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Efforts from many quarters have gone into the successful publication of this Inaugural Issue of the Indian Journal of Constitutional Studies. We would like to express a deep sense of gratitude towards our blind peers who thoroughly validated all articles sent to them for reviews. We would also like to thank our contributors for contributing extraordinary submissions to the issue which stood at par on the rigorous scrutiny.

JUDICIAL REVIEW IN INDIA: SUCCESS OR FAILURE

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CONTENTS

I. INTRODUCTION

The concept of judicial review is not a newer one its foundation can be traced back to a famous American case ***Marbury v. Madison***[1] in 1803 where justice Marshall adopted mostly the arguments put forward by Alexander Hamilton in the federal papers No. 78. Further he was appointed the chief justice of supreme court in 1801 where he continued his post till 1835. This period is considered as the glorious period for the development of doctrine of judicial review in America.

In India the idea of judicial review is regarded as one of the most important features of Indian constitution. We have a written constitution which provides for separation of functions among the three different organs of the government though not explicitly but impliedly. Further we have a federal structure of government which creates the union and the state government & each of which is assigned different subjects on which it can make laws[2]. Part XI of the constitution of India deals with such distribution of powers between these two levels of the government.

[1] Marbury v. Madison, 5 U.S. 137, 138 (1803).
[2] Urmilesh Kumar, *the distribution of legislative powers between the center and the states in India*, SHAREYOURESSAYS.NET (Mar. 26, 2017, 10:51 AM), http://www.shareyouressays.com/115277/the-distribution-of-legislative-powers-between-the-centre-and-the-states-in-india.

Thus the state cannot make any law which is exclusively a subject of union list and the union cannot make any law which is exclusively a subject of state list & this is what our written constitution provides for. Further our written constitution also aims towards the realization of the objective that neither the state nor the union shall make a law or do an act which is ***ultravires or extra-constitutional***.

We have, in India, for the first time came into light the concept of judicial review in ***Emperor vs. Burah***[3] where the Calcutta high court as well as the privy council adopted the view that the judiciary has the power to review the acts of the government under certain limitations. Then by the Government of India Act of 1935, federalism was introduced which further expanded the concept of judicial review. Then in our own constitution of 1950 we have explicit provisions for this concept. Article 13[4], 32[5] & 226[6] affirmed the position of judicial review in our constitution. These are the main developments of the concept of judicial review before independence. After the commencement of the constitution, many developments took place throughout the time & various cases where from time to time the judiciary protected & reasserted the concept of judicial review & the constitutional supremacy.

II. IMPORTANT JUDICIAL PRONOUNCEMENTS ALONG WITH THE UNDERSTANDING OF THE IDEOLOGIES OF THE BENCHES

There has been a long debate regarding the judicial review of the constitutional amendments & this debate has further created a path for the development of the concept of judicial review in india. There is a long series of important cases which laid down a huge impact on the judicial development in India & which made the judiciary in India from the least important to the most important organ of the government. Further the ideologies of the judges played a great role in such developments. Below are a few such cases where such developments took place along with the diverse views of the benches.

In ***Shankari Prasad vs. Union of India***[7] the supreme court held that the parliament can take away any of the rights guaranteed under part III of the constitution of India through a constitutional amendment. The bench was of the view that the article 13(8) of the constitution[8] includes only the ordinary law and not a constitutional amendment made under article 368. Further this view was reaffirmed by the supreme court in ***Sajjan Singh vs. State of Rajasthan***[9] where again the court reiterated its previous decision.

