

## CHAPTER-7

### CONCLUSION AND SUGGESTIONS

*To-day our jurisprudence, the advances made by natural justice for exceed old frontiers and if judicial creativity be lights penumbral areas it is only for improving the quality of government by injecting fair play into its wheels... Law lives not in a world of abstractions but in a cosmos of concreteness and to give up something good must be limited to extreme cases. If to condemn unheard is wrong, it is wrong except where it is overborne by dire social necessity.<sup>139</sup>*

-Hon'ble Supreme Court

The power of judicial review is an integral part of Indian Constitutional system and without it, there will be no government laws and the rule of law would become a teasing illusion and a promise of unreality. The judicial review, therefore, is a basic and essential feature of the Constitution and it cannot be abrogated without affecting the basic structure of the Constitution.

Judicial review is the constitutional weapon to interpret and enforce the fundamental law which is the solemn will of the sovereign people and to adjudicate the constitutional violations and declare the legislative law void if it is in derogation of the Constitution. It is a great institution for maintaining and preserving harmony between the rulers and the ruled and is highly instrumental in the creation of an ideal society by fulfilling the economic and social needs, by applying the Constitution to life and by reconciling the conflicting claims of the various elements in the society. Thus to create harmony between the fundamental law and the legislative law is the ultimate aim and object of judicial review in a modern democracy.

The origin of the power of judicial review of legislative action may well be traced to the classical enunciation of the principle by Chief Justice John Marshall

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<sup>139</sup>*Mohinder Singh Gill v. Chief Election Commissioner*, AIR 1985 SC 851

of the US Supreme Court in the year 1803, in *Marbury v. Madison*. But the origins of the power of judicial review of legislative action have not been attributed to one source alone. So when the Framers of our Constitution set about their monumental task, they were well aware that the principle that courts possess the power to invalidate duly-enacted legislations had already acquired a history of nearly a century and a half.

The essence of a federal Constitution is the division of powers between the central and the State government. This division is made by a written Constitution which is the supreme law of the land. There must be an independent and impartial authority to decide disputes between the Centre and the States or the States inter se. This function has been entrusted to the Supreme Court. It is the final interpreter and the guardian of the Constitution. This power is of paramount importance in a federal constitution judicial review.

Where Parliamentary sovereignty prevails and the legislature enacts atrocious, tyrannous and unjust laws or laws in violation of the constitution, the remedy available to the people is to remove the Government itself, or to get such law repealed by constitutional agitations, or to attract the mind of the legislatures by strong public opinion to amend or repeal such laws. But where the constitutional supremacy is in force, people have another effective remedy also, i.e. of challenging the legality of the law in law courts and in such case, they may not have any necessity of ending the Government itself. The underlying object of judicial review is to ensure that the authority does not abuse its power and the individual reviews just and fair treatment and not to ensure that the authority reaches a conclusion which is correct in the eye of law.

In the democratic state the court is the essential organ for maintaining the fundamental object of the constitution and for keeping the legislature within the limits assigned to its authority by the constitution for saving the people from the dangers of democratic tyranny and for materializing the aim of the constitution of establishing a harmonious and cohesive society based on ideal common morality.

In England, unlike other jurisdictions, Parliament is supreme. Hence only the actions and decisions of public authorities can be reviewed by the judiciary. The laws passed by the Parliament cannot be reviewed by the judiciary, except in

circumstances where it is contrary to the law of European Union. Though India follows the Parliamentary form of democracy, it is the constitution which is supreme. Therefore, not just legislation, but even a constitutional amendment which seeks to change the “basic structure” of the constitution can be called in question (for review) before the courts. The Constitution ensures that an administrative action is subject to judicial review by providing for a comprehensive scheme of judicial control over the administration under Article 32, 136, 226, and 227.

The Constitution of India while conferring power of judicial review of legislative action upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review.

The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. The judges of the superior courts have been entrusted with the task of upholding the constitution and to this end, have been conferred the 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.

In all history, no republic had as rich a heritage of the system of judicial review as in India. The nascent Republic of India possessed enormous sources, materials and precedents from its own as well as from several other countries which afforded it magnificent opportunity to build up a unique tradition for a new democracy based on constitutional supremacy. The roots of judicial review go long back into ancient India, ancient and medieval Europe, pre-Revolution England, and into Colonial and Post-Constitution regimes in the United States of

America and of certain other countries which had a heritage of judicial review from the United States, such as Canada, Australia, Ireland, etc.

India which had the heritage of the Rule of Law from ancient India acted strenuously and assiduously towards establishing the judicial control of the legislative powers. As a result the provisions for judicial review were incorporated in the Constitution itself. This facilitated the task of the Judiciary and relieved it of much strain. But subsequent governmental activates concerns constitutional amendments, curbing the fundamental rights and taking away of the power of judicial review to a considerable extent, have greatly jerked the democratic ideals and standards of the national. But, recent decisions of the Supreme Court of India in upholding the individual rights and liberties have yielded great pressures on the political discretions of the authorities in power.

In adopting the principle of judicial restraints in judicial review the Indian Judiciary has relied upon the American precedents. But circumstances in the two countries are mostly dissimilar. In the United States of America there was no specific provision of judicial review in the Constitution and the American Judges had to take great pains in establishing the system of judicial review and as such judicial restraint is too severe and stringent there. The Indian Judges have to evolve some more progressive models for judicial restraint. As for instances, in India, as in America, the court cannot take up the constitutional question suo moto nor can there be a case to decide the validity of a legislative Act if any party is not directly and positively affected by the Act. This system requires a complete modification. If the citizen by its very start had to check the injury the matter can be permitted to the taken to the court of law by any one and at any time. If the constitutionality can be challenged only in a case before the court, it becomes a matter of chance only, as it is possible that the lawyer engaged in that particular case may fail on detect unconstitutionality or a litigant may not be available to challenge the constutionality for a pretty long time. When a legislature has no right to enact any law in violation of the Constitution such law should be challengible in a court of law in any case and by any one and there should not be any impediment to it.

