(g) Providing group insurance at a nominal premium;

(h) Making the Advocate's Welfare Fund Act more effective and useful

13. Whatever may be the participation of the State, the ultimate goal for achievement lies in the hands of the Lawyer himself irrespective of changing times. As long as a lawyer conducts himself in an honourable and truthful manner maintaining honesty and integrity, he will have great advantages leading to success, and nothing succeeds like success. Justice is always the same though it gets changed with the growth of the society to suit its needs and these changes for the upliftment of the society shall be adapted by the Legal Profession from time to time.

JUDICIAL REVIEW – ITS AMBIENT REACH UNDER THE CONSTITUTION OF INDIA – A CRITICAL STUDY

By

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(a) *Introduction:*

The concept of judicial review is considered as a basic feature of the Constitution. A FIVE - JUDGE Bench of the Supreme Court in the *Sankari Prasad* case,[1] unanimously held within a year of the commencement of the Constitution that Parliament had unfettered power to amend the Constitution. This position was reiterated by majority in the *Sajjan Singh* case,[2] 15 years later though a minority view doubted the amenability of Fundamental Rights.

The settled law on Parliament's power to amend any part of the Constitution was reversed in the 11 - Judge Bench decision in the *Golaknath* case,[3] by a narrow majority of 6 to 5, Chief Justice *Subha Rao* in effect ruled that Fundamental Rights cannot be abrogated even by an amendment of the Constitution because amendments are also laws within the meaning of Article 13. The shift in the Court's perception can be understood only in terms of the socio-political developments of the times.

The repeated judicial interventions against abolition of Zamindari and Land Reform Laws based on inadequacy of compensation under the right to property guarantee did create distrust between Parliament and Judiciary, each claiming to interpret Constitutional intent in opposing fashion. Parliament ultimately won, though in the process people lost a valuable right originally guaranteed as a fundamental right under the Constitution. (Right to Property (Article 31) deleted from Part III by Constitution (Forty Fourth Amendment) Act, 1978).

Cannot be altered:

The birth of the basic feature doctrine happened in the *Keshavananda Bharati* case[4]. Thirteen Judges by a majority of 7 to 6 overruled the decision in the *Goklaknath* case to declare that the Constitution has certain

1. AIR 1951 SC 458
2. AIR 1965 SC 845
3. AIR 1967 SC 1643
4. AIR 1973 SC 1461

"basic features" that cannot be altered or destroyed at all through the amending process. To the extent Fundamental Rights are part of the "basic features" they are un-amendable. It is difficult to explain how and where the majority of Judges in the *Kesavananda Bharati* case discovered this unique doctrine to curtail parliamentary power of amendment, which the Court itself repeatedly said before was unfettered. Does the Court have such a power as part of the judicial review or in its inherent jurisdiction? Interpretation of which provision of the Constitution can lead to such a result? Can such a thin majority of just one Judge rewrite the Constitutional text to make a substantial dent in distribution of powers and erosion of parliamentary authority in legislative business?

While these and related questions were debated again and again, the basic structure doctrine has been acted upon by the Court thereby establishing judicial supremacy on matters of Constitutional principles and policies. Dr. *Ambedkar*, Chairman of the Drafting Committee, expressed himself against such a claim by the Supreme Court. So did *Jawaharlal Nehru*. Both felt that such a situation would not emerge given the clarity of the text of Article 368. In fact, it is pertinent to point out the Parliamentary political system was chosen for India because of a desire to have a strong executive Government in the context of the political situation arising out of Partition and the integration of States. Parliamentary sovereignty, an associated legal paradigm of strong executive Government, became a powerful institutional fact in the working of the Constitution.

