JUDICIAL ACTIVISM AND REVIEW- THE REAL WEAPONS OF JUDICIARY IN A PARLIAMENTARY SYSTEM

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ABSTRACT

The concept of **Judicial Review** finds its roots in the judicial setup of United States of America. The U.S. Supreme Court tried its best to explain the principle through the case of **Marbury vs. Madison**. It gives power of declaring a law as **null and void** to the judiciary, made by the **State** violating the provisions related to **Fundamental Rights** of citizens. India has also adopted the rule by reflecting its meaning and importance under Article 13(2) of the Constitution. This has been followed over a long period of time in order to keep a check upon the functioning of 'State' including governments as well as other 'law making' bodies. **Judicial Activism**, on the other hand is an idea which empowers the judiciary to play the role of an 'activist' by ensuring that a law has to be there for proper functioning of the society. In a democratic nation, it is the duty of legislature to make laws, but if in any case it fails to do so or there is no settled principle of law made by it, the judiciary steps in the shoes of legislature and pronounces law in form of judgments. **Articles 141** and **142** of the Indian Constitution expressly reflect the meaning and nature of 'Judicial Activism'. In this paper, a perusal of both the concepts will be done in Indian scenario by taking the help of *ratio decidendi* of judgments pronounced by the Supreme Court of India. Apart from this, role of judiciary will be discussed in establishing norms for other organs through its judgments decided under the shadow of Constitution. The researcher will also try to have a look at Indian Laws mirroring both the concepts and their importance in current scenario. The definitions of various jurists will be analyzed and their impact upon the functioning of the three organs of democracy. The research methodology adopted shall be **basic and qualitative** in nature.

1. Background and Introduction

The concept of Human Rights can be traced to the natural law philosophers where many scholars like Locke, Rousseau etc. propounded the theory of 'Social Contract'. As far as Indian scenario is concerned, it can be noticed that from a long time, Indian National Congress had been demanding the rights against British Rule as a lot of Human Rights were violated during the British Tenure. It was one of the strong reasons to include the chapter of Fundamental Rights in Indian Constitution[1]. The idea of Judicial Review came into existence in 1803, when Chief Justice John Marshall of the US Supreme Court decided a case between William Marbury and James Madison. The Honorable judge announced that the acts of Congress were against the Constitutional provisions and therefore the Court is under no obligation to follow the same. From there only, the quest of 'judicial supremacy' was finished and a new principle was established that the judiciary has got the right to declare a law made by the legislature as null and void, if it is against the provisions of Constitution including the Fundamental Rights. The history of parliamentary democracy can be found after the World War I when Great Britain and France tried to persuade other countries as well to exercise this practice. Today, there are many countries in the world which are following this system of governance in which there is a head of the government selected by citizens of the country.

The concept of balancing of powers has been one of the most important in Indian scenario. Needless to emphasize the fact that for a democratic country to function properly, it is the duty of all three organs viz. Judiciary, Executive and Legislature to function in a parallel and smooth manner. Legislature has been empowered with the right of making laws, Executive to implement them and Judiciary, to ensure that there is no violation of Fundamental Rights as well as Legal Rights of the citizens (apart from doing justice with the parties). Judiciary has also an extra job of ensuring the fact that the Legislature and Executive are functioning in a proper and balanced manner. It has to keep a check upon the functioning of both the organs and is vested with the right to declare a law as null and void, if found ultra vires the provisions of Constitution of India[2].

Article 13(2) has been inserted in the Indian Constitution to protect the decency and importance of Part III comprising of Fundamental Rights. The framers of the Constitution never wanted to

[1] M.P. JAIN, INDIAN CONSTITUTIONAL *LAW* 846 (Lexis Nexis, Gurgaon, 7th ed., 2014)
[2] The Supreme Court of India declared NJAC Act-2015 as null and void citing the reason that it is unconstitutional.

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play with the sentiments and necessities of citizens (as well as foreigners up to some extent) and thus ensured the presence of these 'minimum' rights for their survival. But it is to be noted that in a democratic set up Parliament has got the power of making laws, therefore it is necessary to maintain a balance between the functioning of Parliament and the concept of Judicial Review for the proper running of a country. Actually, both legislature and judiciary are two pillars of a democratic set up defining and regulating the rights as well as duties of the citizens of a nation. So, it is important for both of them to have a nexus and reasonable collaboration in order to protect and safeguard the dignity of the democracy.

