheduled of the Constitution. The S. C. I. has the powers to resolved any dispute where matter arisen between States and State and Center and
States. The higher courts of state and the S. C. I. may interfere on the legislation matter, where the question of law and fact raised. 436

In case, where the legislation is made by the legislature of the States and the Parliament has the certain objections. In such conditions the law made by the Parliament will be final and acceptable to the State under constitutional Article two hundred fifty-one. The S. C. I. and the higher courts of the state have the constitutional restrictions; they cannot interface constitutionally. Where the dispute raised between States on legislation, the Parliament of India has the powers to resolved the matter through making the legislation on that subject. Under the Article two hundred fifty-one the Constitution has not provided the powers to the court to solve any dispute related to legislation. 437

Under the constitutional provision the legislations was withdrawn by Article three hundred ninety-five, while the additional legislation was made under the provisions of the Constitution for the province of India. In the Article three hundred seventy-two the Constitution has the powers that the laws working before independent of India will be remained continue. However, the S. C. I. may alter such laws subject to constitutional provisions, where constitutional limitations also applicable. Where the concord with the President of India under the provision of the Constitution, such statutes are applicable. On the other statutes, where the President of India was not provided harmony, such statutes is not in forced after implementation of the Constitution in free India. The statutes, those was taken concord on the date of President of India will be effective to make enforceable in the province of India. The President of India is the bound certain constitutional laminations, while he was concord any statute from his signature. It is clear, in every filed of the legislation the constitutional limitations are imposed by the constitution makers. In such laws, the President may has the powers to modification or annulled any portion of law subject the constitutional limitations. 438

The laws accepted or repealed for three years after adaptation of the new Constitution in independent of India under the constitutional Article three hundred seventy-two. This Article has provided powers to the President of India that after completion of three years, the President may alter or annulled in any statute. The President of India has the powers subject to certain constitutional limitations that he may prevent to the competent authority or statute. Where the legislatures or competent authority or capable authority in India has passed the law through
constitutional procedure and afterward, the approval is taken from the President of India. Such law will be applicable in the domain of India and is called the rule in power. The President of India subject to certain constitutional limitations may decide that the such law will be applicable in the part of India or the entire province of India.439

7.4 Erroneous Judicial Review

The Indian Apex Court is the uppermost judiciary of the land whose judgments are binding upon all court of the domain of India. The order, direction, or judgment avowed by the Indian Apex Court are not appealable in any judiciary of law under Article one hundred forty-one of the Indian Constitution.

The United State of America’s Supreme Court, Justice Jackson has observed “when the one court reviews the decision of another court, a fraction is reserved. The difference is normally found when people comprised from different court. Where the judgment reversed by higher court, it is difficult to say justice done better. We are not final due to dependence, but we are dependent only on final judgment.”

When the court has developed with wide jurisdiction, it is important to exercise that jurisdiction with great care and caution. In case where the powers and jurisdiction celebrated through the Constitution of India, the judiciary is required to self-induced discipline in exercise of their power.440

In case ofFood Inspector, Calicut Corporation v. Cherukattil Gopalan (1971), where the defendant was the proprietor of licensee’s tea stall. The Food Inspector, had taken sample of sugar, purchased by the respondent for preparation of tea, sold to the customers. As per description of the public expert, the sample was contaminated; it contained 14.0 mgs per 100 gm saccharine. The trail court examined the description of Public Expert and inveterate that the sugar remained contaminated. The trial law of land pronounces that accuse has not guilty on the based that the sugar, as such was not sold on the stall.

The High Court of Kerala acquitted him on the ground that he was not a dealer in sugar. The Food Inspector had not purchased sugar under the norms of P. F. A. Act, 1954. The Indian Apex Court examined the matter. The sugar was found and confirmed that it was adulterated. The court observed that the respondent disobeyed Section 7 and Section 16 (1) (a) (i) ofPrevention of Food Adulteration Act. Hence, he is guilty for the offence. 441
The Prevention of Food Adulteration Rules, rule 47 and rule 44 (g) are applicable, where the adding of saccharine of 14.0 mgs per 100 gm sugar was permissible. The saccharine was present in sample, according to description of the Public Expert. Henceforth, the sample remained not contaminated. The accused had not committed offence. While the Supreme Court had not considered this crucial facts of the matter and punished the respondent.

The N.J.A.C.A., 2014, which constructed by legislature and the 99th amendment of constitutional, 2014 was challenged in case of S. C. A. O. R. A. v. U. O. I. (2015), the petitioner demanded that the said constitutional alteration and the National Judicial Appointment Commission Act must be overruled by the court. The petitioner in their petition stated that the said policy has destroyed the constitutional elementary structure. The petitioner demanded from the court that before coming final judgment, pronounce the interim order. The petitioner also stated in their petition that the existing methods for transfer and appointment of the higher courts judges should be continue as the same has been explained in the earlier constitutional Articles.