Lurking fear:

However, lawyers and Judges brought up in the legacy of the Common Law culture projected the argument that Parliament is only a creature of the Constitution and therefore primacy is with the Constitution. This logic paved the way for the acceptance of the law declared by Judges having priority over all enacted law including Constitutional amendments. In all these, there was a lurking fear of Parliament not respecting Fundamental Rights to the same degree as the Judges thought the Constitution demanded. The "basic structure" doctrine, which the minority-Judges (*Mudholkar* J. and *Hidayatulla* J.) hinted at in the *Sajan Singh* case, came in as a solid shield against claim of Parliamentary supremacy in the matter of amendments even in the face of the explicit language of Article 368.

The question is not whether such an ingenious interpretation blocking unfettered discretion to Parliament on amending the Constitution has done some good against the uncertainties of majoritarian politics or whether the Constitution is safe in the hands of the Court rather than of Parliament. The question is whether the people operating through a representative Parliament are helpless to determine the structure and quality of governance and whether a small, often divided, set of appointed Judges can replace democratic judgment on "basic features," whatever it means.

One cannot forget that the judgment in the *ADM Jabalpur* case,[5] also came from the very same Court where it unhesitatingly approved the suspension of the right to life and liberty under Emergency laws. The difficulty arises because of the uncertainty of so-called "basic features" and the inclination of the Court to change its interpretation by narrow majorities from time to time.

Thus, Judicial review, means overseeing the acts of the Executive to ensure that they are within the powers given by the Legislature. It is another name for the doctrine of *ultra vires*. In England, although Parliament is supreme and therefore its acts are not subject to judicial review, since there is no written Constitution, Kings' Courts have reviewed

5. AIR 1976 SC 207

acts of the Executive and subordinate Courts and Tribunals to make sure that they act within their powers. Where a written Constitution contains limitations upon the power of the Legislature, the Courts review the acts of the Legislature also with a view to enforcing the limits drawn upon their powers by the Constitution. The Supreme Court of the United States inferred such power of judicial review from the nature of the Constitution. If the Constitution was a law, it must be a superior law and therefore Congress could not make any law inconsistent with the Constitution and therefore the Court had the power to declare a law inconsistent with the Constitution as *ultra vires*[6]. In the Constitutional law parlance it is called unConstitutional. Although since the assertion of such power by the Supreme Court, it was contested by many theorists as being undemocratic, that power has stayed and has been accepted by several other countries including India and most recently South Africa. Judicial review was inherent in a federal Constitution because such Constitutions often distribute legislative and executive powers between the federal Government and the units. Each of them has to function within the boundaries of their powers drawn by the Constitution. Who will umpire if both of them claim a power? Obviously it is for the Judiciary to interpret the Constitution and determine the limits of each of the Governments of federation. Constitutions of Australia, and Canada were made by the British Parliament and both of them have judicial review.

In India, judicial review has existed since the inception of the English Law. The Calcutta High Court had said[7].

The theory of every Government with a written Constitution forming the fundamental and paramount law of the nation must be that an Act of Legislature repugnant to the Constitution is void. If void, it cannot bind the Courts, and oblige them to give effect; for this would be to overthrow in fact what was established in theory and make that operative in law which was not law.

Colonial Legislatures had to function within the limits drawn upon their powers by the constituent act passed by the Imperial Parliament. The founding fathers of the Constitution of India therefore took judicial review for granted. However, as an abundant caution, they provided in Article 13 that the laws inconsistent with the fundamental rights shall be void. The Supreme Court observed in *A.K. Gopalan v. Madras*,[8] that even without such an express provision, the Courts would have had the power of judicial review.

In a country like ours, adopting a written Constitution which mandates Judicial Review of the Constitutionality of State activity in cases needing it and the laws enacted by Legislature, the role of Judiciary cannot be restricted to the primitive function of dispensing justice.

The role of Judiciary in enforcing judicial review, must for all purposes keep the Government in good tune with the changing times and it should not be allowed to drift to become anachronistic or out of reasoning with the needs of the day.

To strengthen the role of Judiciary in espousing the cause of a common man for justice, the judicial review should be free to interpret in a progressive way of the Constitution and in doing so, the laws enacted open up certain interesting features of the judicial freedom. The judicial review gives freedom to Judges to express their mind on any question of law.