But the twist came in 1967 when in ***Golakhnath vs. State of Punjab***[10] the supreme court was again considering the same issue as was in the Sajjan singh's case. It was reinvited to check the validity of the Constitution (seventeenth amendment) Act, 1964 where it overruled its earlier two decisions of the Sajjan singh's and Shankari prasad's case. The supreme court held that the

[3] Emperor v. Burah, ILR, Calcutta, 63 (1877).
[4] INDIA CONST. art. 13.
[5] INDIA CONST. art. 32.
[6] INDIA CONST. art. 226.
[7] Shankari Prasad vs. union of India, AIR 1951 SC 455 (India).
[8] INDIA CONST. art. 13, cl. 8.
[9] Sajjan Singh vs. state of Rajasthan, AIR 1965 SC 845 (India).
[10] Golakhnath vs. state of Punjab, AIR 1967 SC 1643 (India).

parliament cannot take away the fundamental rights enshrined under part III of the constitution of India. The Chief justice subba rao expressed the view that the power of the parliament to amend the constitution is not an absolute power & this power is derived from article 245 of the constitution[11] of India and not the article 368 which merely lays down the procedure for amendment. Further under article 13 of the constitution of India, the word 'Law' would include the constitutional amendments also. The view of the minority was exactly opposite.

Further in ***keshavananda bharati's case***[12] the question before the supreme court was to check the validity of the twenty fourth, twenty fifth and twenty ninth amendments to the constitution of India which made the parliament more powerful. The court said that the parliament has the power to amend any part of the constitution but it cannot influence the basic structure of the constitution.

Justice sikri expressed his views that the word 'amendment' constitute different extent meaning at different places in the constitution. He said that the meaning of the word must be derived from the essence of article 368[13], the preamble, the fundamental freedom of the individual and the directive principles of state policy. The supreme court said that you can amend even the fundamental rights but only in a way as to not damage the basic structure of the constitution.

In another important case ***Indira Gandhi vs. Raj Narayan***[14]**,** the supreme court held the clause IV of article 329(A)[15], which was inserted by constitution (39th Amendment act), 1975, as unconstitutional on the grounds that the provisions therein abridges the basic structure of the constitution of India. Indira Gandhi in this case tried to validate her election which was struck down by the Allahabad High Court as unconstitutional. To counter this, she passed a law and did this amendment.

Justice Mathew was of the view that you cannot regard the adjudication of an election dispute by a law making body as a law thus it cannot be regarded as an amendment to the constitution & the article 329A (4) is unconstitutional. The same idea was again expressed by justice H.R. Khanna. Where justice Khanna, justice chandrachud & justice Mathew unanimously held the above article as void. Justice Ray also joined them in the decision but did not used the word 'void'.

In ***Minerva Mills Case***[16]**,** the doctrine of basic structure was again came into light when the court again took it into consideration. The court again reasserted the position that it took in keshavananda bharati's case. In this case the court held that the insertion of clauses 4 & 5 in article 368 through the constitution (42nd amendment) act,1976 is beyond the powers of the parliament as it would give a blanket power to amend any part of the constitution which would further digress the basic structure doctrine. Article 31(c)[17] was also held to be unconstitutional as it too influence the basic structure doctrine.

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[11] INDIA CONST. art. 245.
[12] Keshavananda Bharati vs. state of kerala, AIR 1973 SC 1461 (India).
[13] INDIA CONST. art. 368.
[14] Indira Nehru Gandhi vs. Raj Narayan, AIR 1975 SC 2299 (India).
[15] INDIA CONST. art. 329(A), cl. IV.
[16] Minerva Mills Ltd. Vs. union of India, AIR 1980 SC 1789 (India).
[17] INDIA CONST. art. 31, cl. C.

Justice Bhagwati in this case gave the dissenting opinion. As far as the question of article 368(4)[18] and article 368(5)[19] is concerned he agreed with other judges but for article 31(c) he dissented from the rest of the bench and said that the article 31(c) only clears the existing constitutional position and it provides for just what is commanded under directive principles to remove the time consuming process of seeing whether a law transgress article 14 or article 19 of the constitution. Further in ***I.R. Coelho vs. State of Tamil Nadu[20],*** the supreme court held that the power of the judicial review cannot be taken back from the judiciary by simply pouring a law into the ninth schedule of the constitution. They said that the consequence of such an immunity would be such that it would nullify the whole part III which incorporates the fundamental rights.

The judgement was delivered by a nine judge bench which was headed by justice Y.K. Sabharwal who said that a wall is built around certain areas of the part III of the constitution of India which cannot be transgressed and this wall is nothing other but the basic structure doctrine founded in keshavananda bharati's case.