When we say democracy, we mean the government for the people, by the people and of the people[3]. Meaning thereby in a democracy, there is a government which is elected by the people for their benefits and welfare. It is a kind of government which has to work continuously for improving the status of its citizens by making and implementing the provisions beneficial for them. It is a non – ending process in which every citizen has the right to speak, put forward his ideas within the Constitutional domain. However one cannot deny the fact that rights and duties run parallel to each other and therefore citizens have to obey the duties, or in other words, have to exercise their rights by keeping the limitations and obligations in their minds as well.

Once it is known that these two organs have to function in a prolific manner, it becomes necessary to define and interpret their roles. The duty of Legislature (Parliament in Indian circumstances) is to make laws for the citizens of the nation. In India, Parliament has been authorized to make laws but it has to function within the Constitutional domain. Though, it has been given the right of amendment, it cannot play with the 'basic structure' doctrine. It is to be mentioned that in a democracy, Parliament is vested with immense powers, the primary one being law - making. The term 'Parliamentary democracy' has to be interpreted in a manner to define the established principles including *the process and procedure of law- making* within an organized democratic set up. The Parliament is a law making body which decides the functionality of a nation by adhering to the principles of Constitution (Indian Scenario). It would not be wrong to say that these MPs are elected by citizens of the country (as far as the process of election to the House of People is concerned) and the MLAs of various State Assemblies (as far as the process of election to Council of States is concerned). They have to decide and frame laws for the country by exercising their

[3] words of Abraham Lincoln, former President of the United States.

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legislative powers. Judicial Review, on the other hand is a process for regulating the exercise of power by the Parliament or any other kind of Legislature. The judiciary is given the power to keep a check upon the functioning of the legislature and to ensure that the latter is functioning as per the provisions of Constitution. Moreover, if any of the law made by the Legislature (which is included in the definition of State under Article 12 of the Indian Constitution) is against part III of the Constitution, the Courts have the power to strike down the law.

So, knowing the meaning and nature of both the concepts it becomes vital to understand the relation between them and their importance in ensuring the proper functioning of a country. Separation of powers has been done in order to ensure the fact that there is no encroachment by any organ of the democracy in other's domain. It is necessary to note that State has to take steps to ensure that there is separation of executive from judiciary. But, it doesn't mean that the judiciary loses its right to interfere (positively) in the functioning of executive. If such would have been the case, the concept of 'Judicial Review' had lost its importance. The framers of the Constitution were keen to include Article 50 in part IV of the Constitution, knowing the fact that it is non – justifiable[4]. They tried to serve the purpose of protecting three important concepts viz. Separate legislation and Independence of judiciary, as well as Judicial Review. It simply signifies the point that the Legislature, Judiciary as well as the Executive have to join their hands for ensuring a productive and fertile functioning of the nation, as all three of them are the branches which come out of the tree of democracy. There have been cases where judiciary and legislature came into conflict with each other defining their own domains and supremacy. However, for a nation to succeed, it is essential that all these three branches produce leaves of cooperation, commitment and coordination which ultimately are going to make the country strong. Parliament as well as the Courts has their areas defined but it won't be wrong to say that it is the judiciary which has been given a front seat as far as the protection of Indian Constitution is concerned. On the basis of above theory, it can be said that Judicial Review and Parliamentary Democracy should act as two sides of the same coin following the principle of mutual understanding required for the welfare of citizens and the nation. There should not be any clash of egos as both the organs viz. Judiciary as

[4] The Judiciary cannot be compelled to give a decision for the implementation of any provision contained in Part IV of the Constitution of India.

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well as the Legislature have their own significance in maintaining peace and harmony in the society as well as nation.

2. Constitutional Provisions

INDIAN CONSTITUTION

Judicial Review

Article 13 (2) of the Indian Constitution says that 'The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void'.

This simply reflects the point that the Parliament as well as the Governments are under an obligation to make laws for the country but those laws have to be intra vires the part III of the Constitution. Meaning thereby, any law made by the Parliament which is violating any of the Fundamental Right, the judiciary has got the right to declare those laws as unconstitutional[5].

Following are various Fundamental Rights, which are available to the citizens (and some to aliens as well) the breach of which gives the remedy to approach the judiciary:

- Articles 14 – 18 (Right to Equality)
- Article 21 A (Right to Education)
- Articles 19 -22 (Right to Freedom)
- Articles 23 and 24 (Right against exploitation)
- Articles 25 to 28 (Right to Freedom of Religion)
- Articles 29 and 30 (Cultural and Educational Rights)
- Articles 32 to 35 (Right to Constitutional Remedies)
- Right to Privacy

These are the Fundamental Rights of citizens enshrined in the Constitution of India and the State (including the Parliament as well as State Legislatures) has to make laws by protecting these rights and any law made in contravention of these rights will be declared as null and unenforceable by the Judiciary.

