

CHAPTER IX

CONCLUSION

India has an ancient lineage of law and enjoys a sophisticated legal system administered by an independent judiciary. The Constitution is the fundamental law of superior obligation for a country. When it is designed as a controlling constitution like the Indian, it sets limits to the powers of the various organs of the State. Law is power. Law and society influence one another and the province of law, and justice through law fall to the province of judges, lawyers, political actors and political scientists and academics. In this, the superior courts especially the ones empowered to exercise the power of judicial review have to lead the way.

The Preamble to the Constitution of India embodies the philosophy of the Constitution. The Constitution of India is the Supreme Law of the land. By nature, the law relating to the Constitution is dynamic and it should be developed in consonance with the changing times and needs. The Indian Constitution is not an exception to the above cardinal rule.

After the Indian Constitution came into force on 26th January, 1950, there has been a phenomenal growth in the development of constitutional concepts, principles, and dynamics. The constitutional development results through a variety of processes.

The most direct one is the constitutional amendment by the institutions entrusted with the power of amendment. In this area the Supreme Court came up with the experience of frequent amendments and responded by announcing the 'Basic Structure' limitation.

Initially, in *Golak Nath*¹ the Court relied on entry 97 List I Schedule VII for a review power but, on a serious challenge to that claim in *Keshanvananda*,² the Court responded strongly through the doctrine of basic structure to strengthen the power of judicial review. When this doctrine itself was questioned again in *Minerva Mills*, the court unhesitatingly reiterated the doctrine of basic structure limitation on the amending power. What constituted the basic structure was left open ended for the court to identify specific elements as and when the occasion presented itself. Strategically this was perhaps the strongest instance of judicial independence and judicial activism to insulate the people against the tyranny of a transient majority attempting to make inroads into the principle of limited Government as chosen in the Constitution itself.

¹ AIR 1967 SC 1643.

² AIR 1973 SC 1461.

Subsequently, the court has identified Art.14 itself³ as a basic structure element. They have proceeded to identify Rule of Law,⁴ natural justice,⁵ the Preamble⁶ and even judicial review as parts of basic structure. Giving equal importance to Fundamental Rights and Directive Principles which they did in *Keshavananda*,⁷ has enabled the court to fashion new fundamental rights. As these revolutionary changes happened case to case, with intervals of time in between, public memory or public opinion could not perceive them.

Breaking procedural barriers for access to justice though PIL ⁸ or SAL has opened the doors of the court to the poor and the weak. Even un-registered associations ⁹ have been allowed to move the Supreme Court directly under Art. 32 and the court seems to be have been persuaded by concern for the rule of law as a substantive principle while not permitting any procedural hurdle to stand in the way of access to justice. The court has even gone to the extent of treating letters¹⁰ as writ petitions. The Supreme Court

³ *Indira Nehru Gandhi v. Union of India*, AIR 1975 SC 2299; and *Minerva Mills case*, AIR 1980 SC 1789.

⁴ *ibid.*,

⁵ *Maneka Gandhi v Union of India*, AIR 1987 SC 597; and *A.K.Gopalan v State of Madras*, AIR 1953 SC 27.

⁶ *Keshavananda Bharati v State of Kerala*, AIR 1973 SC1461.

⁷ *ibid.*,

⁸ *Bihar Legal Support Society v Chief Justice of India*, (1986) 4 SCC 767.

⁹ *A.B.S.K. Sangh v. Union of India*, AIR 1981 SC 298.

¹⁰ *Kadra Pahadiya v. State of Bihar*, AIR 1982 SC 1167.

has devised a novel doctrine under which certain basic features of the Constitution cannot be taken away even by amending the text of the Constitution on the principle that the power to amend is not the power to destroy. The Supreme Court is perhaps the only Court in the world that has struck down constitutional amendments on substantive grounds. The judgments of Supreme Court reflect not mere national, but also global concern for the protection of the environment. Today the environment faces a global challenge for its survival and therefore in the series of *M.C. Mehta*¹¹ cases the court has set norms for environmental protection on the part of various actors. It can be said that in these cases the court has developed constructional tort law principles.

