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Judicial Review vs. Parliamentary Sovereignty: Protecting Fundamental Rights in Constitutional Amendments

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ABSTRACT

It is occasionally argued that judicial review of basic legislation is not required by a written constitution. Instead, a nation may come up with other ways to shield the constitution from interference by the ordinary political apparatus. One can wonder if the opposite is true. Is it possible to imagine a nation without an established constitution that has judicial review of primary legislation? Remarkably, Marshall CJ was the first to recognise the idea of judicial review in the landmark case of Marbury v. Madison. In India, the concept was tested through a series of extremely strict constitutional modifications rather than a particular instance. The main focus of this paper would be on the experience of the Indian constitution both during its inception and as it evolved throughout time. It also describes how the SC of India plays a special and ground breaking role in rendering rulings in matters involving challenges to laws and changes made by the Parliament. A contemporary constitutional framework is used to examine India as a case study. The paper provides some significant sections: It first explores the origins of the concept of judicial review and how it was first added. In order to better comprehend the concept, including the relevant constitutional provisions, a comprehensive overview of judicial review has been presented together with case laws. Lastly, the reasons why judicial review seeks to challenge the Indian Parliament's sovereignty have been emphasised. In addition, a debate has been held on the proper application of the Supreme Court's unique power to ensure that it continues to be a constitutional instrument rather than a machine to forward the Judiciary's own agenda.

KEYWORDS

Judicial Supremacy, Parliamentary Sovereignty, Indian Constitution, Basic Structure, Judicial Review.

INTRODUCTION

The legislative branch, executive branch, and judicial branch are the three pillars upon which our country is structured. For both the legislative and executive branches to operate effectively and democratically, they are inherently interdependent. By operating independently and maintaining within the parameters set by the constitution, the judiciary maintains its place as the body responsible for ensuring that these entities function. The unique additional authority vested to the Indian judiciary is known as judicial review, which allows it to declare any legislative or executive action unconstitutional. Article 226 and Article 32 of the Indian Constitution grant the High Courts and the Supreme Court, respectively, the authority to examine legislative action. This power is a fundamental aspect of the Constitution and forms part of its fundamental framework¹.

The ability of the court to declare any statute or official action unlawful if it believes it to be in inconsistency with the Constitution or fundamental law is known as judicial review. The power of the judicial review now came into play. Through this legal audit, known as judicial review, the judiciary now has the authority and duty to monitor administrative actions that infringe against the basic rights guaranteed to individuals by our constitution².

The Indian Constitution ensures the supremacy of both the judiciary and the legislature. In addition to the Supreme Court's authority to declare legislation unconstitutional, Parliament has the power to amend the Constitution and, in some circumstances, overturn court decisions. The legislative and judicial branches have occasionally clashed as a result, particularly in cases involving basic rights. The constitutional structure of India reflects the challenging balance between judicial supremacy and legislative power. Although the Indian Constitution created a robust and independent judiciary, it also acknowledges the legislature's responsibility in governance and lawmaking. There are two distinct perspectives on who has the last word in interpreting and applying the law: parliamentary sovereignty and judicial supremacy. The interplay between the two ideas can occasionally result in conflict or ambiguity, even though both has

¹L. Chandra Kumar v. Union of India, (1995) 1 SCC 400

²Ferguson & McHenry: The American Federal Government, Ed. X., p. 12

pros and cons.

ORIGIN OF JUDICIAL REVIEW

In US Administrative Law History, *Marbury v. Madison*³ marked a watershed because it established the basis for Judicial Review, which our Constitution ultimately accepted. Chief Justice John Marshall's 1803 decision played a significant role in elevating the Supreme Court to a separate branch of government on par with Congress and the president.