The Hon'ble Sri Justice *Bhagwati* in his concurring judgment rendered in *SP Sampath*

6. Marbury v. Madison 1 Cranch, (5 US) 137 (1803).

7. Empress v. Burah and Book Singh, ILR 3 Cat. 63 at 87-88.

8. AIR 1950 SC 27, 44

Kumar v. Union of India,[9] deciding on Constitutionality of a point in the Administrative Tribunals Act 1985, reiterated his stand and reaffirmed his views, which he took " his minority judgement in *Minerva Mills* case: which reads as:

> "The power of Judicial Review is an integral part of our Constitutional system and there will be no Government or laws the Rule of Law would become teasing illusion and a promise of unreality."

Yet in another case on Judicial Review, the Hon'ble Supreme Court in *M.C. Mehta v. Union of India*,[10] held that:

> "As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with new problems which arise in a highly industrialized economy.' We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for that matter of fact in any other foreign country. We no longer need the crutches of foreign legal order."

(b) Parliament and Judiciary:

Dr. N.R. Madhava Menon,[11] had expressed some interesting views on the role of Parliament and Judiciary in India. These views may be summarized as under:-

All the three wings of the State are creatures of the Constitution and are bound by it. There has to be complementary among the Constitutional institutions and no one institution can claim superiority over the other. Nevertheless, in a system governed by a written Constitution, there has to be necessarily an independent Judiciary, says *N.R. Madhava Menon.*

THE INDIAN Constitution today is far different in content and concerns from what it was at the commencement of the Republic. The original text has undergone many changes, some of which are beyond the imagination of even the framers of the Constitution. Parliament made nearly 100 amendments, some inconsequential in nature, some corrective of the distortions that had crept in, and still others to advance developmental goals.

As compared to this, what the Supreme Court has done through a couple of judgments is indeed radical enough to alter the very character of the Constitution as originally conceived by the Constituent Assembly. Among such radical changes rendered by the Court are the discovery of the "basic features" beyond the amending powers of Parliament, the introduction of the "due process clause" in its substantive and procedural aspects in the reading of Article 21 and Article 14, and the generation of numerous rights and freedoms not expressly given in Part III of the Constitution.

In doing so, the Supreme Court has assumed powers that many Constitutional scholars believe do not belong to it. How did it happen and why are questions seldom asked?

Accountability:

What is at stake is the way WE, THE PEOPLE OF INDIA have resolved to govern ourselves and the manner in which human rights and democratic accountability are sought to be achieved under a federal polity. In the final analysis in any Constitutional democracy, power resides with the people and it is exercised through the rule of law reflecting their collective will. Constitutional institutions are only instruments that exercise limited power in a system where power is

9. (1987) 1 SCC 124
10. AIR 1987 SC 1086
11. Director, National Judicial Academy, Bhopal

divided and operated through checks and balances.

Having critiqued the role of the Court in shaping the Constitution in its new avatar, it is important to see how the other two organs of Government performed in order to decide whether a change is warranted now and, if so, how it is to be achieved.

The Constitution of a nation is a living thing and must be allowed to evolve naturally unless a revolution overtakes it. Any attempt to redraft the Constitution in its essential elements is fraught with unforeseen consequences. At the same time, debating the strengths and weaknesses of the system and proposing alternative courses of action is the democratic way of building public opinion towards change and progress.

The former Chief Justice of India, Dr. *A.S. Anand*, in his Millennium Law Lectures (October 1999) at the Kerala High Court Advocate's Association, while defending judicial activism emphasised the need for caution to ensure that activism does not become "judicial adventurism." Otherwise, he warned, it might "lead to chaos and people would not know which organ of the State to look for to stop abuse or misuse of power," Quoting approvingly the observations in respect of policy making of Lord Justice *Lawton* in the *Laker Airways* case,[12] he reiterated the principle that" ... the role of the Judge is that of a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts must neither take part in it nor tell the players how to play." Dr. *Anand* added that the "judicial whistle needs to be blown for a purpose and with caution. It needs to be remembered that Court cannot run the Government. The Courts have the duty of implementing the Constitutional safeguards that protect individual rights but they cannot push back the limits of the Constitution to accommodate the challenged violation".