Thus above are a few important cases that gave shape to the concept of judicial review in India, making the judiciary in India from the least powerful to the most important organ of the government.

III. UNIFORM CIVIL CODE IN THE LIGHT OF JUDICIAL STANDPOINT ON PERSONAL LAWS

The concept of the uniform civil code[21] can be very easily understood as a code or a law which applies to the people of all the religions equally and such a code deals with matters related to family relations like guardianship, divorce, marriage, inheritance and succession, etc. In India the concept of the uniform civil code is not yet applicable to the whole of the country except goa. The need for such a uniform code arise for a very significant reason that sometimes the personal laws of the religions come contrary to the rights of an individual. To treat all the individual equally and to recognize their basic right, a uniform civil code sometimes becomes necessary. We have Uniform Civil Code under article 44[22] of our constitution as a Directive Principle of State Policy.

On the contrary personal laws are those set of certain rule & regulations, practices, etc. which are exclusively devised for to be followed by the people of that particular religion. The personal laws in India are developed over a long period of time but its roots can also be found in our constitution where under article 25[23], the right to freedom of religion is guaranteed to every individual which include freedom of conscience and free profession, practice & propagation of any religion. Both the judiciary and the legislature were not able to easily repeal or amend these personal laws because of the word 'practice' in this article which can easily be given wide

[18] INDIA CONST. art. 368, cl. 4.
[19] INDIA CONST. art. 368, cl. 5.
[20] I.R. Coelho vs State of Tamilnadu, AIR 2007 SC 861.
[21] A.B. Vajpayee, *Uniform Civil Code*, FANDOM POWERED BY WIKIA (Mar. 26, 2017, 11:04 AM), http://india.wikia.com/wiki/Uniform_civil_code.
[22] INDIA CONST. art. 44.
[23] INDIA CONST. art. 25.

interpretation. Further the religious sensitivity of such a matter is another important aspect especially in a country like India where the people from diverse religions are living together within the same country.

The above position of the personal laws are reiterated by the supreme court in ***Commissioner Hindu Religious Endowments, Madras vs. Shri Lakshmindra Tirthaswamiar of Sri Shirur Mutt***[24] that the right guaranteed under our constitution does not only guarantee the religious freedom of expressing opinions but also the freedom to do any act in pursuance of that religious freedom. Thus the meaning of the word 'practice' used in article 25 was made clear by the supreme court in this case. This has started a new topic of discussion that what is the relation between these personal laws & the fundamental rights guaranteed under our constitution. Regarding this topic following decisions of the court are very significant.

In ***State of Bombay vs. Nasru Appa Mali***[25] the Bombay High Court drew a line between the religious faith and belief and the religious practices where the court said that the state protects only the religious faith and belief and not the religious practices although you may propagate your religious practices only as long as those practices are not against the public order, morality, health and any other policy of social welfare.

In another important case ***Srinivas Iyer vs. Saraswathi Ammal***[26] the court said that a law concerning the Hindu bigamy and divorce is not in contravention of the rights given under article 25 and article 15[27] as it does not discriminate between the Muslims and the Hindus on religious basis as our constitution empowers the state to alter, make or repeal the personal laws.

Further the judiciary while deciding the constitutionality of any personal law takes in account the concern of uniform civil code & try to interpret the law in such a manner as to make the uniform civil code a constitutional reality. This can be explicitly seen in ***Mohammad Ahmed Khan vs. Shah Bano Begum***[28] where the judiciary took a serious view towards the realization of Uniform Civil Code in India and directed the union government to work towards this task. In shah bano's case, the court decided in the favor of the right of a Muslim woman to claim maintenance after divorce.

In another case ***Ahmedabad Women's Action Group (AWAG) vs. Union of India***[29] where the court was dealing with the very sensitive issue of *triple talaq* it held that though the change is necessary it cannot itself deal with such a sensitive issue and make any change in the personal law of the Muslims. Nevertheless, it said that the parliament should make reform in such a personal law as towards the realization of Uniform Civil Code.