The Constitutional law is mainly concerned with the creation of the three great organs of the State, the executive, the legislature and the judiciary, the distribution of governmental function among them and the definition of their mutual relation. No doubts our Constitution Makers have incorporated Fundamental Rights in Part III and made them immune from interfere by laws made by the State. However, it is difficult in the absence of clear indication to the contrary, to support that they also intended to make those rights immune from constitutional amendment. The terms of Article 368 are perfectly general and empower Parliament to amend the Constitution, without any exception whatever. Had it been intended to save the fundamental rights from the operation of that provision, it would have been perfectly easy to make that intension clear by adding the proviso to that effect. Thus, there are two Articles each of which is widely phrased but conflicts in its operation with the other. Harmonious construction requires that one should be read as control and qualified by the other. Therefore, in the context of Article 13, “law” must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of constituent power, with the result that Article 13(2) does not affect amendments under Article 368.”

A constitution which is drawn up to meet the needs of the society at a given time cannot be adequate to meet the changing needs of the modern welfare state. It is realized that a Constitution however carefully projected into the future cannot aspire to make permanent the political solutions. Hence, the necessity of providing for a process of Constitutional amendment which is kept sensibly elastic is neither too rigid to invite with changing conditions revolutionary rupture, nor too flexible to allow basic modifications without the consent of the qualified majorities. The framers of the Indian Constitution, drawing upon the experience of other federal constitutions, have tried to avoid the defects revealed and difficulties experienced in the prescribed modes of the amendments of those constitutions. The amending process was devised having regarded the political conditions and the concept of the framers of the Indian Constitution as regard the role which a Constitution has to play in molding the life of the people, and in the achievement of a welfare state. It is devised to facilitate readjustment in the context of the forces generated by the British rule, to recognize the constituent

units on a rational basis, to achieve unity of the nation by economic, political and emotional integration and at the same time to provide for state autonomy already enjoyed by the units under the Government of India Act, 1935.

The framers of our Constitution took great care to provide for an independent and impartial judiciary as the interpreter of the Constitution and as the custodian of the rights of the citizens. The role that our judiciary has played over the years in ensuring the Rule of Law in general and in providing socio-economic justice to the people at large have been extremely noteworthy. We have had and have many outstanding judges and eminent members of the legal fraternity, who have contributed and are contributing immensely towards strengthening the edifice of Rule of Law in our Country.

The independence of the Judiciary which is a basic feature of the Constitution, compliments of separation of powers. This means in situational independence with institutional immunity, insulation and autonomy, primarily from the executive. The first instance of interference by the Executive, as far as the Supreme Court was concerned, was the suppression of senior judges namely Justice Hegde, Shelat and Grover and the appointment of Justice A. N. Ray as the Chief Justice of India. The superseded judges resigned in protest. In 1975 as a result a Supreme Court decision in *Indira Gandhi v. Raj Narain*, which upheld the decision of the Allahabad high Court declaring Prime Minister Indira Gandhi's election as void, Emergency was declared and the powers of judicial review were severely curtailed.

The year 1976 also saw the enactment of the 42<sup>nd</sup> Constitutional Amendment which introduced Articles 323-A and 323-B which was an effort to curb the independence of Judiciary. Article 323-A empowers the Parliament and Article 323-B the State Legislature to create tribunals which could adjudicate upon disputes which were previously subject to the jurisdiction of the High Court or the Supreme Court. There was provision made for transferring pending cases from the High Court to these specialized tribunals. The power of adjudications so transferred included the power of judicial review which allows Judges of the High Court and the Supreme Court to determine the legality of executive action and the validity of legislation passed by the Legislature.

It is unreasonable to attribute to the makers of the Constitution, who had so carefully provided for the independence of the judiciary an intention to destroy the same by an indirect method. The Indian Supreme Court while liberally interpreting the rights could not stop at merely those rights that had been recognized as judicially enforceable rights known as civil liberties. The Constitution of India includes socio-economic rights such as the right to primary education (Article 45), the right to adequate means of livelihood [Article 39(1)] or the right to work (Article 41) in the directive principles of state policy contained in Part IV of the Constitution. These social and economic rights have been recognized in the Universal Declaration of Human Rights [Article 23(1), right to work [Article 23(3)] right to just and favorable remuneration; (Article 26) right to education and in the International Covenant of Economic, Social and Cultural Rights [Article 7(a) right to fair wage and Article 6 right to work]. It was generally felt and it is true also that these rights cannot be effectively made enforceable through judicial process. They require legislative and executive action.

The Indian Supreme Court and the High Court's expanded judicial access in furtherance of its activist role by entertaining letters from persons interested in opposing illegal acts, allowing social activist organizations or individuals to take up; cudgels on behalf of the poor and disadvantaged sections who possessed neither knowledge nor resources for activating the legal process;; and permitting citizens to speak on behalf of a large unorganized by silent majority against bad governance, wrong development, or environmental degradation. The wide definition of 'life and liberty' as interpreted by the Courts helped various types of issues to come before the Courts. The doors opened by the Constitutional Courts in pursuance of its determination to keep open the legal process more participatory and democratic led to the PILs being used liberally for various types of relief, such as for protecting the fundamental; rights of under trial prisoners in jails, amelioration of the conditions of detention in protective homes for women, for medical check-up of remand home inmates, prohibition of traffic in women and relief for their victims, for the release of bonded labour, enforcement of other labour laws, e.g. full and direct payment of wages to workers or prohibiting the employment of children in construction work, acquisition of cycle-rickshaws by

licensed rickshaws pullers, relief against custodial violence to women prisoners while in police lock up, for environmental protection, for enforcement of gender equality and protection from sexual harassment and the likes.

It must be borne in mind that in the light of multiple scams which have surfaced in the present political regime, not even once has the judiciary made any attempt to step into the shoes of political Executive and appoint a new Prime Minister or any other Minister. Reciprocally, it is expected that the Executive either political or administrative, will not have any role to play in the appointment of High Court or the Supreme Court Judges.

Parliamentary democracy was identified by our Founding Fathers to be the most suitable system of governance, as they perceived that only a democratic set up based on Parliamentary system with a federal structure would be able to solve effectively the myriad socio-economic problems that the nation faced at the time of independence and would be able to deal with our vast array of diversity on all fronts of our national existence.

One of the characteristic features of several constitutional systems across the world is the doctrine of separation of powers, providing for the functions of the three primary organs of the State – the Executive, the Legislature and the judiciary to be carried out by separate bodies. The system envisages an Executive with governing powers; an elected Legislature with the three main functions of representing popular will, enforcing the accountability of the Government and making laws; and the judiciary, to administer civil and criminal justice both between private persons and as between private persons and the state. It also entails that none of these organs should be vested with absolute or unbridled powers, so that no organ or individual assumes power of despotic proportions.