12. 1977(2) WLR 234 at 267

Lack of remedy:

Wise words indeed for Judges to remember. The problem, however, is the absence of an effective remedy when Judges cross the Lakshman Rekha consciously or otherwise, leaving no remedy to restore the Constitutional balance. Such situations may be rare but they do exist. All the three wings of the State are creatures of the Constitution and are bound by it. As co-ordinate organs of the State there is to be complementary among the Constitutional institutions and no one institution can claim superiority over the other. Nevertheless, in a federal system governed by a written Constitution, there has to be necessarily an independent Judiciary capable of resolving disputes between the federating units and the Centre as well as to Judge the Constitutionality of legislative and executive action in terms of the guaranteed rights of citizens. For the progress of the nation it is imperative that all the three wings of the State function in complete harmony.

Unfortunately, on many occasions this did not happen and issues to be decided through political and legislative processes were brought before the Courts for adjudication. While so adjudicating, Courts have to review the Constitutionality of the law and interpret its scope *vis-a-vis* the powers given under the Constitution.

In doing so it is not to be understood that the Court is a super Legislature and sits in judgment on the wisdom of policies adopted by the Legislature. It is only ensuring the observance of the provisions of the Constitution, which is the legitimate function of the Court. Judicial review is fundamental to the rule of law though *prima facie* it may appear to a layman as anti-democratic and elitist. Courts of law are creatures of the Constitution and can act only within the sphere of its jurisdiction.

There are at least two types of situations in which the Court took an activist posture

and either assumed a legislative role or attempted to directly undertake governance. The first type of situation is where gaps and ambiguities exist in the law or where the full protection of Fundamental Rights warranted enunciation of a new policy or extension of an existing policy in conformity with the Constitutional scheme and the international obligations of the State. The *Visakha* case judgment,[13] and the *Lakshmi Nath Pandey* case,[14] are examples of this type of judicial activism in the legislative sphere. The expansion of the right to life under Article 21, invoking the Directive Principles, is another example of activism in areas legitimately belonging to the Legislature.

The second type of situation in which the Court proactively involved itself in what is generally called the executive function, is where the laws are left unimplemented for whatever reasons and individual rights or public interest are adversely affected thereby. Many decisions on environmental law, directing executive action even where budgetary re-allocation is required are illustrative of judicial intervention in the executive sphere. An extreme example of this type of judicial activism is the *Vineet Narain* case,[15] where through the devise of continuing *mandamus* the Supreme Court directed the investigation of high-level corruption and monitored its progress till its completion with the filing of the charge-sheet.

Cause of justice:

From the perspective of the Judiciary it was only attempting to achieve the Constitutional purpose in the best way it felt appropriate in the situation. In the process it did advance the cause of justice and ensured proper implementation of the rule of law. However, from the perspective of the Legislature, it was usurpation of its powers and functions. The Executive argued that the Court was in effect running the Government the way it considered desirable.

Both raised the issue of judicial accountability, the demise of the doctrine of separation of powers, and the negation of checks and balances in the Constitutional scheme. The Judiciary defended itself by saying that the Court acted only in areas where there was legislative vacuum in the field of human rights and that its action only strengthened democracy and the common man's faith in the rule of law (Dr. *A.S. Anand*, Millennium Lecture reproduced in Law and Justice edited by *Soli Sorabjee*, Universal 2004).

Where does this discussion on judicial role in Constitutional law making lead one in terms of parliamentary democracy, democratic accountability and Constitutional governance? The answer depends on how one perceives the executive and legislative wings of the State and what constitutes public interest in the given situation. It is difficult to resolve this question in terms of the original intent of the Constitution makers or the presumed will of WE, THE PEOPLE OF INDIA. Nor can it be addressed by textbook definitions of democracy, the rule of law and Constitutional governance.