So from the above cases it can easily be concluded that the role of the judiciary is appreciable. It shows an active role of the judiciary in dealing with the personal laws where sometimes it itself

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[24] Commissioner Hindu Religious Endowments, Madras vs. Shri Lakshmindra Tirthaswamiar of Sri Shirur Mutt, AIR 1954 SC 282.

[25] State of Bombay vs. Nasru Appa Mali, ILR 1951 Bom 775.

[26] Srinivas Iyer vs. Saraswathi Ammal, AIR 1953 Mad 193.

[27] INDIA CONST. art. 15.

[28] Mohammad Ahmed Khan vs. Shah Bano Begum, AIR 1985 SC 945 (India).

[29] Ahmedabad Women's Action Group (AWAG) vs. Union of India, (1997) 3 SCC 573 (India).

did the necessary changes & sometimes it directed or suggested the parliament to reform these personal laws.

IV. IDEATION OF A LIVING CONSTITUTION OR A DEAD CONSTITUTION

A living constitution is the one which is open to the changes and which has its essence in its dynamic character. A dead constitution on the other hand is the one which is opposed to the changes and it is static in nature. A constitution may also have both the characters i.e. of a living as well as a dead constitution where some matters are open to the change and the others are not.

We have in India a living constitution which empowers the parliament to make necessary changes and amendments in it and which also empowers the judiciary to make liberal interpretation of the constitutional provisions[30]. The justification for a living constitution lies in the fact of need for change with the changing social needs. But the real problem starts when the judiciary through its interpretation or the parliament through its amendment start to overreach their limits[31].

For the judiciary we have seen that in a number of cases it did strong efforts to protect our constitution in the role of the guardian of our constitution. Like in ***Keshavananda Bharati vs. Union of India*** the judiciary propounded the basic structure doctrine which protects the constitution from unreasonable overreach of the parliament. Also in many other cases we can see that the judiciary played an active role for protection of our constitution. But at the same time we can see that in some cases judiciary also tried to overreach its boundaries.

For the parliament we can also say that at many occasions it transgressed its limits by making several amendments in our constitution which tries to demean the basic idea of our constitution. In the 24th amendment to Indian constitution it tried to make its amending powers as absolute by amending articles 13 and 368. Further in 42nd amendment the parliament did one of the most important efforts to enlarge its powers by putting aside the aims and objectives of the constitution. Thus we can see in many other amendments also where the parliament digressed its constitutional limits.

The problems are not only in a living constitution but a dead constitution too where the biggest problem is that it cannot keep pace with the changing social, economic, political & various other needs. Such a problem is also a serious one. But despite such problem we should find a midway between a living constitution and a dead constitution and adopt the features of both. Here we can keep a certain part of the constitution as living and the remaining part as a dead one. In this way the situation can be handled in a more feasible and effective way.

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[30] Ronojoy Seni, *India's Living Constitution*, TIMES OF INDIA (Mar. 26, 2017, 11:25 AM), http://timesofindia.indiatimes.com/india/Indias-Living-Constitution/articleshow/5490343.cms.

[31] Siddhant Kohli, *Judicial Activism and India's Living Constitution*, CENTRE FOR CIVIL SOCIETY (Mar. 26, 2017, 11:47 AM), https://spontaneousorder.in/judicial-activism-and-indias-living-constitution-424d9f2b122d#.8j78m5tg1.

V. JUDICIAL REVIEW OF THE PARDONING POWERS OF THE PRESIDENT AND THE GOVERNORS OF INDIA

In ***Maru Ram vs. Union of India***[32] it was held that a person can go for the judicial review of the rejection of his mercy petition by either by the president or the governor solely on the grounds that they exercised their powers arbitrarily or in bad faith. This grounds for judicial review of such a rejection were confirmed in ***Kehar Singh vs. Union of India***[33].

Later in ***Epuru Sudhakar's case***[34] the supreme court laid down certain guidelines as in which manner the president and the governors for the purpose will exercise their pardoning powers. In another important case ***Narayan Dutt vs. State of Punjab***[35] the court was dealing with the pardoning power of the governors.