The power of judicial review of legislative and administrative action has been entrusted to the Supreme Court and High Courts as the case may be by the Constitution through Arts. 32 and 226. This constitutional arrangement places the higher judiciary as the guardian and interpreter of the Constitution and the people's watchdog over the legislative and administrative branches to ensure conformity with the constitutional dictates. In the discharge of this immense trust and high constitutional power, the Supreme

¹¹ *M. C. Mehta v. Union of India*, AIR 1987 SC 965.

Court has moved from the orthodox start in *A.K.Gopalan*¹² to a pro-people position in a number of socially sensitive questions in PIL cases as in *Peoples Union for Democratic Reforms*,¹³ *Sunil Batara*,¹⁴ *Kadra Pahadiya*,¹⁵ *Bandhua Mukti Morcha*¹⁶ and *S. P. Gupta*¹⁷ to mention a few. On the question of adoption, *Lakshmi Kant Pandey*¹⁸ has served to set guidelines.

In *Common Cause*¹⁹ again the Supreme Court was found responding in tort law fashion. *Visaka*²⁰ has served to express the court's concern for the safety of women in work places and set guidelines to protect their dignity. Even political process has been the courts concern and in *Association for Democratic Reforms*²¹ case the court has set down some standards to be observed. Perhaps a less known facet of judicial activism is the development of the concept of a 'curative petition'²² where even after a final decision the court is willing to correct an error if it has occurred. This very important contribution by the court was announced in

¹² AIR 1950 SC27.

¹³ AIR 1982 SC 1473.

¹⁴ AIR 1980 SC 1579.

¹⁵ AIR 1982 SC 1167.

¹⁶ AIR 1984 SC 802.

¹⁷ AIR 1982 SC 149.

¹⁸ AIR 1984 SC 469.

¹⁹ AIR 1989 SC 2039.

²⁰ AIR 1997 SC 3011.

²¹ (2002) 5 SCC 294.

²² AIR 2002 SC 1771.

Rupa Ashok Hurra.²³ The court's concern for justice and its readiness to do complete justice in a case would stand evidenced by these innovative judicial responses, which have received the appellation of judicial activism. In truth what is termed as judicial activism is no more than judicial concern for delivering complete justice aside of the trappings of procedural law and in this approach the court has re-lived the old maxim of equity that procedure shall not be permitted to prevail over the substance. The device of the curative petition has no parallel elsewhere.

The epigraph in the symbol of the Supreme Court '*Yato dharmah tato jayah*' (where there is Dharma there is Success) is drawn from the Mahabharata. The centerpiece of the Constitution is the Bill of Rights embodied in Part-III as Fundamental Rights. Part III enumerates a whole set of obligations imposed on the State both in its executive capacity as also in enacting laws. These rights are not merely a formal or nominal declaration of freedoms, but are enforceable by any person by a simplified process of a writ petition. In the area of fundamental rights the court has moved from the direct impact test to inevitable consequence test. Between

²³ *ibid.*,

*A.K.Gopalan*²⁴ and *Maneka Gandhi*²⁵ the court has moved towards a holistic interpretation of fundamental rights and required all State action to answer Arts. 14, 19, and 21. To check violations of fundamental rights the court has interpretatively added speedy trial,²⁶ health,²⁷ pollution free environment²⁸ and safe drinking water²⁹ as rights covered by Art.21. So too, illegal detention,³⁰ cruel and inhuman punishment³¹ and bonded labour³² were found impermissible under Art. 21. Indigents were given a right to bail;³³ handcuffing of accused was held normally impermissible;³⁴ solitary confinement of prisoners was disallowed;³⁵ fetters were generally not to be used³⁶ and prison punishments were subject to judicial scrutiny. The political move to make Art. 21 non-suspendable even during emergency has provided the judiciary with a useful tool for increasing the area of protection against the governmental excesses. Even governmental

²⁴ AIR 1950 SC 27.

²⁵ AIR 1978 SC597.

²⁶ *Hussainara Khatoon v State of Bihar*, AIR 1979 SC 1360.

²⁷ *M. C. Mehta v. Union of India*, AIR (1986) 2 SCC 176.