[5] There are 6 Fundamental Rights in Indian Constitution, from Article 14 to 35.

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Articles 226 and 32

The definition of the concept of Judicial Review would be incomplete without mentioning these articles. Under Article 226 of the Indian Constitution, the aggrieved party has got the right to approach the High Court and to get a remedy, if succeeds in proving that any of the Fundamental Right or Legal Right of him has been violated. High Courts have the right to issue writs in the form of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto.They have been given a vast jurisdiction as far as the concept of Judicial Review is concerned. They have the right to declare a law as null and void if that law is against the Fundamental Rights or Legal Rights of citizens.

Supreme Court, on the other hand is empowered to pronounce or exercise the power of Writ Jurisdiction only in case of violation of Fundamental Rights. So, it won't be wrong to say that the jurisdiction of High Court is larger than compared to Supreme Court as far as the concept of writ jurisdiction is concerned. But more or less, both the Courts have been given the power to declare laws as null and void, which are inconsistent with Fundamental Rights of citizens.

Article 136

Special leave to appeal by the Supreme Court

Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

This article gives the right to approach the Supreme Court directly when a person is aggrieved from the decision of a tribunal, Court etc. which wasn't decided on merits and there was violation of his Fundamental Rights. The apex Court exercises the 'appellate jurisdiction' under this provision and has got every right to decide the Substantial Question of Law as well as fact so evolved and can give any remedy within the Constitutional domain.

U.S. CONSTITUTION

Article III of the Constitution talks about the concept of Judicial Branch indirectly mentioning Judicial Review as well.

It can be seen that the Indian Constitutional Law has very well defined the concept of Judicial Review in different articles and has stated that the power of Judiciary to declare a law passed by

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the Parliament as null and void if it is against the provisions of Part III of the Constitution, is valid and the aggrieved party can claim the remedy under the above mentioned articles.

Parliamentary Democracy

Article 245 (1)

Parliament may make laws for the whole of India, or a part thereof.

This article empowers the Parliament to make laws for any part of the Country which clearly reflects the fact that in a democracy, the power of law making, primae facie vests with the Parliament.

Article 246 (1)

Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List).

This provision decides the subjects on which Parliament can make laws exclusively, i.e. having the whole sole right without any outside interference. The States are not entitled to legislate upon any matter which comes in List I of Seventh Schedule.

Article 253

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

This power given to the Parliament clearly establishes the fact that for implementation of an International Treaty, the Parliament has got the right to make laws for any part of the country or for the whole country. Meaning thereby, the Treaties shall be finalized by the Prime Minister (who is a member of either house of Parliament) and will be implemented as per the provisions of this article.

So, it won’t be wrong to say that the Constitution makers have very well defined and balanced the powers of Parliament keeping the fact in their minds that it is the legislature in a democratic organization which has got the duty of making laws for the nation and therefore, Parliament has been given the power to legislate upon the subjects of National Interest.

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3. Comparative Analysis with best practices

JUDICIAL REVIEW

The Canadian or the Australian Constitution does not contain any express provision for judicial review, but the Judiciary there has always tried to keep a check upon the functioning of legislature. Britain also does not follow the practice of direct judicial review. But Courts do resort to indirect judicial review at times. They interpret Constitutional provisions restrictively to protect civil liberties[6]. But, as far as the American Judicial system is concerned, the doctrine has an important role to play irrespective of the fact that there is no direct evidence of its presence in the Constitution. The efforts of American judiciary must be appreciated that it has defined and interpreted the concept in a manner which ensures protection of the needs and liberties of the citizens of United States.

As far as the Indian system is concerned, the Supreme Court in the case of *Rajasthan vs. Union of India*[7]has said that the Constitution is the supreme lex, the permanent law of the land and there is no department or branch of government above or beyond it. The Supreme Court is the ultimate interpreter of the Constitution and it will decide the power conferred on the each branch of the government.