In ***Mansukh Lal Vithal Das Chauhan vs. State of Gujrat***[36] the court said that it will not look into the merits of the case but will look into:

1. Exceedance of powers.
2. Error of law.
3. Breach of rule of natural justice.
4. No reasonable tribunal would have come to such decision.
5. Abuse of powers.

Thus the above important cases give a clear evidence that now a person can go against the rejection of his mercy petition by the president or the governor. Further the judiciary can also commute the death sentence of a person to life imprisonment on the grounds of delay in execution of his sentence. However, it is very difficult to prove one's claim against such a rejection.

VI. THE AID AND ADVICE OF COUNCIL OF MINISTERS: THE POSITION OF THE JUDICIARY IN MAKING THE PRESIDENT MERE A RUBBER STAMP

Article 74(1) of the constitution[37] makes it binding on the president to act in aid & advice of the council of ministers. Further article 74(2)[38] says that any advice tendered by the council of ministers to the president cannot be questioned in any court of law. Thus the position of the president is quite clear in our constitution. Now let us see what is the judicial stance on his position.

In ***Dinesh Chandra vs. Chaudhary Charan Singh***[39] the court held that the president has the power to dismiss any minister at any time thus it totally depends upon his will. This view the

[32] Maru Ram vs. Union of India, AIR 1980 SC 2147.
[33] Kehar Singh vs. Union of India, AIR 1989 SC 653.
[34] Epuru Sudhakar vs. Government of A.P., (2006) 8 SCC 161.
[35] Narayan Dutt v. State of Punjab, (2011) 4 SCC 353.
[36] *Mansukhlal Vithaldas Chauhan v. State of Gujarat*, (1997) 7 SCC 622.
[37] INDIA CONST. art. 74, cl. 1.
[38] INDIA CONST. art. 74, cl. 2.
[39] *Dinesh Chandra v. Chaudhary Charan Singh*, AIR 1980 Del 114.

court was reaffirmed in ***S.P. Anand vs. H.D. Devgowda***[40] where the court said that the word 'minister' would also include the prime minister for above purpose.

But in some other cases the court took a narrower view towards the powers of the president. Thus in ***Shamsher Singh vs. State of Punjab***[41] the court said that the president is only the titular head of the government and whenever his satisfaction is required by the constitution it is not actually his satisfaction but the satisfaction of the council of ministers. This position was further strengthened in ***Ram Jawaya Kapoor vs. State of Punjab***[42] and the court expressed the same view as earlier. There are many more such cases where the judiciary from time to time determined the role of the president in India.

Thus from the above observation it is quite clear that the judiciary played a very significant role in determining the status of the president in our country[43].

VII. JUDICIAL REVIEW OF ECONOMIC LEGISLATIONS

After the enactment of our constitution, the judiciary played a very significant role in dealing with the economic legislation. The main focus of the government was among others, the agrarian and industrial reforms through various policies and legislations. In case of these reforms, the right to property was also significantly considerable as at that time it was guaranteed as a fundamental right under article 19(1)(f)[44] of the constitution.

There was, many a times, remained a tussle between the rights of the individuals & the welfare aspect of the society. Between the period of 1950-75, a large number of laws dealing with such economic issues were passed by the legislature where a number of times the judiciary intervened as the protector of the fundamental rights of the people and the guardian of our constitution.

At the same time judiciary also confirmed that it will not go to interfere in the economic policies of the government until & unless such a policy or a legislation is declared by the constitution to be illegal or *ultravires*. But it can be seen always that the judiciary at most of the times, accepted the government policies & also intervened whenever necessity required.

VIII. JUDICIAL STANCE ON THE CONCEPT OF CONTEMPT OF COURT

There are various provisions regarding the contempt of court proceedings in India. We have article 129[45] which empowers our High Courts & article 215[46] which empowers our supreme court to punish for contempt of themselves. We also have a separate law 'The Contempt of Court Act 1971' where the higher courts are also empowered to punish for contempt of their

[40] *S.P. Anand vs H.D. Devgowda* (1996) 6 SCC 734.
[41] Shamsher Singh vs. State of Punjab, AIR 1974 SC 2192.
[42] Ram Jawaya Kapoor vs. State of Punjab, AIR 1955 SC 549.
[43] Abhishek Kumar, *President: A Titular Head*, ACADEMIKE (Mar. 26, 2017, 11:54 AM), https://www.lawctopus.com/academike/president-titular-head.
[44] INDIA CONST. art. 19(1), cl. F.
[45] INDIA CONST. art. 129.
[46] INDIA CONST. art. 215.

subordinate courts. But in India such provisions had never been used in a strict way, in fact they were used time and again in different way on the basis of the people involved[47].