The five judged bench of S. C. I. in their landmark decision has declared National Judicial Appointment Commission Act and 99th constitutional amendment void and unconstitutional. The court pronounced that the methods and procedure for appointment and transfer of S.C.I. judges and the higher courts of State judges are also available in the constitutional Articles prior to 99th constitutional amendment. The S.C.I. specified when the transparent procedure for selection and transfer of higher courts judges is available in the Constitution, there is no need to further constitutional amendment. 442

The verdict is quashed, the N. J. A. C. Act was delivered by five judge bench, while central government demanded judicial review by the larger bench of 1993 and 1998 verdict of the Supreme Court, on the same matter. The court had not considered the voice of the government and struck down the arguments.

The court stated that when the procedure of assortment of the adjudicators of higher courts of states and the adjudicators of S. C. I. to be directed in the manner of National Judicial Appointments Commission Act, 2014, the Constitution’s basic structure will be violated. Arun Jaitley, Minister of Finance to the government of India remarked upon the conclusion of the Indian Apex Court based on erroneous logic. 443
In case of Inspector of Police v. Battenapatka Venkata Ratnam (2015), where the complaint was lodged with Inspector of Police, against the respondent. In their complaint, they alleged that the respondent, working as Sub Registrar in various offices of Andhra Pradesh, cheated the government and the public. He gained financial benefits through registration on the basis of old value of the property and made conspiracy with document writers and stamp vendors.

The respondent raised the objection that there is no sanction under Section 197 of Cr.P.C. from the State government. Hence, the criminal proceeding cannot be initiated. The trail court initiated that it is the burden of the complainant, he needed to prove that accused acted beyond his official duties.

The High Court of Kerala has verified the happening of the trial judiciary. It is the question before the Supreme Court, when there is no sanction under Section 197 of Cr.PC from State government the criminal proceeding can be quashed on the sole ground on which it is initiated.

The Indian Apex Court specified that the indorsed dimensions of the public employer are unable to misappropriate public fund and official record. The court stated the purpose of the trail judiciary and the higher court concerned was the erroneous. The court further observed that the assessments articulated by the trajectory judiciary, as well as the High Court, on the interrogation of sanction under Section 197 of Cr. PC are illegal and it cannot be sustained.

In this case The Higher Court of Kerala State did not evaluation the said question able properly, whether the sanction is required from the State government under Section 197 of Cr. PC, before it initiated the trial. The High Court has not gone seriously through to discharge its duties. Hence, the judicial review pronounced by the High Court was inaccurate and biased.

In case of Baban Singh v. Jagdish Singh (1966), where the appellant submitted affidavits stating denial of money receipt through compromise in their appeal. The High Court had given order to Registrar to conduct the enquiry. The Registrar of the court, after taking evidences from the party, reported that the denial of receipt of money is false.

Afterwards, the application was made before the High Court, under Section four hundred seventy-six of Cr. PC, 1973, which was kept undecided. It was taken up after the appeal was decided. The High Court held that the appellant was commuted
submission of false statement under Section one hundred ninety-nine of the I. P. C, 1860 and judiciary directed to the Registrar to file complaint.

The questions were raised previously the Apex Court of India, where the appellant’s offence was falls evidence under Section 191 and fabricating false suggestion under Section 192 or made false statement in declaration under Section one hundred ninety-nine of the Indian Penal Code, whether the proceeding for property, marked under Section 477 of the Indian Penal Code can be taken, while the action falls under Section 476 of the Indian Penal Code, 1860.

The Supreme Court of India observed that when the appellant made declaration in their affidavits to be taken into consideration under evidence, while the High Court entertained erroneous opinion on compromise, their offence has come under Section 191 and Section 192 of the IPC, not under Section 199 of the same code. The court also stated that when the offence committed by a witness, under Section 479 of the IPC and the action under Section 476 of the IPC are ruled out.

In case of Santosh Kumar Satish Bhusan Bariyar v. State of Maharashtra (2009), where the petitioner was convicted for death penalty by the trail judiciary and the Higher Court of State. The Indian Apex Court in their judgment accepted that the pronouncement of the S. C. I., in the Ravij case, was erroneous and careless. This has come after thirteen years of his hanging.

The court stated that the situations, which are related to criminal and his crime must be looked before the pronounced death penalty. The court stated that there was error in passing judgment in Ravij case. The court further stated there are some judges who are more prone to award death sentences in comparison to other judge.

In the debate of Yakub Memon hanging, it has highlighted in many cases, who were hanged but they should have lived. Once the person hanged, court cannot give his life back. There is no homogeneity in causes that clue to the sentence commuted. It is true that several time innocent people are hanged.

The group of 14 retired judges, addressed a letter to the President of India, pointed out that the S. C. I., during the period from 1996 to 2009 had awarded death penalty to 60 people. They stated that 15 were awarded death penalty erroneously and out of them two were hanged.