²⁸ *M. C. Mehta v. Union of India*, AIR (1996) 4 SCC 750.

²⁹ *M. C. Mehta v. Union of India*, AIR (1987) 4 SCC 463.

³⁰ *Deena v. Union of India*, AIR 1983 SC 1155.

³¹ *Sunil Batra (1) v. Delhi Administration*, AIR 1978 SC 1575.

³² *Bandhu Mukti Morcha v. Union of India*, AIR 1984 SC 803.

³³ *Hussainara Khatoon .v State of Bihar*, AIR 1979 SC 1360.

³⁴ *Prem Shankar v. Delhi Administration*, AIR 1980 SC 1535.

³⁵ *Sunil Batra (I) v. Delhi Administration*, AIR 1978 SC 1575.

³⁶ *ibid.*,

inaction or indifference ³⁷ has been held to offend Art. 21.

A mandatory death sentence under Section 303 of IPC was held violative of Article 14 ³⁸ and 21. Detention of non criminal lunatics³⁹ in jail was disallowed. For the killing of a convict by a co-convict, compensation⁴⁰ was ordered to be paid. For death because of failure of prompt attention in a public hospital, compensation was ordered to be paid.

In *Olga Tellis*⁴¹ the apex court ruled that fundamental rights were incapable of waiver. This pronouncement has opened up the area of protection for fundamental rights to include every private action. A right to privacy⁴² has been identified as a fundamental right under Art. 21. The framers of the Constitution were aware that the prohibition of exploitation of children of the country alone would not permit the children to contribute their mite to the nation building work unless they received at least basic education. Article 45 was therefore inserted casting a duty on the State to endeavour to provide free and compulsory education to children. This provision in Part IV of the Constitution had after the decision by a

³⁷ The Constitution (Forty Fourth Amendment) Act, 1978.

³⁸ *Sheela Barse v Union India*, (1993) 4 SCC 204.

³⁹ (1996) 8 SCC 80.

⁴⁰ *ibid.*,

⁴¹ AIR 1986 SC 180.

⁴² *Govind v. State of Madhya Pradesh*, AIR 1975 SC 1378.

Constitution Bench of the Supreme Court in *UnniKrishnan*,⁴³ acquired the status of a fundamental right. When the court proceeded to hold the right to education as part of the guarantee under Art. 21, reading unnamed Art. 45 and Art. 41 in context, the Parliament chose to amend the Constitution to add Art. 21 A to make a right to education for children between 6 and 14 years of age, a fundamental right. A part of Art 45 was thus transplanted as a fundamental right as a result of judicial activism and Art.45 was amended to provide for early childhood care also. Judicial activism in this area has found echo in Part IV-A of the constitution imposing a duty on every parent/ guardian to provide educational opportunity to his children between 6 and 14 years of age. However, the provision in Art. 21 A is not in force because the Union Government has not notified the date on which the provision is to come into force. It is to be mentioned here that when the political process has chosen to exercise the amending power to add Art. 21A and the President has assented to the amendment, it would be arbitrary for the Government to keep the provision in limbo by not notifying the date for its coming into effect. If the matter is agitated before the Supreme Court it is likely to hold the non action as an arbitrary exercise of power. Right to know has been read into Art. 21. Through its doctrine of

⁴³ (1993) 1 SCC 645.

prospective overruling,⁴⁴ the Court has added strength to fundamental rights. Over half a century, the court has consistently endeavored to protect fundamental rights against political assaults manifested through devices to reduce their effect in controlling exercise of power by the executive and the legislature. It has gone on even to say that any judicial pronouncement violative of fundamental rights is void and thus has sought to protect the people of India even against the court itself.

Property of minority educational Institutions was given increased protection by requiring a special law ⁴⁵ for acquiring them. The right to approach the Supreme Court to enforce any fundamental right is itself a fundamental right. The judiciary has constantly asserted and exercised the power of judicial review and has been remarkably innovative both in striking down illegal measures and in developing affirmative action. The greatest strength of the Indian Legal System is that it has provided the framework to sustain a vibrant and noisy democracy under the rule of law.