So, if we compare the functioning of different organs of various democratic countries, we find that more or less every country has tried to include this concept if not expressly, then impliedly in its system. Their Courts have understood the fact that it is necessary to give some extra power to judiciary for ensuring the preservation of rights of the citizens. This cannot be said to be an imbalance of power as it is accompanied with a bonafide motive. There has to be an authority to maintain the balance of power and protection of individual interests and none other than judiciary can be the best for this. This power cannot be given to legislature as primae facie; it has got the task of framing laws for the country and under any circumstances, it won't hesitate to misuse this power. India has already accepted this system through its judicial decisions and various constitutional provisions. It was need of the hour that Supreme Court of India had to include this

[6] Supra Note 1 at 1605
[7] AIR 1977 SC 1361

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principle in the definition of 'basic structure' which forced the legislature to fold its hands and to exercise its powers within defined limits.

PARLIAMENTARY DEMOCRACY

British Position

The major characteristic of British Constitution is the 'doctrine of sovereignty' or 'supremacy' of Parliament. It simply means that Parliament has no defined boundaries while making laws and it can go up to any extent. Even the Courts have no jurisdiction to declare laws made by Parliament as null and void or *ultra vires* the unwritten Constitution. Even the constitutional principle can be changed by an ordinary process of the Parliament. The concept of 'Parliamentary supremacy' has actually, diluted the powers of Judiciary as well as the Executive.

Indian Position

The powers of Indian Parliament have been very well defined and mentioned in the Constitution of India. It has to function within the constitutional domain without any arbitrary or unjustified interest. Article 245(1) has used the words 'Subject to the provisions of the Constitution',which means that Parliament cannot exceed its limits and has to observe all the principles, rules and regulations of the Constitution in its working. For e.g. there are restrictions on the subjects on which Parliament can legislate etc.[8]

This tells us about the scenario in which the Parliament cannot exercise its powers completely as per it wish. As already said, rights are not absolute and therefore it can be established that Indian Parliament cannot play with the Constitutional provisions as it has not exactly the same powers like that of British Parliament.

American Position

It won't be a wrong statement if someone says that the American as well as Indian Judicial and Parliamentary system is somewhat similar to each other. American Congress cannot enact a law which is against Bill of Rights or which contravenes the scheme of distribution of powers etc. The

[8] Supra Note 1 at 115

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Constitution is written in form and is supreme and therefore a law made by the Congress, in order to be valid must be in conformity with it. If it is not so, it will be subject to Judicial Review.

We can see that Parliamentary democracy is so necessary today, that many countries have adopted it in a defined and prolific manner. If we compare the provisions of U.S. and Indian Constitution, we find that the power of Parliament is limited and within the Constitutional domain irrespective of the fact that the former is the world's oldest democracy and the latter, the world's largest democracy. Both Countries have the system of Parliamentary democracy but the laws made by the legislature can be subject to Judicial Review, i.e. the Judiciary can decide the validity of laws once they have been passed by the Houses of Parliament.

But, on the other hand, The British system of governance is quite different where the Parliament has been given the absolute powers without any limitation or restriction. It can work in any manner and is not accountable to anybody including the Judiciary or the Constitution. It is presumed that the Members of Parliament will make and define laws for the welfare of the citizens and therefore there is no need to keep a check on their functioning, as if allowed, would simply interfere in their working and legislative process of making laws. So, it won't be wrong to say that British Parliament is supreme as well as sovereign. India took the concept of democracy from Britain but gave the sovereign power to the Constitution of India, which is the law of the land. The framers of the Indian Constitution never wanted to define the powers of Parliament in an absolute manner and therefore didn't hesitate to include the concept of Judicial Review in the Constitution. Not only has the Legislature, even the judiciary had to work within the defined constitutional limitations as well. However, it can be said that the Indian Parliament has got the power to amend the provisions of Constitution, but it cannot be done at the cost of violation of basic structure including the principles of 'Secularism', 'Independence of Judiciary', 'Fundamental Rights' etc. Therefore, this step taken by the framers of the Constitution has to be appreciated as it has not only defined the boundaries of Legislature, but has also given the right to monitor the functioning of Parliament and other Legislative bodies and ensure that they are not playing with the provisions of Constitution, specially Part III. There have been many cases in Indian history where the tussle between the Judiciary and the Legislature was highlighted and resulted in degrading the reputation of the country in front of the whole world. So, it is need of the hour that Judiciary through its

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decisions and Parliament through its laws should try to create equilibrium for the better functioning of the country as well as the protection and preservation of rights of the citizens.