Accountability, of course, is a key issue. The over-concentration of power in anyone institution is inimical to democratic accountability and good governance. There is need for restraint and the development of healthy Constitutional conventions and practices. In the present context, judicial appointments, judicial independence and judicial accountability are issues that warrant informed and responsible debate if parliamentary Government is to remain the central theme of Indian democracy.

Not in India alone:

The problems are not peculiar to India either. In 1998 a joint colloquium was

13. 1997 (6) SCC 241
14. 1984 (2) SCC 244
15. AIR 1996 SC 3386

organised in London sponsored by the Commonwealth Parliamentary Association, the Commonwealth Lawyers' Association and the Commonwealth Judges' Association on "Parliamentary Supremacy and Judicial Independence." It adopted a set of guidelines on Good Practice Governing Relations between the Executive, Parliament and the Judiciary in the Promotion of Good Governance, the Rule of Law and Human Rights. In relation to Parliament and the Judiciary, the following guideline was adopted "which speaks of the delicate balance and the restraint a responsibility each institution must demonstrate in the exercise of power within its own Constitutional sphere so as not to encroach on the legitimate discharge of Constitutional functions by other institutions. The guideline stated: "The legislative function is the primary responsibility of Parliament as the elected body representing the people. Judges may be constructive and purposive in the interpretation of legislation, but must not usurp Parliament's legislative function. Courts should have the power to declare legislation to be unconstitutional and of no legal effect. However, there may be circumstances where the appropriate remedy would be for the Court to declare the incompatibility of a statute with the Constitution, leaving it to the Legislature to take remedial measures."

In conclusion, it is worthwhile to recall the views of the Hon'ble Justice Pierre Olivier of South Africa. He was highly critical of the Westminster model of parliamentary sovereignty which proved powerless to protect the people of apartheid South Africa from unjust laws passed by a Parliament which was a rubber stamp of a tyrannical executive. Judge *Olivier* painted a vivid picture of the intolerable position in which South African Judges were placed in having to apply oppressive laws in relation to which the possibility of judicial review was carefully excluded. Even judicial review of executive action was emasculated by laws conferring draconian powers upon the executive.

Does this description of the erstwhile South African model of Parliamentary supremacy strike any parallel with the state of Parliament during the Emergency period in India? If so, there is reason to let the "basic structure" doctrine remain in Indian Constitutional Law despite the threat of "judicial activism" upsetting the democratic balance of power. The issue cannot be resolved by declaring that in India the Constitution is supreme. This is because of the vastness of the power of judicial review the Courts have assumed and the limitations on amending power of Parliament again developed through judicial interpretation. The proposition that Constitution is what the Judges say it cannot be accepted under any democratic scheme of governance, particularly when there is no clarity or certainty as to the nature, number and scope of un-amendable basic features of the Constitution. In the circumstances, the available options are a national debate on the issue and possibly a referendum on scope and procedure of amendment of so called basic features and/or a review of the whole situation by the full Court of 26 Judges of the Supreme Court after issuing notices to all the stakeholders.

(c) Limitations on judicial review power:

Lord Aitkin said 'the power tends to corrupt and absolute power corrupts absolutely'. It is also pertinent to mention that 'wherever there is discretionary power there is a room for arbitrariness'. The exercise of power of judicial review by the Constitutional Courts is not untrammelled, but hedged in by severe limitations. Even in USA, the judicial review power exercised under certain limitations. These limitations are mostly "self-imposed"; the United States Supreme Court itself has evolved them as a concomitant of its notion of 'judicial self-restraint'. In India limitations and restrictions cover much wider and have mostly been specially incorporated into the Constitution

itself. According to *D.D. Basu*,[16] these limitations may be placed in three categories. They are as follows.

(a) Constitutional limitations;

(b) Intrinsic limitations;

(c) Self-imposed limitations.