In *Keshavanda Bharati* ⁴⁶ the Supreme Court evolved the concept of 'basic structure' and in *Indira Nehru Gandhi*,⁴⁷ the Court

⁴⁴ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

⁴⁵ (2002) 1 SCC 273.

⁴⁶ AIR 1973 SC 1461.

specifically declared democracy as a feature of the basic structure of the Constitution. With a view to have a fair and transparent election, the Law Commission had recommended several changes in its 170th Report, one of which was that a candidate had to declare his own assets and those of his relatives and dependants and also to furnish the details of criminal cases, if any, against him. In response to a PIL by the *Association for Democratic Reforms*⁴⁸ for a direction to implement of the recommendation of the Law Commission, the Supreme Court directed the Election Commission to make the required information available. The Supreme Court found the legislative nullification of this requirement as violative of the right to information under Art. 19(1) (a) of the Constitution and, emphasizing importance of free and fair elections in a democracy, directed the Election Commission to issue a fresh order. In *M. V. Rajasekharan* ⁴⁹ the apex court has held that chairmanship of a committee appointed to study problems of linguistic groups in the State border areas was an office profit and disqualified the holder to contest an election. In *Jaya Bachchan*,⁵⁰ the apex court has held that if pecuniary gain is receivable in connection with the office then it becomes office of

⁴⁷ AIR 1975 SC 2299.

⁴⁸ AIR 2002 SC 2112.

⁴⁹ AIR 2002 SC 742.

⁵⁰ 2006 AIR SCW 2601.

profit, irrespective of whether such pecuniary gain is actually received or not.

The exclusion of judicial review of an order of the Presiding Officer, on the point of disqualification on the ground of defection, was struck down by the Supreme Court⁵¹ to affirm judicial review which was a part of the basic structure. What was perceived as a statutory right in *Ponnuswamy*,⁵² has been elevated to the status of fundamental right when the Apex Court ruled that the voter had A right to know ⁵³ all relevant information about the contesting candidate to make an informed choice.

In the area of contempt of court the Supreme Court has strived to maintain the dignity of the court against assault from any quarter. It has however held that only conduct that is likely to interfere with the due course of justice or is likely create distrust in the popular mind and impair their confidence in the courts of law would amount to contempt. In applying this standard the court has not been unduly harsh and has shown a readiness to accept a sincere apology properly tendered.⁵⁴ Yet the court has not hesitated to

⁵¹ *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651: AIR SC 412.

⁵² AIR 1962 SC 64.

⁵³ (2002) 5 SCC 294.

⁵⁴ Explanation to sec. 12 of the Contempt of Court Act, 1971.

come down on erring bureaucrats or advocates or political actors including chief Ministers⁵⁵ and Speakers of the legislative Assembly.⁵⁶ Even the judges of the subordinate courts are not spared the wrath of the Superior Courts and appropriate corrections are administered. These instances would go to show the Supreme Court's concern for maintaining the image of the judiciary unsullied by irresponsible conduct defying its authority or dignity. The court has even resorted to *suo motu* action where it was considered necessary to do so. However, the court seems to have taken two steps backward in the *Supreme Court Bar Assn.* case⁵⁷ after taking a strong step forward *In re Vinay Chandra Mishra*.⁵⁸ As matters stand, allowing justification by defense of truth in contempt cases would be fraught with the danger that the sullied image of the court cannot be restored to the unsullied state.

At the beginning of the constitutional journey the Supreme Court was of the view that there was no strict separation of powers in the Constitution, but in less than 25 years, the then full court moved to recognising the separation of powers amongst the legislature, executive and the judiciary as a basic feature of the Constitution.

⁵⁵ (1994) 6 SCC 442.

⁵⁶ *I. Mannil Lal v. Dr. H. Borobabu Singh*, AIR 1994 SC 505.

⁵⁷ (1998) 4 SCC 409.

⁵⁸ (1995) 2 SCC 584.

This change in position has been brought about after a tenuous start in *re Keshava Singh*⁵⁹ where a seven judge bench of the court opined that whether or not there was a distinct and rigid separation power under the Indian Constitution, there is no doubt that the Constitution has entrusted to the Judicature in this country the task of construing provisions of the Constitution and of safeguarding the fundamental rights of the citizens.