The error rate of Supreme Court is 25 per cent, which is unacceptable, simply, said by Yug Mohit Chauthury, human right lawyer. Prabha Sridevan former Justice of the Madras Higher Court itemized that the S. C. I. had admitted its error too late,
they were hanged because of erroneous decisions. There is no severe miscarriage of justice other than this. 447

7.5 Conflicting Decisions of Court

The Constitution of India has deliberated a wide jurisdiction to the Supreme Court. When the court devoted with very wide powers, it is necessary that the judiciary must be exercised within its dominion, with appropriate attention and greatest care. The discipline self-imposed and judicial restraint may be mobilized, to be viewed impartial. The Indian Apex Court is the highest judiciary body. There is no appeal against its decision under Article 141 of the India’s Constitution. The ruling of the Apex Court is pertinent all over domain of India. However, it is the responsibility of the judiciary to follow every movement with great care and devotion.

The conflicting sentences of the Supreme Court is other great limitation in review judicially. Where the declaration of the Indian Supreme Court is conflicted, it creates great confusion to setup a precedent for other courts inside the Indian province.

In case of Ganga Saran v. Civil Judge, Hapur (1991), where the decision of the S. C. I. was discordant and unbending, it directed to the embarrassing situation. The question was raise beforehand the Higher Court, Allahabad State of Utter Pradesh, whether the inconsistent decision of the Indian Apex court should be followed as precedent?

The High Court of Allahabad, full bench contributed response that the court must dispense law, which is elaborated accurately. Where the judgment is conflicted, the biggest disadvantage is that it creates severity in deliberation of development of law. In the judge made statute, the stare decisis doctrine shows limited factors.

The High Court stated the scope of experience restricted, where the practical law is found on test. It makes complexity for increasing the bulk to find law difficult. The precedent illustrates that the law is great but in such cases the dishonesty is another aspect. The past mistake of the court affects future cases, that come before the court in appeal for reconsideration.

In several cases, it was hard for judges to find the relevant and transparent judgment. When the work load is more and cases are too confused, the confidence of judges is lost. Such precedent may produce justice in individual case but produce
generally injustice. It is true, that single binding case had put down unjust rule. Hence, it will be unjust to treat a number of cases in undesirable manner.\textsuperscript{448}

In case of \textit{Mattu Lal v. Radhe Lal (1974)}, the respondent given nonresidential land for the duration of two years on tenancy bases to the campaigner. After passing of two years, the petitioner had not vacated the land and started business of Iron and Steel, in their premises. The trail court granted decree for eviction. The appellate court set aside decree for eviction. The judiciary arose to the supposition that property-owner desires to flinch the business of Iron and Steel, which was new to him. The landlord has not submitted any evidence for making necessary preparation of business. Hence, the respondent has failed to recover his land.

The Indian Apex Court specified that the High Court permitted unreasonable evidence and conducted a mistake of law. The Supreme Court observed that the respondent had not fulfilled the bona fide requirement for starting of new business of Iron and Steel. The court stated, it was not up to the higher court of state to interfere, when the matter was not concerned, otherwise it will be assumed that the matter is conflicting with error of law.\textsuperscript{449}

In case of \textit{Delhi Development Authority v. Ashok Kumar Bahel (2002)}, where the appellant had formulated a new scheme of registration to build and sell Janta Flats in the year 1997. The respondent made registration for his flat. Afterward, the Delhi Development Authority increased the rate of flats, higher than it declared in the scheme.

The respondent challenged the increased rate of the flats. The other aggrieved persons filed the applications in the High Court but they remained terminated by the judiciary, the petition of the respondent was accepted by other High Court’s division bench. The court has reversed their judgment in the case of respondent. The matter was conflicting between two division workbench of the same judiciary.

The Indian Apex Court, stated when the matter conflicted between coequal division bench of the similar judiciary, it requirements that problem to be bring up to the hefty bench. The Indian Apex Court specified that as soon as the judgment passed for the same matter by the same court, it created contradiction and inconsistency in respect of the same scheme, which may not be permitted to be extended or continued.

The court stated that the contradiction and inconsistency in the order must be avoided in any costs, it is the cardinal rule of the doctrine of rule of law. The court further stated, in case, where, two applicable doctrines on the same point allowed by
the same court to operate at the same time, the doctrine would be violating in such situations. 450

In case of Shyam Sunder Sarma v. Pannalal Jaiswal (2005), where the appellant had filed title suit for declaration of property in his name, under the C. P. C. The trail court declared ex-party. However, higher court dismissed ex-party decision. The petitioner in their appeal to the High Court further claimed title of the property, that was re ex-party decision against the defendant.

The S. C. I. specified that when the rule 9 of order 41 of the Code of Civil Procedure, 1908, allowed the appeal for registration, it had to be disposed of in harmony through the rule. Once the petition is dismissed for the reason of delay, the application for delay is accepted for condoning. In such condition, it is confirmed against the appealed decree. The court stated the application filed along with appeal for condone against the dismissal on the ground of delay. It was never the decision of court to refuse the condoned appeal.