4. **Leading case laws**

JUDICIAL REVIEW

In *L. Chandra Kumar vs. Union of India*[9], C.J. AHMADI said that 'judges of the Superior Court have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations and therefore the power of Judicial Review over legislative action is an integral and essential feature of the Constitution, constituting part of its basic structure'.

Through this case, it can be understood that the Supreme Court decided the limitations of the legislature and included the term 'Judicial Review' in the definition of basic structure of Constitution.

In *Minerva Mills Ltd. vs. Union of India*[10], C.J. CHANDRACHUD observed that 'It is the function of the Judges, nay their duty, to pronounce upon the validity of laws. If Courts are totally deprived of that power, the fundamental rights conferred on the people will become a mere adornment because rights without remedies are as writ in water. A controlled Constitution will then become uncontrolled'.

In this case, the judiciary tried its best to deduce the idea that it is essential for the judges to keep a check upon the functioning of legislature. The honorable judge went on to say that in order to protect the rights of citizens; the judiciary will have to keep a vigilant eye upon the material of the legislature defining validity of laws.

In *Kesavananda Bharti vs. State of Kerala*[11], J. KHANNA, pointed out that 'As long as some Fundamental Rights exist and are a part of the Constitution, the power of Judicial Review has also

[9] AIR 1997 SC 1125
[10] AIR 1980 SC 1789
[11] AIR 1973 SC 1461

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to be exercised with a view to see that the guarantees afforded by those rights are not contravened…..Judicial Review has thus become an important part of our constitutional system'.

It can be very well understood that Justice Khanna was very much inclined towards the protection of basic rights of citizens of the nation and that's why tried to connect them with the concept of Judicial Review. He told that the meaning of Fundamental Rights would be finished if we don't give importance to judiciary while deciding the validity of laws.

In **Marbury vs. Madison** [12](decided by U.S. Supreme Court) The Court claimed that it had the power of Judicial Review and that it would review the constitutionality of the Acts passed by the Congress. It further said that the Constitution seeks to define and limit the powers of the legislature, and there would be no purpose in doing so if the legislature could overstep these limits at any time. Thus, the theoretical foundation of the doctrine of judicial review in U.SA., is that in exercise of its judicial functions, the Supreme Court has the power to say what the law is, and in case of conflict between the Constitution and a Legislative status, the Court will follow the former, which is the superior of the two laws, and declare the latter to be unconstitutional[13].

If we go for the perusal of these cases, we will come to a conclusion that the judiciary never hesitated in defining its own rights for the protection of citizens'. It tried to establish a link between its independence of using power and the various essential rights of citizens of the country. However, arguments raised were of no importance as the judiciary by then had already redefined and interpreted its rights under the shadow of Constitution. Needless to point out that the legislature was confined to work within the domain of the Constitution. The arbitrariness and capricious working of the legislature was challenged and it was none other than the judiciary which forced the former to rethink about its rights. It would be improper to say that judiciary kept its eyes closed and watched everything silently, rather its efforts and role in shaping, creating and redefining rights of the legislature have to be appreciated and welcomed.

PARLIAMENTARY DEMOCRACY

Framers of the Indian Constitution took the concept of democracy from the British system of governance. They were very enthusiastic about following a system in which the citizens will elect

[12] 5 U.S. 137
[13] Supra Note 1 at 1605

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their representatives for being governed. So, let's discuss some of the leading case laws which define the concept in detail.

In *Union of India vs. Prakash P. Hinduja*[14], it was held that Parliament exercises sovereign power to enact laws. No outside power or authority can issue a direction to enact a particular piece of legislation.

Through this case, the apex court tried to tell that in a democratic organization, it is the Parliament which has got the right to enact laws. However it has to be noted that, a government will be formed at the Centre only when there is election to the House of People through the process of adult franchise. Meaning thereby, the citizens through their representatives will have the final say (indirectly) in law making process through Parliament.

In *K. Nagaraj vs. State of Andhra Pradesh*[15], it was held by the Supreme Court that 'The legislature as a body cannot be accused of having passed a law for an extraneous purpose. Meaning thereby, a law passed by the Parliament can neither be invalidated on the ground of non-application of mind nor that of *mala fides*.

The basis of this judgment was that, it is implied that the Parliament will always exercise its power of law making with a bonafide intention as it has the supremacy in law making process within the Constitutional domain.

In *Hindustan Gum and Chemicals Ltd. vs. State of Haryana*[16], it was held that if a law is struck down by the courts as being invalid for an infirmity, Parliament can cure the same by passing another law by removing the infirmity in question.