Our Constitution makers provided in our constitution, that all the three organs of the state, namely, the Legislature, the Judiciary and the Executive would have their distinct roles to play. Through the provisions of the Constitution, they enumerated their powers and responsibilities to be the facilitators of national weal, leaving hardly any scope for doubt or confusion in their mutual relationship.

The doctrine of separation of powers is an integral part of the evolution of democracy itself. The doctrine, which provides for checks and balances amongst the organs of the state, is one of the most characteristic features of our constitutional scheme.

Our great leaders who framed our Constitution were able to foresee that excessive power, if vested with any of the three organs of State, could possibly lead to unwarranted situations of conflict, which could compromise the quality and content of our democracy itself. Accordingly, they visualized that all organs of the State would need to co-exist harmoniously in a joint and participatory role and with mutual respect amongst them, so that they could work in a smooth and co-ordinate manner in the areas demarcated for them, for the larger national well-being. In our constitutional scheme, there is no exclusive primacy of any one organ nor does any organ have absolute power, which is anathema to democracy.

As the Supreme representative and law-making body, the Legislature has been accorded a pre-eminent position in our constitutional set up. The power to make laws, its control over the nation's purse, the Executive being made accountable to the popular house, its role in the election and impeachment of the head of State as well as in the removal of incumbents of high constitutional offices, its constituent powers, and its powers during an emergency, testify to such pre-eminence. Yet, the Legislature must function within the confines as laid down by the Constitution.

By its very representative character, in a democracy, no organ other than the legislature is better placed to understand the people's priorities. It is expected of the people's representative bodies to voice people's problems, their demands, their urges and aspirations, and, in the ultimate analysis, to protect and promote their fundamental democratic rights.

All institutions of governance in a democracy are expected and are indeed required to remain accountable to the people directly or indirectly. It is this notion of abiding account ability to the people, which holds the day to the success and sustenance of democracy. Elaborate procedure has been laid down for the Legislature to discharge its function of enforcing the accountability of the Executive to the Legislature and thereby to the elected representatives of the

people and ultimately to the people themselves. The Members of the Legislature on their turn remain accountable to the people, as they have to face the electorate every five years and their tenure depends on the people's verdict.

Preamble of the Indian Constitution itself promises to secure justice which is social, economic and political. Therefore Constitution enhanced the conventional role of judiciary to deliver social, economic as well as political justice to all its subjects. The Indian Constitution assigned the functional role to the Supreme Court in its various provisions from Articles 131 to 147. Supreme Court is given plenary powers under Article 142 to make any order for doing complete justice in any cause or matter and a mandate in the Constitution under Article 144, to all authorities, Civil and Judicial, in the territory of India to act in aide of the Supreme Court. Article 32 provides remedies for enforcement of Fundamental Rights.

There was a lot of appreciation when our Supreme Court was pleased to hold that justice can be provided, through an innovative procedure, to the oppressed citizens, especially those belonging to the vulnerable sections of the community, who have no means, no facilities and, in fact, no possibility on their own to approach the Court, even in cases of glaring injustice and discrimination, by giving a liberal meaning to the concept of locus standi, without in any way, entering into the areas preserved for the legislature or the executive. I was one of many, who felt greatly excited by the possibility of judicial redress to those who were till then the oppressed victims with no hope of redressal.

There are umpteen instances where judiciary has intervened in matters entirely within the domain of the executive, including policy decisions. An important instance has been the direction of the Supreme Court on the Central Government for providing food grains to the poor people free of cost prompting the Prime Minister to remind the Court that it should not deal with policy decisions.

No one can question the Courts concern for the well-being of the people, which obviously includes their right to have food security. But what can the Court do to ensure it? The Court clarified that it made an order and not gave any suggestion. Every Court order should be implementable by processes known in and provided by laws themselves. But except making an extremely popular "decision," which

received a lot of public approbation, it did not really serve any purpose as an “order” of the Court. Populism should not influence judicial interventions.

It is often seen that the judiciary is applauded for its “activism.” The issue involved, however, is more serious than the perception of a section of the people, who have access to the media. It is about the very basis of our constitutional scheme of power-relationship. Self-restraint is the primary balancing element in the exercise of judicial power.

Almost all votaries of judicial activism, including the Humble judges themselves, while exercising power in such assumed jurisdiction justify it on the supposed failure of the legislature or the executive authorities in taking proper action to mitigate the people’s grievances or to find solutions to people’s problems.

Now, in such a case, can any other organ of the State take up on itself the right to exercise judicial powers on the pleas that judiciary has not adequately been able to do so? Obviously neither the legislature nor the executive can do so, because it has no such power under the Constitution. We can assess the validity of some contentions by extreme examples. So, in my submission, no organ under the Constitution can take upon itself the function of any other organ on the ground that there is supposed malfunctioning or non-functioning or inadequate functioning of that particular organ.

In a democratic set up, the space and role of every institution is expected to be clearly earmarked in the Constitution that creates it. It is in the effective discharge of those functions, that it serves the people for whom the institutions are meant. This can be accomplished without intruding into or trivializing the role of the co-ordinate institutions or without undermining the importance of fundamental democratic process. To my mind, when institutions succeed in functioning strictly within the domain assigned to each, not only do they grow in public esteem, but they also create the ideal conditions for the effective functioning of the entire system.

Undoubtedly, the people look up to the Courts, which are temples of justice, with great expectation, hope and confidence. Similarly, people look up to the Parliament and State Legislatives, of which the Executive is a part, also with expectation and hope, because under the Constitution, the Parliament is the

supreme legislative institution of the country, the people's institution par excellence, through which laws for the people are made and executive accountability is enforced. We must recognize that Constitution is the supreme law and no organ of the State should go beyond the role assigned to it by the Constitution. It is the duty of all concerned, including the legislature, the Executive and the judiciary, to ensure that this balance is scrupulously adhered to. No organ can be the substitute of another. Visionary leaders of our country strove all through their life to preserve and protect this lofty ideal of our constitutional system, and ideal which needs repeated reiteration, as it has an eternal bearing on our parliamentary policy and constitutional and democratic framework.