The decision of the S. C. I. clashed with its previous pronouncement in case of Chandi Prasad v. Jagdish Prasad, 2004 (8) SCC 724, where the Supreme Court stated, it will not be condoned when the appeal is terminated on the basis of delay. Hence, the principle of merger does not apply. 451

In case of Enercon (India) v. Enercon GmBH (2014), where the respondent made arbitration clause in the agreement with appellant party. The responded in their agreement mentioned that if that is any dispute, it will be solved at London, under the Indian Arbitration Act.

The S. C. I. pragmatic the agreement of arbitration cannot be avoided, that there is no determined bond between the parties. In case of International commercial context, the arbitration agreement will be avoided. It will be conflicted when the party, who have agreed that it will be treated in London, when the parties have chosen Indian Arbitration Act.

Where the law related to Indian context the English court cannot have simultaneous jurisdiction. The court directed to solve the conflicted matter where omission is displayed in arbitration clause. The two party appoint arbitrators; those parties will nominate the third arbitrator. 452

In J. P. Bansal v. State of Rajasthan (2003) case, where the plaintiff was selected by the government as a Judicial Member of particular Tribunal. Afterward, the government was appointed him as temporary Chairman, till the nomination of
systematic Chairman. The plaintiff claimed remuneration after termination of his duties as Chairman. The S. C. I. specified that the legislature is the independent organ of the government, the judges should not interfere in their work. The judiciary is the supreme boldness; it should not be made fight in the mind of adjudicators. The judiciary should must be remembered that, there is a separation of mark, which need to be maintained from the work of legislature. The S. C. I. stated that can be arranged by alert gratefulness.

The S. C. I. realized the liberty, while the judges construe the India’s Constitution. In the construal of the legislation, similar liberty is formed conflict. It is threatened to the impartiality of the judges, which has created conflicts in the mind of the public. The court further provoked that the favoritism is the portion of the rule. This is inaccurate and injurious for the public, when the judges in their explanation are choosing individual amendment in the legislation.

The court specified more, where the intention of the legislature is correct, words in the statute are clear, no obscurity and no ambiguity in the legislation. In this circumstances, no option to the judges to alter or expand or transfigure their duties in the provision of statutory.

In case of Union of India v. Raghubir Singh (1989), where the property of respondent was acquired under the Land Acquisition Act. The District judiciary heightened the recompense of the land. The respondent further appealed to the High Court and demanded for more enhancement of compensation.

The Indian Apex Court, on that problem specified the division bench of the same strength, of the same court, is not bound by the law ruled by the previous bench. When the pronouncement brought to the knowledge of the division bench that the judgment is overruled from the earlier division bench of the similar judiciary. The matter has to be dedicated to the superior bench of the court.

The S. C. I. specified, the matter is clashed where the earlier decision of coequal bench evaded the same question, without referring to the earlier decision. The court stated that being of conflicting judgment, the earlier judgment will be prevailed. The court further stated that the decision of the authority is what up to logically, it will be decided by the court of law.

7.6 Supreme Court Reversed Own Judgment
The jurisdictive conclusion of the S. C. I. is the precedent, which will be applied in the domain of India, in the future cases. The court overruled the previous judgment and laid down the parameters in their new judgment. The judgment of the Indian Apex Court is the pronouncement of the lone judge or of the bench of the judges; it is never the pronouncement of the whole Apex Court. Nevertheless, the conclusion of the Apex Court is not challengeable in any court under Article one hundred forty-one of the Indian Constitution; it is mandatory to wholly the courts surrounded by the province of India.

It has seen several times that the judgments of the Supreme court are logically erroneous or conflicted. Sometimes, the judges have lack of knowledge or they are unable to resolved the matter amicably. It has also been observed, wherever the linguistic of the legislation is unblemished but then again the objective of the judge is malicious. The judges are human being, they should do their work sincerely without any frustration and emotion.

In case of *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services* (2005), where the agreement was executed between appellant and respondent to install and supply of modernization and upgradation equipment’s for production of facilities at Korba Plant, in Chhattisgarh State. The agreement provided the clause of settlement of any dispute by arbitration. The arbitration was held in England. In the year 2002 awarded two orders.

The Indian Apex Court has domineered its personal decision delivered, in case of *Venture Global Engineering v. Satyam Computer Services Ltd. (2003)*, 2003 (1) Scale 214, therein stated that international commercial arbitration shall apply in the I. A. C. Act, 1996, although the chair of adjudication is outdoor of India.

In this case the Supreme Court’s five judge bench, claim superiority the previous ruling, which obligated held that the international commercial arbitration, which had the outside of India shall not apply in India. The court stated that where the arbitration decided outside of India, the parties disputed, cannot move to Indian courts for any relief. In such case, wherever the chair of adjudication is outdoor of India, the parties may have to look at that court.