Constitutional limitations: The Indian Constitution itself excludes many acts from judicial review. Powers of judicial review is expressly precluded by some of the Articles of the Constitution. They are Articles 3l-A, 31-B read with 9th Schedule, 31-C, 74(2), 77(2), 105(2), 194(2), 122, 232-A, 323-B, 239(a), 359, 361-A, 363, 368(4), and 10th Schedule.

Intrinsic limitations: The intrinsic limitations arise from the nature of the process in which only judicial pronouncements take place, it is distinguished from executive or legislative actions. They are grounded in the fundamental and commonly accepted norms of Anglo-Saxon Jurisprudence, for example, as (a) that Judges do not legislate, but only decide 'cases' or 'disputes' existing between adversaries, resented as such before.

Self-imposed limitations: Following the line of American counterpart the Indian Supreme Court adopted self-imposed limitations while discharging its Review Power. To sum up the self-imposed limitations as discussed by *D.D. Basu* the following areas could be identified on judicial review power. They are as follows:

1. 'Actual' case or 'Controversy'.
2. Controversy must be real, not hypothetical.
3. Substantial computational question must be involved.
4. Constitutionality to be decided not in the last resort.
5. Issue must be 'justifiable'. Not 'political'.
6. Presumption in favour Constitutionality of legislation.
7. Respect for Legislature determination.

Judicial Review of Constitutional Amendments: Judicial Review of Constitutional Amendments is not generally permissible except on procedural grounds or to prevent the violation of the express limitations mentioned in the Constitution itself. Before 1967 even the Indian Supreme Court had held that it had no power to strike down Constitutional amendments on substantive grounds and therefore could not exercise power of judicial review in this respect.

It was only after the *Golaknath's* decision in 1967 that the Supreme Court assumed the power of Judicial Review of Constitutional amendments. The opinion on the scope of judicial review of Constitutional amendments is divided: one view upholds Supreme Court's power to strike down Constitutional amendments even on substantive grounds, where as the other view does not concede this power to the Court. Whether the power of judicial review ought to be extended to Constitutional amendments or not can be decided by dispassionately examining the relevant provisions of the Constitution.

The provision made under Article 372(1) clearly establishes the judicial review of legislation in respect of pre-Constitutional laws in India because the Courts are given a duty under the said article to determine whether or not a pre-Constitutional law is reconcilable with the Constitution. In respect of the post-Constitutional laws it is established that the Constitution allows the judicial review of legislation under Article 245(1) which empowers the Parliament to make laws for the whole or a part of the territory of India and the Legislature of a State to make laws

16. *D.D. Basu*, "commentary on the Constitution of India", 5th Ed., vol. I , p. 170

for the whole or a part of the State. The exercise of the powers by the Parliament or the State Legislatures is "subject to the provisions of this Constitution". This implies that neither the Parliament nor State Legislatures can make a law which is not inconsonance with the Constitution. Article 13(2) provides that the "State shall not make any law which takes away or abridges fundamental rights.

Article 372(1) and Article 245(1), thus form the basis for the judicial review of legislation in India. But the two Articles explicitly provide for the judicial review of the ordinary laws only and there should be no doubt about it. The advocates of judicial review of Constitutional amendments cannot find any theoretical basis for their contention in these two Articles, for the Articles cannot be applied to the Constitution itself because they themselves are part of the Constitution. The distinction between the amendment of the Constitution made by Parliament under Article 368 in its constituent capacity and a law made by it under Article 245(1) must be appreciated.

The assertion of judicial power of judicial review over a constituent function of an amendment may not fit within the framework of the pure theory of law as understood by *Ray*, J., in *Kesavananda's* case. But the fact remains that the present culture of the judicial activism is no respecter of the' restraints on judicial power sought to be justified on the basis of traditional jurisprudential discourses on the nature of the constituent and the judicial power. On the level of legal theory at any rate *Kesavanand* as reaffirmed in the *Election's* case and the *Minerva Mills'* poses fundamental issues as to the nature of the judicial power in modern democracies which are now under compelling obligation to embody the emerging International Law of human rights and fundamental freedoms as also the legitimate expectations of a democratic order within the framework of judicially enforceable principles of law.