Issues like intolerance, divisiveness, corruption, confrontations and disrespect for dissent are increasingly vitiating our socio political system. The cynicism that is creeping into the minds of the people, especially the youth, about the functioning of our democratic structure is undoubtedly a matter of grave concern. The greatest challenge of good governance is to bridge the gap between the expectations of the people and the effectiveness of the delivery mechanisms.

Both in spirit and in letter, the constitutional scheme of separation of powers and, with it, the checks and balances, that are indispensable to democratic governance, will be respected, and the spirit of moderation and the mutual respect, animated by a common commitment to the Constitution are followed in all cases and our efforts are fully directed towards improving the social and economic conditions of our people, which they have a right to expect that of us.

The court in India and specially the Supreme Court, has assumed a unique position by discharging the function of judicial review and giving constitutional decisions of wider importance to the nation. The court in India has to shape the destiny of the nation by its constitutional decision which have great impact on the individual and the social life. "The tendency to view the court as unique and relatively isolated body is largely the result of its power of judicial review, they act as a major instrument of social equilibrium and within their sphere of jurisdiction fulfill function that cannot adequately be performed by any other organ of Government.

The basic structure doctrine of the Supreme Court should not be seen as an interpolation that challenges the supremacy of the Constitution. It should also not be seen as an artificial construct based on the physical structure of the Constitution. It should be seen as an attempt to identify the moral philosophy on which the Constitution is based. Seen in that manner, the Supreme Court may well be able to isolate some parts of the Constitution, albeit small ones, as being inconsistent with rest. For reasons of propriety and mutual respect under the separation of powers doctrine, the Court will obviously strain hard to not have to do that explicitly.

Our judiciary in many occasions rightly held, that if it comes to the notice of the Court that some fundamental right of the citizens has been impaired by any legislative enactment, relief for the declaration of unconstitutionality cannot be denied merely on a technical plea. The court being the constitutional protector of the rights of the people, the relief, in genuine case of constitutional violations, flows as a matter of natural consequence. Even the political thinkers have appreciated the stand taken by the Supreme Court. As Moraji Desai observed – “Our Constitution has invested the Supreme Court with the duty of preserving and defending our fundamental rights against precisely such errors and inroads and we must say the court has discharged the duty with dignity, courage and erudition. (The Statesman, Friday, February 13, 1970, at p. 9.)

There is no denying the fact that there have been occasions when judicial pronouncements have not been palatable to the governments and the legislatures in India. The exercise of the power of judicial review has at times generated controversies and tensions between the courts, the executive and the legislature. For example, the judicial pronouncements in the area of property relations, legislative privileges and constitutional amendments have been controversial and have even led to several constitutional amendments which were undertaken to undo or dilute judicial rulings which the central government did not like. But, in spite of all these hurdles, the institution of judicial review has a vibrancy of its own and has even been declared as the basic feature of the constitution.

Even though our Constitution does not accept strict separation of powers, it provides for an independent judiciary with extensive jurisdiction over the acts of the legislature and the executive. Independence and integrity of the judiciary in a democratic system of government is of the highest importance and interest not

only to the judges but also to the people at large who seek judicial redress against perceived legal injury or executive excess. Judicial review is the basic structure, independent judiciary is the cardinal feature, and an assurance of faith enshrined in the Constitution. The need for independent and impartial judiciary is the command of the constitution and call of the people.

Sometimes, it is argued that the strength of the courts has weakened other parts of the government. This legal debate raises the important and inevitable question that how far this statement holds true about judicial review powers and capacities of the Indian Judiciary. The Indian Constitution, like other written Constitutions, follows the concept of 'Separation of powers' between the three sovereign organs of the Constitution. The Doctrine of Separation of powers stated in its rigid form means that each of the organ of the Constitution, namely, executive, legislature and judiciary should operate in its own sphere and there should be no overlapping their functioning. The Indian Constitution has not recognized the doctrine of separation of powers in its absolute form but the functions of the different organs have been clearly differentiated and consequently it can very well be said that our constitution does not contemplate assumptions, by one organ of the functions that essentially belong to another.

The power of judicial review has in itself the concept of Separation of Powers an essential component of the rule of law, which is a basic feature of the our Constitution. Every State action has to be tested on the anvil of rule of law and that exercise is performed, when occasion arises by the reason of a doubt raised in that behalf, by the courts. The power of judicial review is incorporated in Article 226 and 227 of the Constitution insofar as the High Courts are concerned. In regard to the Supreme Court Article 32 and 136 of the Constitution, the judiciary in India has come to control by judicial review every aspect of government and public function.

The legislature may remove the defect, which is the cause for invalidating the law by the court by appropriate legislation if it has power over the subject matter and component to do so under the constitution. The primary duty of the judiciary is to uphold the constitution and the laws without fear or favor, without being biased by the political ideology or economic theory. Interpretation should be in

consonance with the constitutional provisions, which envisage a republic democracy.

The constitution-makers have reposed great confidence and trust in Indian Judiciary by conferring on it such powers as have made it one of the most powerful judiciary in the world. The Supreme Court has from time to time indulged in genuine and needful judicial activism and judicial review. It gave birth to the famous and most needed "Doctrine of Basic Structure".

The ultimate scope of judicial review depends upon the facts and circumstances of each case. The dimensions of judicial review must remain flexible. It is cardinal principle of our constitution that no one howsoever highly placed and no authority lofty can claim to be the sole judge of its power under the constitution. The rule of law requires that the exercise of power by the legislature or by the judiciary or by the government or by any other authority must be conditioned by the constitution. Judicial review is thus the repository of the supreme law of the land. It is a vital principle of our constitution which cannot be abrogated without affecting the basic structure of the Constitution.

Judicial Review of constitutional amendments may seem involving the court in political question, but it is the court alone which can decide such an issue. The function of interpretation of a constitution being thus assigned to the judicial power, the question whether the subject of law is within the ambit of one or more powers of the legislature conferred by the constitution would always be a question of interpretation of the Constitution.

It is true that the courts have the wide powers of judicial review of constitutional and statutory provisions. These powers, however, must be exercised with great caution and self-control. The courts should not step out of the limits of their legitimate powers of the judicial review.