Such things can very often be perceived in many cases involving sometimes journalists, politicians, lawyers, etc. the court adopted different approaches on case to case basis. In other words, sometimes it strictly used the law other times it took some cases not so strictly.

In ***P.N. Duda vs. P. Shiv Shankar & others***[48]. A union cabinet minister directly alleged the supreme court of nepotism in the words that the supreme court has become a heaven for bride burners, FERA violators & whole horde of reactionaries. But since the person who said this words was a cabinet minister in union, the court did nothing. You can now imagine that what would have been the situation if the same words were said by an ordinary person.

In another case in 2009, when a student and his father were indicted by the CBI applied for bail before a judge of the Madras High Court, the said judge was approached by a lawyer to ask him to talk over the phone with the 'Minister Raja' for letting the father and the son free. The said judge refused to do so but instead of starting a contempt procedure against the counsel, he referred the matter to the Supreme Court. This is just because the case involved the 'Minister Raja'.

But in the case involving advocate Prashant Bhushan who alleged the judiciary of corruption the supreme court took a strict view and ordered him to tender his apology before the court for something which he said without any bad intention on his part. He further clarified his position & said that what he said was misconstrued by some people but the court refused to enter his view & order him to tender an official apology before the court.

In the same way in arundhati Roy's case the court again took a strict view regarding its contempt. Now from the above cases it is pretty much clear that the contempt law in India is not used in the way it is supposed to be used. Sometimes it is used casually & sometimes it is used in very strict sense. But whatever happens, as far as this understanding is concerned, that completely depends upon the judge.

IX. CHASING ITS OWN TAIL AROUND THE MAPLE

Our constitution does not mention anywhere in the constitution the principle of separation of powers but we nevertheless follow this principle where the powers are divided among the three organs of the government i.e. the executive, the legislature and the judiciary. This separation of powers is not very clear there may be overlapping between the powers of the different organs of the government.

The constitution provides the power of its amendment to the parliament where the amending bill once passed by the parliament sent to the president for his approval only then after his approval it would become a law. Further in many of the cases it is clearly established that the amending

[47] Justice Markandeya katju, *It's Time to Amend Law on Contempt of Court*, LAW RESOURCE INDIA **(**Mar**.** 26, 2017, 12**:**04 PM**)**, https**://**indialawyers**.**wordpress**.**com/category/contempt-of-court**.**

[48] P**.**N**.** Duda vs**.** P**.** Shivshankar, AIR 1988 SC 1208**.**

power of the parliament is not absolute. In ***Keshavanda Bharati vs. Union of India***[49] it was held that the parliament cannot amend the basic structure of the constitution. For the purpose of protection of our constitution, we have the judiciary that from time to time intervene to protect it from the unreasonable encroachment of the legislature.

When we talk about the amenability of article 370[50] of the constitution the supreme court made the position very clear in ***Ashok Kumar & Others vs. State of Jammu & Kashmir*** where it said that article 370 is the permanent feature of the constitution and it cannot be amended, repealed or abrogated by the parliament. Thus this proves that even the parliament cannot use its full discretion to exercise its amending powers & in effect it bound by the limit drew by the constitution.

X. EVOLUTION IS BETTER THAN THE REVOLUTION

The concept of judicial review has evolved over a long period of time in the history of India. The objective of the judicial review is to protect the constitution from unreasonable and unjustified interference from the executive and the legislature and to check the arbitrariness of the government of the day. The work to achieve this objective is done by the judiciary which from time to time take account of such issues. In effect the judiciary has the power of judicial review of legislative & executive acts and legislations.