This decision reflects the fact that even after Judicial Review, Parliament has got the right to correct its mistake and legislate upon the same subject again by respecting the Constitutional provisions.

[14] AIR 2003 SC 2612
[15] AIR 1985 SC 550
[16] AIR 1985 SC 1683

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In *P.U.C.L. vs. Union of India*[17], the Supreme Court opined that 'the entire scheme of Indian Constitution is such that it ensures the sovereignty and integrity of the country as a republic and the democratic way of life by parliamentary institutions based on free and fair elections.

This judgment told about the importance of elections and the role of Parliamentarians in making law for the citizens of India.

5. Conclusion and way forward

The framers of the Indian Constitution were very well aware of the fact that it is necessary to balance the powers given to various organs specially the Legislature and the Judiciary in order to ensure smooth functioning of the Country. They were of the view that a system should be made which comprises of various powers of the Parliament while making laws for the entire nation as well as the Judiciary whose role would be to interpret the laws made by the Parliament. It won't be wrong to say that in a democratic country, Parliament has its own weightage and importance as the members are selected directly by citizens of the nation reflecting their express as well as implied will and consent and thus empowering them to make laws for the nation. If Parliament wouldn't have been given these powers of law making, meaning of the term 'democracy' would have finished. So, it was an important step taken by the Constitution makers to ensure Parliamentary supremacy (but not sovereignty) while making laws for the entire nation. They were so keen in Parliamentary democracy that they gave the power to the Parliament to legislate upon the subjects mentioned in Union List, Concurrent List and even in some cases State List also. However, one may argue that the Parliament can make laws on these restricted subjects only mentioned in various lists, but this power is not less and rather empowers it to take decisions regulating almost every aspect of a citizen's life as well as the nation's benefit.

But apart from giving the power to Parliament, the framers were very well aware of the fact that there might be cases where the Parliament decides to misuse its powers. So, they included the concept of Judicial Review and empowered the Courts to declare any law made by the Parliament to be null and void if it contravenes any provision of Part III of the Constitution (Fundamental Rights). This doesn't mean that the members of the Drafting Committee of Constitution were very much interested in restricting the power of Parliament; rather they were inclined towards forming

[17] AIR 2003 SC 2363

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a system where there is equitable balance of powers. This was necessary as all three organs have to function together in order to ensure the success of a democratic set up.

So, if we go through the various provisions of Indian as well as other Parliamentary system of governance, we find that two things are clear:

1) The Legislature (Parliament) has been empowered to make laws for the Country.
2) The judiciary has been given the power to review the laws made by the Legislature (except in case of British Parliamentary System)

WHAT LIES AHEAD?

There cannot be any democratic system working efficiently in absence of proper coordination among its various organs. So, it can be advised that the governments should always try to function by respecting Constitution as well as the Judiciary as both of them are an important part of the system. There should not be any clash of ideas or assumptions but a proper cooperation should be maintained. There are many points which need improvements and additions for e.g. the British Parliament's domain has to be decided, cases of conflict between the Indian judiciary y's power of *examining* laws and Parliament's power of *making* laws have to avoided, The U.S. Constitution should also come up with a definite and well defined concept of Judicial Review empowering the Courts to carefully examine the validity of laws made by the Congress. The Parliament of India should also try its level best not to play with the principles of democracy as was done by Mrs. Indira Gandhi by proclaiming emergency and thus violating rights of the citizens. It can be concluded that no system is perfect, but it can be made to function in a manner suitable for everyone. There may be clash of interests, but that has to be solved in an amicable manner without touching the sentiments of democratic set up. If every organ of the democracy decides to function in a suitable manner, there won't be any case of violation of rights or something like that. The question of supremacy has to be left behind and a chain needs to be formed for ensuring the successful functioning of a country. The citizens have to play an important role as well by regulating their conduct and obeying their duties. They cannot claim their rights absolutely, rather have to respect the obligations imposed upon them as well. It can be argued that Parliamentary democracy and Judicial Review cannot be kept in the same basket as both of them have different flavors and both Legislature as well as the Judiciary have their areas defined which makes it necessary to follow the concept of Separation of Powers literally, but this theory cannot be

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welcomed on the ground that ‘absolute power corrupts absolutely’. So, none of the organ can be given any absolute and undefined power rather all the organs of a democratic country have to be a garland made up of flowers which can spread its essence in form of proper and genuine working for the welfare of the entire society in a nation.

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