Judicial activism is defined as the shaping of the basic law through a bold act. It is a conscience choice of the judges exercised with the power of judicial review to meet the needs of changing time. The voluntary practices of spreading awareness through legal aid movements, social action groups, Lok Adalats, PILs, is what judicial activism is all about. It is because of judicial activism that courts

take suo motto (on their own) initiatives in certain cases. Fast track courts and speedy trials are examples of the same.

Judicial activism is a part of the evolution process of judicial review. It has provided a moral leadership to the existing judiciary system because of which it is a symbol of hope for the people, as they are at the receiving end of the law making process.

Judicial review has not only strengthened the three organs of the state but has also emphasised how important it is to keep the laws dynamic so that they prove to be useful with every phase. This power of review has significantly highlighted that judiciary is not only a legal structure but also political structure having its roots in particular socio-economic-political context.

More and more emphasis was being given on the International Standards, so as to secure the citizens the same rights and freedoms that were available to their foreign counterparts in their respective countries. Thus began the trend of making a constant reverence to the provisions of Universal Declaration, as and when a case involving violation of rights guaranteed under Part III and Part IV was brought before the Court. The Hon'ble Supreme Court looked into the serious issues arising from the proliferation of economy and the increasing production pollution (as a result of industrial and other ancillary activities) and dealt with them by reading the various documents, along with the Universal Declaration and extending the scope and purview of the constitutionally granted freedoms. of inclusion of International law principles to Municipal law, was one of the causes for the change.

Under the heading of Economic, Social and Cultural Rights, all governments are expected to try progressively to improve the living conditions of their citizens. For example, they should try to guarantee the right to food, clothing, housing and medical care, the protection of the family and the right to social security, education and employment. They are to promote these rights without discrimination of any kind. The conventional wisdom had been that human rights are indivisible, meaning that respect for civil and political rights could not be divorced from the enjoyment of economic, social and cultural rights. Expressed

another way, authentic economic and social development could not exist without the political freedom to participate in that process, including the freedom of dissent.

Role of judiciary has always been to deliver justice to the matters which are brought in front of it. Conventionally this role was perceived as to deliver justice by strictly following the laws in vogue. But fulfilment of the promise given in preamble to secure Justice (social, economic and political) to all its citizens was not possible by the judiciary while strictly following its conventional role of interpreting law as legislated. It required a broader interpretation by judicial creativity and judicial activism to bring a social change keeping public interest in view.

The Court has for all practical purposes disregarded the separation of powers under the Constitution, and assumed a general supervisory function over other branches of governments. The temptation to rush to the Supreme Court and High Courts for any grievance against a public authority has also deflected the primary responsibility of citizens themselves in a representative self-government of making legislators and the executive responsible for their actions.

At the same time, judicial activism should not lead to the dilution of separation of powers which is the Constitutional scheme. Each organ of our democracy must function within its own sphere and must not take over what is assigned to the others. The balance of power between the three organs of the state is enshrined in our Constitution. The Constitution is supreme. The equilibrium in the exercise of authority must be maintained at all times. The exercise of powers by the legislature and executive is subject to judicial review. However, the only check possible in the exercise of powers by the judiciary is self-imposed discipline and self-restraint by the judiciary itself.

Judiciary in India enjoys a very significant position since it has been made the guardian and custodian of the Constitution. It not only is a watchdog against violation of fundamental rights guaranteed under the Constitution and thus insulates all persons, Indians and aliens alike, against discrimination, abuse of State power, arbitrariness etc. The Supreme Court has, over the years, elaborated the scope of fundamental rights consistently, strenuously opposing intrusions into

them by agents of the State, thereby upholding the rights and dignity of individual, in true spirit of good governance. In case after case, the Court has issued a range of commands for law enforcement, dealing with an array of aspects of executive action in general.

The Supreme Court of India has earned a global reputation for its superior standards and lofty ideals. Landmark judgments passed by this Court have not only strengthened the legal and constitutional framework of our country but are widely cited by the Judiciary in many other countries seeking to build progressive jurisprudence. The Bench of the Supreme Court is known for its intellectual wisdom and legal scholarship. The Supreme Court has over the years been served by Judges who have provided intellectual depth, vigour and vitality necessary to create a world-class institution. I am confident this Court will always remain a sentinel of justice.

The power of judicial review is confined not merely to deciding whether in making the impugned laws the Central or State Legislatures have acted within the four corners of the legislative lists earmarked for them; the courts also deal with the question as to whether the laws are made in conformity with and not in violation of the other provisions of the Constitution. As long as some fundamental rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by those rights are not contravened. Judicial has thus become an integral part of our constitutional system and a power has been vested in the High Courts and the Supreme Court to decide about the constitutional validity of the provisions of statutes. If the provisions of the statute are found to be violative of any article of the Constitution, which is the touchstone for the validity of all laws, the Supreme Court and the High Courts are empowered to strike down the said provisions.

The scope of judicial review in India is not as wide as in USA. The American Supreme Court can declare any law unconstitutional on the ground of its not being in “due process of law”, but the Indian Supreme Court has no such power. In India, outside the limitation imposed on the legislative powers, Parliament and State legislature are supreme in their respective legislative fields and the Court has no authority to question the wisdom or policy of the law duly made by the

appropriate legislature. Another reason is because the Indian Supreme Court has consistently refused to declare legislative enactments invalid on the ground that they violate the natural, social or political rights of citizens, unless it could be shown that such injustice was expressly prohibited by the Constitution.

Judicial Review, a concept of Rule of Law, is the check and balance mechanism to maintain the separation of powers. Separation of power has rooted the scope of Judicial Review. It is a great weapon in the hands of the courts to hold unconstitutional and unenforceable any law and order which is inconsistent or in conflict with the basic law of the land. The two principal basis of judicial review of administrative actions are “Theory of Limited Government” and “Supremacy of constitution” with the requirement that ordinary law must confirm to the Constitutional law.

The power of judicial review is an integral part of Indian Constitutional system and without it, there will be no government laws and the rule of law would become a teasing illusion and a promise of unreality. The judicial review, therefore, is a basic and essential feature of the Constitution and it cannot be abrogated without affecting the basic structure of the Constitution. In judicial review, the court is not concerned with the merits or correctness of the decision, but with the manner in which the decision is taken or order is made. A court of law is not exercising appellate power and it cannot substitute its opinion for the opinion of the authority deciding the matter.