The court stated that where the arbitration is decided outside of India, it will be treated as foreign award, under Section 44 the I. A. C. Act, 1996. The judiciary has avoided confusion and uncertainty and stated that this decision will be applicable in arbitration agreement, which are entered after this judgment.
In case of *P. V. Anvar v. P. K. Basheer (2014)*, where the respondent was elected to general election of Kerala Legislative Assembly, in the year 2011. The appellant contested election as independent candidate and was second from marginal votes. He applied to set aside election and declare result in his favor under the Representation of the People Act, 1951. The higher court of Kerala State specified that the position under Section one hundred twenty-three (two) (a) (ii) of the Representation of the People Act, is not maintainable to set aside the matter.

The Supreme Court of India stated on this matter as evidentiary admissibility in respect to contents of electronic record. The court overruled its earlier judgment delivered in case of *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru (2005)* 11 SCC 600 and reinterpreted applicability of Section sixty-three, Section sixty-five, and Section sixty-five -B of the Indian Evidence Act, 1972. 456

In case of *Nagalakshmi Flour Mills v. Commissioner of Customs Chennai (2001)*, the appellant was engaged in production of various products from wheat. He used imported machines for increasing their production. He paid nil rate of excise duty, due to exemption under the rule. The concerned authority stated that the product, which is produced by appellant is not a marketable product. However, appellant countered that the said product is marketable.

The Supreme Court of India has analyzed the term ‘manufacture’ and held that it includes the produced or production. The Supreme Court claim superiority the previous pronouncement, in the case of *Commissioner of Income Tax v. N.C. Budharaja & Comp. (1993)*,1993 AIR 2529 and also overruled the finding of Commissioner of Customs, on production of commodity to different from manufacture of commodity. 457

In case of *Naturalle Health Products Pvt. Ltd v. Collector of Central Excise (2003)*, where the appellant was not manufacturing cough syrup and throat drops in accordance with license, which was issued, under the Drug and Cosmetic Act, 1940, for ayurvedic drugs, which was classified as ayurvedic medicine for the levy of central excise duty.

The Indian Apex Court has claim superiority its previous pronouncement mentioned in case of *Amrutanjan Ltd. v. Commissioner of Customs & Excise (1995)*, 1995 (77) ELT 500 (SC). The Supreme Court stated that the ingredient used for
preparation of ayurvedic medicine, if the ingredients processed for refinement, they have pharmaceutical quality. The ingredients for both are of the same nature.

It is useless to say the same material used in allopathic system and bearing different nomenclature. The court stated it is not necessary that the formula should be in ayurvedic texts. Hence, the court treated the drugs as ayurvedic medicine, whether the ingredients find place in a ayurvedic book or not.  

In case of State of Orissa v. Asiatic Gases Ltd. (2007), where the respondent manufactured gas cylinders. The cylinders are not constituted in the sale price as mentioned under Section two (h) of the Orissa Sales Tax Act, 1947. The question raised before the Supreme Court of India, to transfer right to customs for use of cylinder or bottles, through collection from rent.

The Supreme Court reversed its earlier decision, given in M/s Tripty Drinks Appeal (civil) 6482 of 2000, and stated that the industrial gas or medical oxygen gas cannot be sold short of container. The property of those goods cannot pass without container to the customers.

Hence, the containers are considered an integral part of oxygen gas, used for medical purpose. The court stated the sale means to transfer property of goods and comprises the right to use such goods. The court stated the tax to be charged on the handover of rights to use goods.

In case of State of Kerala v. Alassery Mohammed (1978), where the various items of specific quantity of food samples were sent by authority to the Public analyst, under Rule 22 of the Prevention of Food Adulteration Rules. In the rules, the measure of the items for testing is not specified, it mentioned in the column that ‘approximate quantity will be supplied.

The Supreme Court of India, while deciding the matter in earlier case of Gurunamal Rajaldad Pamanani v. State of Maharashtra (1975), 1975 2 SCR 886, AIR 1975 SC 189, which is set aside on the position that the appropriate amount remained not declared in the Rule 22, of the Prevention of Food Adulteration Rules, for analysis of the items. The court stated that the shortage of quantity is not permitted for analysis in statute. The Supreme Court stated that this court did not interpret the Rule 22 and taken normal conditions of the case.

The Indian Apex Court specified that the ratio of Gurunamal Rajaldad Pamanani case based on false conclusion and does not justifies the fact of law. The case decided was based on wrong interpretation of Rule 22. The court stated that there
were several of trials, which were originated on this reading, whereas some of them are still pending.