From this change of position in 1965,⁶⁰ (*Keshav singh*) the shift to the position in 1973⁶¹ (*Keshavananda*) was easy to make and from 1975⁶² (*Raj Narain*) the court has only gathered strength in strong pronouncements of far reaching import starting with *Minerva* in 1980.⁶³ *Chadrakumar*⁶⁴ in 1997 saw the Supreme Court capture judicial review for the judiciary to be exclusively with it and not to be surrendered to the executive or the legislature. Thus the 'say' in 'what the law is', was to be with the judiciary only. In 1991 the Supreme Court in *Subesh Sharma*⁶⁵ had introduced the suggestion of separation powers, but in 2000 the court was more specific in observing a clear separation of power in *Dattaraj*.⁶⁶ Before that

⁵⁹ AIR 1965 SC 745.

⁶⁰ *ibid.*,

⁶¹ AIR 1973 SC 1461.

⁶² AIR 1975 SC 2299.

⁶³ AIR 1980 SC 1789.

⁶⁴ AIR 1997 SC 1125.

⁶⁵ AIR 1991 SC 631.

⁶⁶ (2005) 1 SCC 590.

*Almithra Patil*⁶⁷ had spoken nearly categorically when the court observed that under separation of powers it is not for the courts to tell the executive how to do various jobs. Once again in *Balmukund Shaw*⁶⁸ the court was clear about separation of powers for which it had paved the way in *Kannadasan*⁶⁹ where it had held that the Constitution of India recognises and incorporates the Doctrine of Separation of powers.

The shift over time is clearly towards an affirmation that the Constitution of India recognizes and incorporates a separation of powers and a categorical pronouncement to this effect can sooner or later be expected from the apex court.

Emerging from pre-constitutional colonial past into an era of human rights, India began its journey as an independent sovereign State under a Constitution which reflected many of the provisions and principles of the Universal Declaration of Human Rights, 1948. This document was prepared when India was engaged in framing its own Constitution. It was not surprising, therefore, that the ideals held out in the UDHR found reflection in the Constitution of India. Although the Ministry of External Affairs clarified

⁶⁷ (2000) 2 SCC 679.

⁶⁸ (2000) 4 SCC 640.

⁶⁹ (1996) 5 SCC 670.

immediately after the commencement of the Constitution that the Indian National Legal System did not require any ratification of treaties, the change to this new position was gradual. Even in 1960 the Speaker of the Lok Sabha observed that no treaty was brought before Parliament for ratification till then. No obligation to place treaties before the Parliament for ratification existed, absent a specific provision in the treaty itself. The emergence of the WTO has changed many of the treaty making procedures because of self fulfilling provisions in the General Agreement on Tariffs and Trade (GATT). The power available to the executive therefore comes under very few constitutional limitations.

In *Maganbhai*,⁷⁰ the Supreme Court ruled that if the implementation of treaty infringed the rights of citizens or others, or modified any law, legislative authorization by the Parliament would be necessary. The Court in *Keshoram Industries*⁷¹ was of the view that automatic reception did not apply in India and specific adoption of the treaty principles would be required. However, even in instances where India is not a party to an International Treaty or Covenant, the Supreme Court has interpreted the Municipal Law harmoniously with international expectations. Art. 51 of the

⁷⁰ AIR 1969 SC 783.

⁷¹ AIR 1993 CAL.78.

Indian Constitution, a provision in the Directive Principles was drawn in for assistance.

The court's approach in *Vishaka*⁷² illustrates how the court has drawn strength from an International Treaty to fill the gaps in the Municipal Law and to prevent a hostile posture from the Legislature said that their directives in *Vishaka*⁷³ will occupy the field till Parliament enacted necessary legislation. In *Pratap Singh*⁷⁴ the Juvenile Justice Act received interpretation in the light of International Treaties and Conventions bearing on the area. The court added that it would not hesitate to refer to International law so as to find new rights in the context of the Constitution. In *Indian Handicrafts Emporium*⁷⁵ a three judge bench of the apex court has proceeded to hold that while under Art. 13(1) a pre-constitutional law will have to be judged for constitutionality as on 26th January, 1950, it was not precluded from taking into consideration subsequent events for judging the constitutionality of a law which was constitutional when enacted. The court *sub-silentio* seems to have applied the principle *cessante ratione legis, cessante lex ipsa* (where the reason for the law ceases the law itself ceases).