It is a cardinal principle of Indian Constitution that no one howsoever highly placed and no authority lofty can claim to be the sole judge of its power under the Constitution. The rule of law requires that the exercise power by the legislature or by the judiciary or by the government or by any other authority must be conditioned by the Constitution. Judicial review is thus the touchstone and repository of the supreme law of the land. In recent times, judicial review of administrative action has become extensive and expansive. The traditional limitations have vanished and the sphere of judicial scrutiny is being expanded. Under the old theory, the courts used to exercise power only in cases of absence or excess or abuse of power. As the State activities have become pervasive and

giant public corporations have come in existence, the stake of public exchequer justifies larger public audit and judicial control.

The power of judicial review has in itself the concept of separation of powers an essential component of the rule of law, which is a basic feature of the Indian Constitution. Every State action has to be tested on the anvil of rule of law and that exercise is performed, when occasion arises by the reason of a doubt raised in that behalf by the courts. The power of Judicial Review is incorporated in Article 226 and 227 of the Constitution insofar as the High Courts are concerned. In regard to the Supreme Court Articles 32 and 136 of the Constitution, the judiciary in India has come to control by judicial review every aspect of governmental and public function.

Today, we find that in third world countries, there are large number of groups which are being subjected to exploitation, injustice and even violence. In this climate of conflict and injustice, judges have to play a positive role and they cannot content themselves by invoking the doctrine of self-restraint and passive interpretation. The judges in India have fortunately a most potent judicial power in their hands, namely the power of judicial review. The judiciary has to play a vital and important role not only in preventing the remedying abuse and misuse of power but also in eliminating exploitation and injustice.

Notably, over the decades, the Supreme Court has affirmed that both the Fundamental Rights and Directive Principles must be interpreted harmoniously. It was observed in the *kesavananda Bharati case*, that the directive principles and the fundamental rights supplement each other and aim at the same goal of bringing about a social revolution and the establishment of a welfare State, the objectives which are also enumerated in the Preamble to the Constitution.

This approach of harmonizing the fundamental rights and directive principles has been successful to a considerable extent. The Supreme Court has interpreted the 'protection of life and personal liberty' as one which contemplates socio-economic entitlements especially in public interest cases.

In post-independence India, the inclusion of explicit provisions for 'judicial review' were necessary in order to give effect to the individual and group rights guaranteed in the text of the Constitution. Dr. B.R. Ambedkar, who chaired the

drafting committee of our Constituent Assembly, had described the provision related to the same as the 'heart of the Constitution'. Article 13(2) of the Constitution of India prescribes that the Union or the States shall not make any law that takes away or abridges any of the fundamental rights, and any law made in contravention of the aforementioned mandate shall, to the extent of the contravention, be void.

While judicial review over administrative action has evolved on the lines of common law doctrines such as 'proportionality', 'legitimate expectation', 'reasonableness' and principles of natural justice, the Supreme Court of India and the various High Courts were given the power to rule on the constitutionality of legislative as well as administrative actions to protect and enforce the fundamental rights guaranteed in Part III of the Constitution. The higher courts also approached to rule on questions of legislative competence, mostly in the context of Centre-State relations since Article 246 of the Constitution read with the 7<sup>th</sup> Schedule, contemplates a clear demarcation as well as a zone of intersection between the law-making powers of the Union Parliament and the various State Legislatures.

Hence the scope of judicial review before Indian courts has evolved in three dimensions – firstly, to ensure fairness in administrative action, secondly to protect the constitutionally guaranteed fundamental rights of citizens and thirdly to rule on questions of legislative competence between the center and the states. The power of the Supreme Court of India to enforce these fundamental rights is derived from Article 32 of the Constitution. It gives citizens the right to directly approach the Supreme Court for seeking remedies against the violation of these fundamental rights.

It is now established law that the courts while exercising jurisdiction under article 32 and 226 of the Constitution can award compensating and exemplary cost for the violation of a person's fundamental rights and for the abuse of power by the State. In *Nilabati Behra v. State of Orissa*, the court held that a claim in public law for compensation for violation of human rights and abuse of power is an acknowledged remedy for the enforcement and protection of such rights. In such a situation, the court observed, that leaving the victim to the remedies available in

civil law limits the role of constitutional courts as protector or guarantors of fundamental rights of the citizens. Thus courts are under an obligation to make the State or its servants accountable to the people by compensating them for the violation of their fundamental rights.

Judiciary plays a very important role as a protector of the constitutional values that the founding fathers have given us. They try to undo the harm that is being done by the legislature and the executive and also they try to provide every citizen what has been promised by the Constitution under the Directive Principles of State Policy. All this is possible thanks to the power of judicial review.

In other words, Rule of Law presupposes division of powers and a system of checks and balances intended to prevent authoritarian and arbitrary exercise of public power. It is in this context that the legal system becomes relevant for Rule of Law. In a written Constitution, the Judiciary exercising powers of judicial review performs a significant role in the maintenance of Rule of Law by resolving disputes between the citizen and the state. The complementarily of constitutional institutions and their capacity to function within their legitimate jurisdictions enable Rule of Law to be a living reality in constitutional governance.

The Supreme Court and the High Court's engaging concurrent jurisdiction in determining constitutionality of administrative action and of legislation, enjoy vast powers of what is called "judicial review", a vital instrument for preventing arbitrariness in State action. Given the range and scope of powers under judicial review, the Indian Supreme court is possibly the world's most powerful court safeguarding Rule of Law in the world's largest democracy.

Rule of Law is imperative for a democratic regime in which equality, basic rights and popular will are respected. Rule of a law does not exist where arbitrary exercise of power prevails. Government by the "Rule of Law" envisages judicial review as an inevitable projection of the fundamental principles implicit in the doctrine. Public law enforces the proper performance by public bodies of their public duties.

Administrative Law is a branch of Public Law concerned with the various organs of government engaged in administering public policies. This is the concept of

legal control of government under the Rule of Law. A constitutional guarantee of rights, as in India, wherein constitutional remedy is also guaranteed under Article 32 in the Supreme Court and under Article 226 in the High Courts, transforms the court's power into a constitutional mandate for the protection and enforcement of the rights. Rule of Law is firmly entrenched in this manner.