The Supreme Court has stated under Rule 22 that the sample must be representative sample. The representative sample has different purpose, meaning, and connotation in viable transactions. The court stated the quantity prescribed in Rule 22 not to be tempered in any manner. 460

7.7 Cost of Litigation

The cost of litigation is most disadvantageous, under the procedure of court, for the judicial review. The litigation cost mainly contains the process fees, court fees and advocate fees. This cost system of litigation was developed by the British, during colonial period. The object of British administration to charge such fees to dispose of files of frivolous claims. The main object was to extract the money from the people and delay their access to courts.

The Court Fees Act, 1870, is accepted after independent, which was earlier enforced by British. In this Act, the parties are obligatory to recompense charges of written declaration, fees for filing of plaint, fees for issuing of summon and fees for copy of decree or judgment. Mainly speaking the access to justice depends in the pecuniary capacity of the parties, which creates dissimilarity between parties. 461

7.7.1 Court Fees

Under Section 35 of Civil Procedure Code, 1908, to determine the amount of cost of the plaint, the court has the full authority. The Order IX R 2 of Civil Procedure Code directed, where the plaintiff failed to postal charges or court fees, the prosecution can be ended, if the subpoena has not been obliged to the respondent. The judiciary fees dishearten the truthful complainants. Those who do not have economic resources cannot approach the judiciary. The non-payment of judiciary fees consequences in dismissal of the suit is high compulsion band. 462

The S. C. I., in case of Central Coal Fields Ltd. V. Jaiswal Coal Co. (1980), stated that the heavy quantity of judiciary fees volumes to sale of fairness. Hence, to effective have admittance to impartiality, it is one of the elementary prerequisite of the judiciary. The court observed, where the equality is assured under Article fourteen of essential rights under the Constitution is not obtainable.

It has also been directed under Article 39A, that securing justice is not to deprive citizens through economic disability. The court stated that it is disgraceful
that the principles of magna carta were not maintained in the free India, the court process an Anglo- American forensic system. The court fees contain payment of the court. 463

The State is required to protect the individual, and if it failed, it is the duty of the State to redress to that individual. It is the established standard of the rule that none will profit from their own wrong. There is lapses on the part of state in performing duties. Hence, state cannot make profit from the plaintiff’s money for their own wrong.

In case of Secretary to the Govt. of India v. P. R. Sriramulu (1996), 1996 (1) SCC 345, the S. C. I. pragmatic that the provision of the administrative justice comes under the state obligation and failure by state to declared the Court Fee Act, unconstitutional. 464

7.7.2 Advocate Fees

The power of money has influenced the verdict of the judiciary, while Article fourteen of the India’s Constitution assured the equivalent defense of law, it has been violated. The Advocate is the main source, but he is the officer of court. Section fifty-seven of the Indian Evidence Act, 1872, specified that the judges are presumed to know every laws. In such situation there is no need of Advocate.

In India, most of the people do not know the rule and procedures of the court. They are poor, illiterate and unable to approach to the court for justice. They do not have enough food to eat; they survive in bad conditions. In such situation, they have no money to spend for an Advocate.

In Indian prisons, many of the prisoner are not able to appeal their case due to lack of money, which need to hire the Advocate. Many of the inmates have completed maximum limits of prison, under, whichever Acts they are punished. However, they are still in prison because such people do not have money to spend on Advocate. This is imbalanced justice, of the Indian society. 465

Under the Advocates Act, 1961, the duty of Advocate is to assist in administration of justice; they are considered as officer of the court. The court requires the aid of Advocate in administration of justice, without giving any financial assistance. In such situation, the paying of fees to the Advocate, disrupts Article fourteen of the Indian Constitution.
Wherever the charges arrangement of Advocate is involved to take justice and fees of Advocate varies from matter to matter and person to person, equivalent defense of rule is not exhausted by way of as long as under Article fourteen and equality before law to the citizens of India will be the dream only.

7.8 Justice Delay

The Indian legal system is based on facts and evidences, which needs hearing and argument for declaration of judgment. The system is not worried for harmonizing soul of defendant and of the plaintiff with time. The justice delayed is increased out of the court practices, which lose the trust on the judiciary. The judiciary is the part of democracy, wherein, mandate of the Constitution is that the State will provide fairness on the foundation of equivalent chance.

Henceforth, the court is guaranteed to make procedure of law under the provision of the Constitution, to protected identical fairness to all inhabitants. In India, a large number of people are illiterate, primitive in the way of life, poor, backward and tribal; they apply unusual cadre of justice, because equal justice in democratic system under the law is not a reality.  

Article thirty-nine -A of the Indian Constitution affords way to the State to make available permitted legitimate assistance and identical fairness to the citizens of India. However, the state has failed to provide inexpensive and quicker justice. The justice delivery system has collapsed, where several millions of cases are pending in the various courts; it will take generations to redressal.

The cases are adding up every time in pending cases due to overburden of courts. Most of the cases are relocated from one judiciary to alternative judiciary, which is also another cause for delay in justice system. According to Law Commission, a huge quantity of cases is undecided in the S. C. I. and their subordinate courts, which has defeated judicial system for its purpose.