⁷² AIR 1997 SC 3011

⁷³ *ibid.*,

⁷⁴ *ibid.*,

The court has drawn inspiration from the U. N. Charter, the UDHR and Art.51 of the Indian Constitution. In *A. D. M.Jabalpur* ⁷⁶ the court clarified that when two constructions are possible the one that would harmonise with International Law or Treaty obligations was to be preferred. In *Peoples' Union for Civil Liberties (PUCL)* ⁷⁷ the court said the International law today extends to many domestic matters and is aimed at individuals. The 'polluter pays' principle of International Law was drawn from international law and applied in *Vellore Citizens* ⁷⁸ case. The duty to prevent harm to the environment mentioned in Draft Articles VII approved by the Working Group of the International Law Commission found favour with the court to require of the state to take necessary legislative, administrative and other actions. State non-action was frowned at relying on international law principles. The general treatment of foreigners in the country and non discrimination in compensation for expropriated property was rested on the rule of International law compelling non discriminatory treatment. International obligations were again the standard applied in *Kubic Dariusz*, ⁷⁹ in

⁷⁵ AIR 1986 SC 515.

⁷⁶ AIR 1976 SC 1207.

⁷⁷ AIR 1997 SC 568.

⁷⁸ AIR 1996 SC 3399.

⁷⁹ AIR 1990 SC 605.

the matter of preventive detention of a foreigner. The report of U.N. Secretary General dated 27th May, 1983 requiring strengthening of consumer protection was the inspiration for crafting the better protection of consumer rights in *India Photographic Company* ⁸⁰ and the two International Law principles of sustainable development and precautionary principle have been put under Art. 21 for protecting the environment. The International Convention on Psychotropic Substances 1971, and U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 were used by the court to retain its jurisdiction with reference to offences relating to Narcotic Drugs and Psychotropic Substances. And, in *Nilabati Behera* ⁸¹ the court found an enforceable right to compensation notwithstanding the reservation by the Government of India under Art. 9 (5) of the International Covenant on Civil and Political Rights, 1966.

It can be said that the inarticulate premise in the reasoning of the Supreme Court was that it would turn to International law for strengthening fundamental rights and limitations on the Governmental power where responses from the municipal system was undependable.

⁸⁰ AIR 1999 SC 2453.

With neither the power of the sword nor the purse, the power of the judiciary depends on the public acceptance of its authority and its integrity. The greatest strength of the judiciary is the faith of the people in the judiciary which has to be earned by developing inner strength of morality and ethics. A little isolation and aloofness are the price which one has to pay for being a judge, but this is not to recommend complete isolation. The judge has to pulse societal currents.

The power of judicial review vested in the Superior Court by the Constitution has to be handled with care and sensitivity because judges who exercise judicial power are subject to the political sanction of impeachment. What would attract impeachment is hard to say because it will be determined by the political winds of the day. This is not to say that a judge has to be deferring to every political decision taken in exercise of policy making, be it in constitutional amendment or legislation. The judiciary in India can be credited with having maintained its independence through not inviting even for a move for impeachment despite strong denouncements of major political decisions. This protection can be said to have come from a strong climate of public opinion in favour of judicial independence.

⁸¹ AIR 1993 SC 1960.

The accountability of the judiciary remains as majorly political. For violations of law it is an in-house correction mechanism that currently manages. The sufficiency of this has not been called in question and this can be said to reflect sufficient trust in the judges of the superior court who manage the in-house procedures under the Judges (Inquiry) Act, 1968.⁸²

The independence of the judiciary has been constitutionally safeguarded through the constitutional requirement that their salaries, allowances and pensions shall be charged on the consolidated fund of the Union and of the State in terms of Arts. 112 and 202 of the Constitution. Their conditions of service cannot be varied to their dis-advantage. Only during financial Emergency under Art.360 can their salaries and allowances be reduced for the duration of the Emergency. They are thus kept out of reach of the political winds and guaranteed independence of function. This independence is reflected in their exercise of judicial review of legislations, administrative actions and even constitutional amendments.