In reaction to Supreme Court decisions, in 1971 Parliament passed the Twenty-fourth Amendment empowering it to amend any provision of the Constitution, including the Fundamental Rights; the 'Twenty-fifth Amendment by inserting Art.31-C gave primacy to Article 39(b) and (c) over 14, 19 and 31 and the Twenty-ninth Amendment regarding Kerala Land Reforms, (Amendment Act), 1969. On April 24, 1973, the Supreme Court responded to the parliamentary offensive by ruling in the *Kesavananda Bharati v. The State of Kerala* case that although these amendments were Constitutional, the Court still reserved for itself the discretion to reject any Constitutional Amendments passed by Parliament by declaring that the amendments cannot change the Constitution's "Basic Structure."

(d) Conclusion:

To err is a human nature. No doubt Judiciary is occupied with men of experience, but one should not forget that Judges are also human beings. Every institution, including judiciary has its share of black sheep. Now it is high time to see the accountability off judicial review power. *Sri Kamalashwarnath*,[17] made a good suggestion, which may be considered by the authority, they are appointment of an 'ombudsman' and allowing free criticism by the press and public which act like watchdog. If free - criticism is allowed that would be the quickest act in controlling the Judiciary', but she expresses a doubt about the press and public scrutiny because most of the people are not educated'.

It also pertinent to mention that Judiciary should use its judicial review power only in the interest of people of this nation and Constitutionalism but, not for popularity and

17. Sri *Kamaleshwarnath*, "deficiencies in Court procedure, remedies" AIR 1999 J&A; p.1.

publicity. There is no need of expanding unnecessarily the Constitutionalism which is established by the founding fathers and predecessors of learned Judges of the Court. Therefore, there is need to keep this legacy established by predecessor by the functionary of the Court, by not yielding to worldly things. In this regard "where the Judges must not accept any type of money in any form, in the matter of dealing any related cases regardless of caste/creed poor or rich, normal or influential people must be accountable as per law and order (bribes)"[18].

Judicial review is an armour to check lawlessness - legislative as well as executive. In India, right from the date of commencement of the Constitution of India, the judicial review has effectively been exercised and any endeavour to undermine or crumble its sanctity has been counter-productive, *i.e.*, struck down because it violates the Basic Structure of the Constitution. In fact, the concept is more akin to the concept of "reasonableness" and "non-arbitrariness" which pervades the entire Constitutional scheme; it is a "golden thread which runs through the whole fabric of the Constitution.

ENVIRONMENTAL DEGREDATION IN INDIA: HUMAN FAILURE – A PERSPECTIVE

By

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Introduction

Life of dignity and well – being for every one is the goal set for the international community and the national Governments to achieve. It is the task before the mankind for the mankind. Needless to say that the quality of life comprehends everything indispensable for its sustenance. Its net is quite wide to take within its sweep the right to life and liberty, higher standard of living, education, social security, quality of environment *etc.*, threat to anyone or more indispensables may leave the quality of life impaired and less precious. Hence the obvious is the widespread alert for protection of human rights and fundamental freedoms and imposition of obligations on the national Governments in this regard. Presently the nations face many problems and the more prominent among them is environmental degradation. That threat to environment is racing ahead of others is no exaggeration at least in case of countries like India where knee-jerk reactions are the responses.

Concern and awareness of the need to preserve and protect the environment, both nationally and internationally, has been increasing day by day. What is shot into focus is the need for rational use of environment and elimination of causes of damage, both existing and additional, to the environment.[1] A legal framework has become operational through treaties and declarations at the international level and statutes at the national level. The fledging legal control primarily targets pollution and lays emphasis on the control of hazardous

18. The modern law review Vol. 68, No.6, November 2005, p. 902

1. Martin Dixon and Robert Mecorquodale, Cases and Materials on International Law, Blackstone Press Ltd., 1995, p.521.