Upholding Parliament's power under Article 368 to amend the Constitution and place laws in the Ninth Schedule, the Court said it was a limited power, which was subject to judicial review. Deciding a reference made by a five member constitution bench on the justifiability of laws placed in the Ninth Schedule after April 24, 1973 (when the Supreme Court propounded the 'basic structure doctrine' in the *Keshavananda Bharati*, will be open to challenge. Laying down the tests to be adopted to examine the validity of laws placed in the Ninth Schedule, the Court said it would have to be seen if the law in question violated any fundamental right.

Thus, the Supreme Court has upheld Parliament's power to place a law in the Ninth Schedule. But it said such laws are open to judicial scrutiny and do not enjoy blanket protection. The process of judicial review, thus, is neutralising and nationalising influence over various interest groups and classes in the community to keep them sufficiently balanced.

In a democracy, the power is held by the majority and these vast powers can be misused to suppress the minority. By virtue of the power of judicial review, the Judiciary protects the minority over majority against the capricious, tyrannical and whimsical power of the State. In the ultimate analysis, the aged criticisms against the process of review like usurpation of powers by the Judiciary, overthrowing of separation of powers, etc. need not be answered since judicial review is the only potent weapon to check the omnipotent Legislature and the Executive from arbitrariness. Moreover, the existence of legislative reprobation of judicial power under the protective umbrella of the IX Schedule, asserts the significance of judicial review.

It is needless to say that the judiciary and the judicial decisions, over the years, have shaped the Indian polity to a great extent. The role played by the judiciary has been pivotal in ensuring a process of fairness in governance and

administration. Thus, be it the pragmatic interpretation of Article 19 or Article 21 or propounding doctrines of equality, the judicial decisions in India have infiltrated through every strata of the society. Judiciary, as one understands, is the edifice of a strong democracy as it endeavours not merely to interpret the black letter of the law but also adopting an activist stance of creatively interpreting it to suit the needs of the society. Our Constitution does not use the expression 'freedom of information' in Article 19 but it is declared by the judiciary that it is included in Article 19(1) (a) which guarantees freedom of speech and expression. The primary object of the judiciary is to provide justice to each and every individual in the country and put a cap on growing corruption.

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The Supreme Court of India has earned a global reputation for its superior standards and lofty ideals. Landmark judgments passed by this Court have not only strengthened the legal and constitutional framework of our country but are widely cited by the Judiciary in many other countries seeking to build progressive jurisprudence.

In view of the present study and findings derived from this work, conclusion that can be safely drawn as follows:

I. The Constitution of India established 'rule of law' in the country and entrusted the responsibility of "watching" the functioning of national institutions, "policing" the corridors of power and "balancing" various national interests to the judiciary. The judiciary is therefore the balancing force and has "a socio-economic destination and a creative function." In order to enable it to discharge its constitutional obligation, it was made 'independent' and this characteristic was treated as 'basic' to the constitutional scheme. The Supreme Court decision in *Keshavanand Bharti's case* in 1973, brought out this important facet of the judiciary and clarified that it formed part of the 'basic structure' of the Constitutional scheme.

The judiciary is separate and independent of the executive to ensure impartiality in administration of justice. The judiciary has a pivotal central role to play in our thriving democracy and shuns arbitrary executive action. The higher judiciary has been empowered by the constitution to pronounce upon the legislative competence of the law making bodies and the validity of a legal provision. The range of judicial review recognized in the higher judiciary in India is the widest and most extensive known to any democratic set up in the world.

The concept of judicial Review has its foundation on the doctrine that the constitution is the supreme law. It has been so ordained by the people, and in the American conception, it is the ultimate source of all political authority. The constitution confers only limited source powers on the legislature. If the legislature consciously or unconsciously oversteps these limitations there must be some authority competent to hold it in control, to thwart its unconstitutional attempt, and thus to indicate and presence inviolate the will of the people as expressed in the constitution.

IV. The rule of law is the bedrock of democracy, and the primary responsibility for implementation of the rule of law lies with the judiciary. This is now a basic feature of every constitution, which cannot be altered even by the exercise of new powers from parliament. It is the significance of judicial review, to ensure that democracy is inclusive and that there is accountability of everyone who wields or exercises public power. As Edmund Burke said: "all persons in positions of power ought to be strongly and lawfully impressed with an idea that "they act in

trust,” and must account for their conduct to one great master to those in whom the political sovereignty rests, the people.

V. The expanded role of the power of judicial review has been given the title of ‘judicial activism’ by those who are critical of this expanded role of the judiciary. The main thrust of the criticism is that the judiciary by its directives to the administration is usurping the functions of the legislatures and of the executive and isruining the country. What these critics of the judiciary overlook is that it is the tardiness of legislatures and the indifference of the executive to address itself to the complaints of the citizens about violations of their human rights which provides the necessity for judicial intervention.

VI. In cases where the executive refuses to carry out the legislative will or ignores or thwarts it, it is surely legitimate for courts to step in and ensure compliance with the legislative mandate. When the court is apprised of and is satisfied about gross violations of basic human rights it cannot fold its hands in despair and look the other way. The judiciary can neither prevaricate nor procrastinate.

VII. Recently the country has seen instances of beneficial judicial activism to a great extent. It cannot be disputed that judicial activism has done a lot to ameliorate the conditions of the masses in the country. It has set right a number of wrongs committed by the states as well as by individuals. The courts have innovated to reach justice to the deprived section of the society. Anything contrary would be like suggesting the abolition of marriage in order to solve the problem of divorce.

VIII. Moreover, socio-economic movement generated by court has at least kept alive the hope of the people for justice and thus has weaned people away from self –help or seeking redress through a private system of justice .It is necessary for sustaining the democratic system and the establishment of a rule of law in society. Therefore, one has to be both adventurous and cautious in this respect and the judiciary has to keep on learning mostly by experience.

IX. The Apex Court of India has continuously been interpreting the mandate for good governance enshrined in the Constitution on the altar of contemporary situations and challenges facing the country, whether due to global winds of

change or from within. This has not been merely an exercise in interpretation of laws or legal order, much less an exercise in edifying jurisprudence; it has captured the ethos of our developing society as it has evolved from the colonial shackles to a social order replete with the essence of human dignity, of aspirations of a populace maturing into a sovereign, socialist, secular, democratic republic as mandated by the makers of our Constitution.