⁸² There is a proposal to replace this with a new enactment .

By and large, the Indian judiciary has acquitted itself creditably. The apex court's declaration that Art. 14 binds the judiciary and any judicial order violative of fundamental rights is void can be identified as 'HIGH's in auto regulation. The Principles of Judicial Conduct, 2002 and Restatement of Values in Judicial Life adopted by Chief Justices Conference in 1999 are the other standards for their functions and would underline at once their independence and their accountability. Power and responsibility go together and the judiciary is no exception to this principle.

To sum up, it can be said that over a half century the Indian Constitution has been enriched in its contents relating to fundamental rights through the apex court enunciating the doctrine of 'basic structure' limitations on the amending power and keeping judicial review of amendments open by not enumerating the elements of the basic structure. The court has thus stationed itself as the sentinel on the *qui vive* of the strongest aspect of political power - the exercise of the power of amending the Constitution. The identification of Arts. 21 and 14 as parts of the basic structure has enabled the court to suffuse the right to life with a richer content and control the Government against any arbitrary exercise of power. It has established constitutional supremacy as against political assertions of parliamentary

supremacy; strengthened judicial review, cleansed electoral processes and resorted to activism to open up access to court and for awarding of damages even in writ proceedings.

To sum up, a few suggestions are given hereunder. They are, in the first place to improve easier access to justice and reduce the barrier of cost it may be desirable to have benches of the High Court sitting in Circuit. Secondly, the prevailing practice of International treaty obligations being taken into consideration for interpreting constitutional and municipal law provisions should be advantageously continued. Thirdly, allowing justification by defence of truth in Contempt of Court cases would, where the defence is not successful, leave the reputation of the institution damaged, and would not appear to be desirable. Fourthly, the existing in-house mechanisms for enforcing accountability of judges would seem to be sufficient and no radical change seems necessary. Fifthly, the expenditure on the judiciary may be brought under 'plan' expenditure as recommended by the Planning Commission and the total budgetary allocation for the judiciary may be left to the administrative control of the Chief Justice of India or the Chief Justice of the respective State High Courts. Sixthly, as the law making will be complete with the assent of the constitutional apex authority as required by the Constitution, it

would be an arbitrary exercise of power not to bring the law into operation. Therefore, the apex court can rule that when the constitutional procedure for an Amendment⁸³ or an enactment is completed, it would be arbitrary not to bring that provision into force and effect. Because political power is involved it would have the beneficial effect of checking hasty modifications of the Constitution or the law, and also make the power holders more responsible.⁸⁴

In the seventh place, it would be desirable to have a *police Judiciare* (judicial police) exclusively under the control of the superior courts for accessing official records and information quickly, in the interest of speedy disposal of cases. Eighthly, in the matter of State Action cases it is suggested that the inquisitorial system as is currently practiced in the administrative courts in France may be adopted. Ninthly, in the matter of public offices it is desirable that an upper age limit for holding such offices be prescribed to bridge the generation gap. In the tenth place, the age of retirement of judges of the High Courts and the Supreme Court

⁸³ Art. 368 (2) is clear that on the President assenting the Bill proposing Amendment, the Constitution shall stand amended in terms of the provision of the Bill. There is no provision for keeping the Amendment in limbo.

⁸⁴ Clauses (4) to (7) of Art. 22 as amended by sec. 3 of the 44th Amendment Act, 1978 have so far been brought into force, by not notifying the amendment to come into force. The other provisions of the amendment have already come into force and effect from 20.6.1979.

shall desirably be raised to 65 and 70 years, respectively. This increase has already been recommended by the Constitution Review Commission.

All the above can provide a strong foundation for reaching the conclusion that the Supreme Court of India has shouldered well the responsibility of guarding the Constitution and its values, read with canons of judicial ethics handed down by generation after generation of judges by tradition and conventions.