Where there is justice delayed, it has caused by justice denial. As best legal aptitude, the judiciary no more attracting because the emolument of the judges is not attractive in comparison to income of the young lawyers. Hence, most of the efficient judges quit and practice as lawyers. To avoid delay in judiciary, the service conditions and emolument of judges must be improved.

The Indian Apex Court believed that the confidence of the public in judiciary has decreased; it is an alarm and serious threat to democratic and constitutional
governance. The Supreme Court admitted that the large numbers of vacancies of judges and officers of the subordinate courts are vacant; it is the main cause of delay of justice.\(^{467}\)

Every citizen has the rights to assess justice, under the Indian Constitution. It is the obligation of the executives of the country that they must be provided with necessary and enough infrastructure to the higher judiciary. It is expected from the government to provide enough resources to the National Mission for Justice Delivery and Legal Reforms, for developing the courts, so that the citizens can enjoy the rights of justice.

The prisons of India are overcrowded, the inmates of the prisons are awaiting justice, most of them having crossed the maximum limit of imprisonment. However, the justice has not been provided to them, due to failure in justice delivery system.\(^{468}\)

The huge pendency of cases is the biggest cause of delay in justice. The cases take years for final disposals. The judges are rebutting the accessibility of the justice. It is totally unfair, if a suspected criminal waits for years for justice and he is found ultimately innocent. Similarly, the victims of crime are never satisfied, if the court will not award punishment after a long proceeding of the court.

Where there is delay in justice, the quality of justice cannot help for peace and harmony in the society. It is also a danger to make stronger internal security of the country. There are several provisions in the procedure, which can be avoided by litigation such as those under Section 80 of Civil Procedure Code, 1908. Enough time is provided to the government and parties in dispute, they can solve their dispute before going to the court.\(^{469}\)

There is no one cause, which can be attributed to delay of justice. The delay in justice, has composite factors, which affect commonly the judicial system. The strength of judges in court, interest of the judge, work load of judiciary, lack of supporting staff, knowledge of judges, defect in procedure of court, lack of infrastructure and several other direct and indirect causes, which play a vital role in justice delay.

7.8.1 Strength of Judges

The strength of the judges directly plays an important role. The strength is depended upon the policy of appointment of judges in higher courts. The emolument and other benefits also affect the strengths of the judiciary. Most of the eminent
lawyers are not interested in working as judge, because the judges are bounded to
government rules and regulation, transfer policy and several other causes, while the
eminent lawyers are free to enjoy the attractive practices of lawyers, they can enjoy
part time educational profession also.

The procedure of appointment of judge is lengthy; once the judge quits the
post, it takes years to fill up the post. Today, more than fifty thousand of case are
waiting in the S. C. I. and more than sixty lakhs of cases are awaiting in the
innumerable higher courts of states. The judge-population ratio is 10.5 million for one
judge, which is the lowest in the world. The accumulation of vacancies in the High
Court are 140 against the sanction strength of 668 judges.\footnote{470}

7.8.2 Infrastructure of the Courts

Most of the higher courts have their old buildings. They do not have good
infrastructure. The number of cases are increasing year by year. However, the
government is not increasing their budget of infrastructure. It is true the court has no
proper physical facilities and convenient building. The executive machinery has failed
to provide enough financial support so the judiciary to enable them to do work
normally.

Most of the courts do not have good space for library, sufficient court staffs,
requisite furniture and reasonable space, which is needed for qualitative justice. In
most of the courts, there is no social security system for lawyers. The legal profession
is the most struggling profession.

The Bar associations are not provided with enough of social security to the
lawyers. To regularize the court work properly, the government is requested to
provide proper infrastructural support to every court.\footnote{471}

7.8.3 Competency of Court Staff

The court staff must be free from dishonesty. A highly competitive and
technical staff will provide help in speedy justice system. Most of the courts do not
have enough staff and the staff which is available is not efficient enough to carry out
work properly. The court staff are responsible for typing work, documentation,
making copy of record, searching of the record, providing copy of order or judgment.
These things directly or indirectly affect the delay of justice.
To make proper documentation of work of the court, the staff must be in adequate numbers, efficient in work and regular in attending court work. The staff which is inefficient and irregular in attendance, must be replaced efficient staff.

**7.8.4 Delay in Investigation**

The investigation is the part of documentation, where crime is committed by accused. Several times accuse gets bail and creates hurdle in investigation process. Sometimes, investigating officer has more them one investigation work at a time, which causes delay in their normal work. In some cases, investigation work is connected with several other crimes, which requires team work of investigation, it may cause delay.