X. The law grows to meet the demands of the ever growing society. Hence the Supreme Court has found Article 21 to incorporate the substantive freedom that serves as means to remove major areas such as poverty, poor economic opportunities as well as systematic social deprivation. A most significant feature of expansion of article 21 has been that many of the Non justifiable Directive Principles have been converted into enforceable fundamental rights by the hands of judges. Guarantees of economic opportunities and protection against social deprivations.

XI. One may find the activist role of the judiciary resulting in law-making also. But when there was no law to regulate the adoption of children by foreigners, in 1984 in *Lakshmi Kant Pandey v. Union of India*, the Supreme Court laid down directions for regulating such adoptions and these directions have been in force for more than nineteen years. Similarly when women's organization approached the Supreme Court with a request to lay down guidelines as to how sexual harassment of working women could be combated, the Supreme Court in the year 1997 in *Vishaka v. State of Rajasthan*, responded by laying down guidelines and also declaring them to be the law made by it under Article 141 of the Constitution. These guidelines were followed throughout the country until the Legislature came up with suitable legislation in 2013, i.e., the Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013, to create an environment of safe working for the working women's.

XII. Liberty and Equality have well survived and thrived in India due to the proactive role played by the Indian judiciary. The rule of law, one of the most significant characteristics of good governance prevails because India has an independent judiciary, which has been fearless in advocating the cause of the underprivileged, the cause of deprived, the cause of such sections of society as

are ignorant or unable to secure their rights owing to various handicaps, an enlightened public opinion and vibrant media that keeps all the agencies of the State on their respective toes

XIII. The Supreme Court has, over the years, elaborated the scope of fundamental rights consistently, strenuously opposing intrusions into them by agents of the State, thereby upholding the rights and dignity of individual, in true spirit of good governance. In case after case, the Court has issued a range of commands for law enforcement, dealing with an array of aspects of executive action in general.

XIV. Even though law is a changing phenomenon which changes with the changing aspirations of time and society, several age old laws are unable to work in par with the emerging modern trends. Here Judiciary plays an important role by 'filling the lacunae' and adapting the old laws to the new society.

XV. The judiciary has, thus, been rendering judgments which are in tune and temper with the legislative intent while keeping pace with time and jealously protecting and developing the dimensions of the fundamental human rights of the citizens so as to make them meaningful and resulting in many reforms such as humanitarian treatment of the prisoners and the undertrials. The doctrine of equality has been employed to provide equal pay for equal work. Ecology, public health and environment are receiving attention of the courts. Exploitation of children, women and labour is receiving the concern it deserves. The executive is being made more to realise its responsibilities.

XVI. PIL serves a vital role in the civil justice system. It offers a ladder to justice to the disadvantaged sections of the society, provides an avenue to enforce diffused or collective rights, and enable civil societies to not only spread awareness about human rights but also allows them to participate in government's decision making. It facilitates an effective realization of collective, diffused rights for which individual litigation is neither efficient nor a practicable method. The range and scope of PIL is vast as it is a mechanism to agitate any socio-economic public issue before the court which can be brought within the legal and constitutional mould.

XVII. In the present era of Globalization where international regulatory regimes

such as WTO and GATT are working parallel to the constitutional and other domestic regimes. It becomes necessary to develop constitutional interpretations that can make the private entities that are largely international in character performing public functions without popular mandate that comes through elections liable under the domestic laws of the nation. This further included the application of present constitutional principles to the private entities that were developed with the State entities in view. Thus, in recent years the judiciary has widened its field of operation by declaring judicial review as a basic feature of the Constitution and the Apex Court has not merely interpreted the language of the Constitution but also pronounced on issues which involve matters of policy.

XVIII. The court alone is competent to determine the nature and extent of the good or evil or effect, on the fundamental rights of state action. The function of the court in judicial review is to alert the Parliament of limitations on its powers, and the scope of progressiveness and democratic socialism, and for such function the court cannot be criticised of adopting any spirit of conservatism.

IX. Recently, the legislatures in India has taken certain initiatives that seek to make socio-economic rights enforceable in India like, the Right of Children to Free and Compulsory Education Act, 2009; the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005 and the National Food Security Act, 2013 etc. They seek to make the right to education, right to work, right to food enforceable. All these rights have previously been subject matters of cases brought by civil society groups before the Indian Supreme Court and the Indian judiciary had made these rights enforceable through the right to life even before these Acts were formulated.

Taking into consideration the findings as mentioned above, the following points of suggestions may be put forth:

The independence of the judiciary shall be guaranteed by the State as enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restriction, improper

influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

The judiciary shall have jurisdiction over all issues of judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by judiciary, in accordance with the law.

Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures or the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

Misapplication of the PIL jurisdiction can be avoided if it is remembered that PIL is basically the well principles of judicial review by courts of actions of Government and public authorities, with the modification of Courts allowing the petitioner applicant to approach the court on behalf of other persons who themselves are unable to come to the Court because of ignorance of the difficulty and cost of litigation. In such cases the Court relaxes the strict rule of locus stand on the applicant and also relaxes proximity formalities. It is therefore important to note that except for procedural relaxation, the PIL jurisdiction should not exceed the permissible limits are of judicial review by the court over the actions or omissions of Government legislatures or public bodies, or transcend the basic separate powers underlined by the Constitution.

The parameters of intervention must be strictly formulated by the Supreme Court and observed, otherwise the concept of judicial review which is so necessary in India will become diffused, unprincipled, encroaching into the functions of other branches of government and ineffective by its indiscriminate use.

The courts are further required not to interfere in policy matters and political questions unless it is absolutely essential to do so. Even then also the courts

should interfere on selective grounds only. Moreover, mere possibility of abuse cannot be counted as a ground for denying the vesting of powers or for declaring a statute unconstitutional.

The courts should not refuse to interfere when it is required under the limited scope of judicial review. Such check through judicial review is vital so that the edifice of rule of law is not shattered, and should not be given away. Just to illustrate, the judiciary intervened to tackle sexual harassment as well as custodial torture, but it did not intervene to introduce a uniform civil code, and to provide a humane face to liberalisation-disinvestment policies.

Finally, the researcher is of the opinion that all the three organs including the judiciary are responsible to the people, who are the ultimate sovereigns. Thus, all the three organs must work harmoniously to promote and protect the fundamental rights of the people of India.