But what would have been the situation if there was no such concept of judicial review. The only answer is that to check the arbitrariness of the government there must have been a revolution which would leave nothing but destruction. Therefore, to prevent us from such a situation the concept of judicial review evolved over a period of time in India where through various judicial pronouncements the concept of judicial review developed in India.

XI. JUDICIAL REVIEW GRANT OF MINING LEASE GRANTED BY THE GOVERNMENT

In a large number of cases we may observe that the judiciary always played a very important role in reviewing the grant of mining leases which is especially and more importantly for the purpose of environmental protection. The judiciary always remain proactive in filling in the gaps between the existing laws and the existing social concerns.

Once, the state of U.P. was failed in properly fulfilling the requirements of the then existing mining & environmental laws. A PIL was filed under article 32[51] of the constitution alleging that the mining is going on in mussorie Dehradun region rampantly in a haphazard and dangerous manner which creates a huge environmental concern for the people living in surrounding areas. The supreme court issued directions to the U.P. government and the collector of Dehradun regarding the same.

[49] Keshavanda Bharati vs. Union of India, (1973) 4 SCC 225.
[50] INDIA CONST. art. 370.
[51] INDIA CONST. art. 32.

In ***Samatha vs State of Andhra Pradesh***[52] the dispute was that the land for mining was to be granted to the tribal people of 14 villages of Andhra Pradesh but it was instead granted on lease for mining to non-tribal people of some other place. When the case went to the court it held the grant of mining lease to non-tribal people is illegal. Further in a large number of cases the role of the judiciary pertaining to disputes related to mining lease was deferential & commendable.

XII. THE SOCIAL JUSTICE BENCH

The social justice bench was initially constituted by the then chief justice of India H.L. Dattu in December 2014 with an objective of early disposal of cases related to social domain. This cases of social domain includes the cases related to food & public distribution, mal-nutritious food to woman & children, effective utilization of public fund for social cause, to provide for rehabilitation of acid attack victims, to provide shelter for destitute and homeless, etc. Further aim of the social justice bench is to protect the social rights guaranteed to the people by the constitution.

The bench initially worked in its full pace but later by the time the workload increased on the bench so that it could not deliver a single judgement for a year before march 2016 when the bench was finally disposed of by the then new chief justice of India T.S. Thakur. Nevertheless, the bench through its initial phase took some important decisions.

In one of its major steps, the social justice bench directed the government to effectively utilize the cess of 20000 crore rupees that it collects from the construction builders for the betterment of the workers & the education of their children which in effect forced the government to formulate a policy making it mandatory for such contractors to register all their workers in the Employees Provident Fund Office

In another important case it directed the central government to set up an institutional mechanism for the rehabilitation of acid attack victims & to make the sale of acid products uneasy.

The bench now again started[53] with the same intention by the new chief justice of India J.S. Khehar in January 2017 & now it is yet to see as to how well it will work but we still hope that it will work with its full strength and capacity.

XIII. CONCLUSION

From the above comprehensive discussion, it is very easy to conclude that the judiciary always remained proactive in dealing with every matter concerning the welfare of the people and the protection of the constitution. In matters ranging from political concerns to environmental concerns its role is always deferential and respectful. It always fights for the protection of rights of the people of the country. At the same time, it also directs the government to take necessary steps in the direction of good of the people.

[52] Samatha vs. State of Andhra Pradesh, 1997 8 SCC 191.

[53] J Venkatesan, *CJI Restores Social Justice Bench at Supreme Court*, THE ASIAN AGE (Mar. 26, 2017, 12:08 PM), http://www.asianage.com/india/all-india/150117/cji-restores-social-justice-bench-at-supreme-court.html.

The concept of judicial review should always be a characteristic of a democratic country where one organ of the government is given powers to keep a check on arbitrariness of the other. This way it can achieve the basic purpose of a democracy and that purpose is rule by the people.

Now the judiciary has a highly reputed image in the country. Perhaps we can say that it is the most powerful organ of the government and people keep their trust on it. We further hope that it will be successful in keeping & protecting its deferential image in the future.