It has also been seen, in several cases that the court is not satisfied with investigation report. In such conditions, the court directs to other investigation team or directs for reinvestigation, which takes more time. It has been seen that several investigation officers are not efficient for a particular investigation or they want some gratification from other party. 472

**7.9 Corruption in Judiciary**

The court is the greatest significant structure of the self-governing organization. Wherever inequity is created between legislature and executive, the judiciary has played vital role to make the balance. Where the encroachment of rights is there, by the government, individuals or public body, in such cases the judiciary plays role of custodian of the people’s rights. The adjudicators essential to be of sound moral character, integrity and work in public confidence

Where there is power, there is corruption. The corruption in judiciary has extended from subordinate judiciary to higher judiciary, at every level. In other words, we can say justice is not for poor. Certain judges have misused their credibility. There is carelessness, improprieties and get involved in direct and indirect act of corruption. In the higher judiciary, there is no simple procedure to remove the corrupt judges.

The procedure for impeachment of judges is very vast and lengthy. The framers of the Constitution expected that the adjudicators of the higher courts will be the people of distinction, trustworthiness, but the adjudicators of higher judiciary have failed what constitutional framers intended. 473
The unbearable work load of the judge causes delay in getting justice. Even after passing of six decades from independence, there is no sign of inexpensive justice delivery and speedy justice, which is envisaged by the founding father of democracy. Two lakhs of fresh cases are filed in various courts each year, while the disposal rate is nine thousand. The work load of all courts doubles every seven years. The judicial independence is as long as under Article one hundred twenty-four of the Indian Constitution.

The justice of higher judiciary cannot be detached excluding by the method of impeachment, where two- third majority of the both Houses of the Parliament is required. This independence of judiciary invalidates judges to pass unconstitutional laws and also legislations, which have affected the liberty of the citizens. The judicial independence also makes the judges irresponsible, unaccountable and abusive in the performance of their duties.

In India, more than 2.5 crores of households are getting service of judiciary every year. Mainly, nearly 47.32 % households paid bribes by direct or indirect ways to the judiciary. In the words of Somnath Chatarji, the Members of Parliament are working hard to distract the democracy. It has been seen after several cases of judges with corruption, it is difficult to say the courts are working through bursting trustworthiness.

A learned justice commented that he joined court when there was 20% of dishonest adjudicators, and at the time of his superannuation, the percentage of corrupt judges gone up to more than 80%. It is very shameful that the Supreme Court judges are involved directly for personal benefits.

In the words of Hon’ble Ex-President Mr. A.P.J. Abdul Kalam, the Indian law lords has become an entire of dishonesty. The blackmail in litigation occurs as a consistent occupational of court servants. The hugged entire money of litigation is collected by the reader of the court. The money is distributed among the judges and lunch is being served for the judiciary. The complainants should be threatened from misuse of the arrangement. In order to protect right of the people, it should work for welfare of the citizen.

There are several ways of corruption in the Indian judiciary. It is true, where there are powers, there is corruption. In the modern civilized society, the corruption changes its outlook of corruption. The causes of corruption in judiciary may delay justice, delay in pronouncement of judgment, unexpected work load with court staff,
incredibility of the officer and staffs, misuse of powers, lengthy impeachment process, more expectation etc. The judiciary is the most powerful organ of the government; it must be work for the welfare of the citizens but the money landers and politicians in favor of personal benefits.

7.9.1 Pending of cases

There are millions of court case that are pending in the Indian judiciary. The pending cases generate corruption. In present position, more than 26 millions court case are pending. The judges are inefficient to dispose of the cases. Several hundred vacancies of the judges are vacated in higher judiciary. The court staff in the judiciary is not excellent and enough to handle the court matters. 476

7.9.2 Inaccessibility

The judicial system in highly expensive and dilatory, it is beyond the reach of common men. It has been noticed on several occasions that the adjudicators of upper courts are not talented to understand the statutes. The officials of the higher judiciary do not excel in their work. The officials of the courts always use work avoiding tendencies. They are not interested in their normal routine work. The officials of the court are not capable to comply their work honestly and sincerely.

7.9.3 Misuse of power

The judges of the Indian judiciary many times, misuse powers to assess the justice. Being humans, the judges are also a part of human society, they do their work with mixed-up of staffs and officials of the court. The judges of higher judiciary are interlinked, several times with court officials and advocates. They provide some times gratification to the judges for making judgments in their favor. There are so many middlemen, always try to approach to the judges for making judgment in their favor. Sometimes the judges or the official of the judiciary offer the judicial favor in exchange for direct or indirect form of money from the litigants.

7.9.4 Difficult Process of Impeachment

There are several rules and statutes, which do not allow First Information Report (FIR) against the judges, nor initiation of criminal investigation, without prior approval of the Indian Apex Court’s Chief Justice. The adjudicators of higher judiciary and the Indian Supreme Court, cannot be detached from their workplace excluding by the impeachment process. The impeachment procedure for deletion of judge from the S. C. I. or from the higher courts of states requires two-third majority
decision of the both the House of Parliament. After passing of six decades of independence, there is no case of impeachment. However, media has focused from time to time to several judges for their misuse of powers and corrupt background.