The principles, which are based on *Marbury v. Madison (1803)*⁴, guarantee that judicial review is carried out sensibly and within the bounds of the Constitution are,

- A specific case or dispute involving the defence or enforcement of important legal rights or the punishment, prevention, or restitution of wrongs directly pertaining to the persons concerned must exist before a court would hear any matter or dispute. The parties who are filing the lawsuit must have standing, which means that the issue must directly affect or harm them. On speculative or scholarly matters, courts do not offer advisory opinions. They exclusively handle precise and targeted conflicts, guaranteeing that the emphasis stays on specific legal issues rather than broad ones. Furthermore, the person contesting a legislation must show that it caused them pain or loss rather than just using the legal system to obtain an advantage.
- Before going to the Supreme Court, all other options must be tried. The courts steer clear of pointless matters and only consider important and substantive legal topics. As opposed to legal questions, factual questions are often not seen as a suitable foundation for judicial review. Courts may modify their opinions over time to take into account shifting social mores or developing legal interpretations. The judiciary, however, stays out of purely political disputes and concentrates only on the legal issues of a case.
- Until the opposite is demonstrated, a legislation that is contested in court is assumed to be legitimate. Without specific and compelling proof, courts often do not attribute unlawful intentions to legislators. If a legislation or a portion of it violates constitutional principles, they may declare it unconstitutional, but they will only rule on the

³Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

⁴Supra No. 5.

particular provisions that were successfully contested. Except in cases where it violates fundamental rights, the court is not meant to be a remedial mechanism for bad or foolish legislation. If a legislation must be declared unconstitutional, the court tries to restrict its decision to the particular clauses at issue, avoiding more general invalidation unless it is absolutely required.

CONSTITUTIONAL PROVISIONS OF JUDICIAL REVIEW IN INDIA

As the ultimate law of the nation, the constitution establishes the rules that provide the judiciary both authority and restrictions over the use of this unique judicial review power, which is within their regular purview. The following articles address the authority granted to courts with respect to judicial review:

- **Article 13** unequivocally declares that any legislation or existing law that contravenes the Constitution will be abolished⁵.
- **Article 32**, which guarantees constitutional remedies, a person has the right to petition the Hon. Supreme Court if his basic rights are being violated. As a result, this Court has been established to safeguard and uphold basic rights⁶.
- **Article 226**, this article gives the High Court the unique authority to issue writs or judicial orders to protect the rights of people. These are certiorari, habeas corpus, mandamus, and co warranto, in that order⁷.
- **Article 143** determines the Supreme Court's advisory jurisdiction. At any point in time, the President may consult the appropriate body for the stated purpose if he believes that a legal or factual issue has emerged or is likely to emerge that is of such a nature and significant to the public that it is unavoidable to surpass the Supreme Court's opinion⁸.
- **Article 372(1)**⁹, any laws that were in effect within India's geographical domain before the adoption of this Constitution would remain in effect until they are changed or amended by the Parliament or another appropriate body.

⁵ Constitution of India 1950, art.13.

⁶ Constitution of India 1950, art.32.

⁷ Constitution of India 1950, art. 226.

⁸ Constitution of India 1950, art.143.

⁹ Constitution of India 1950, art. 372(1).

- **Article 131–136¹⁰**: This series of articles gives the courts the ability to decide personal and interstate conflicts and enshrines them as the exclusive interpreters of the Constitution. As the Supreme Court is the protector of the Constitution, other courts must recognise and abide by its interpretation.
- **Article 245 and 246(3)¹¹**, the constitutional provisions govern the authority of both the State Legislature and Parliament. Any legislation's legality may be contested in court if it violates any basic rights or if it deals with a specific issue.
- **Article 251 and 254¹²**, stipulate that the Union Parliament's legislation will have the last word in any conflict between state laws.

JUDICIAL REVIEW IN INDIA

The U.S. Constitution serves as the model for the Indian notion of judicial review, which differs from its American equivalent in that it is more strict and explicitly sanctioned by the constitution. The Indian Constitution states in Article 13(2) that any law enacted by Parliament that infringes upon fundamental rights is null and invalid from the beginning. The Judiciary is the last arbiter of constitutional interpretation, guaranteeing the safeguarding of the document. **Shankari Prasad v. Union of India (1951)** was the first case to emphasise judicial review in India after independence, and it has its origins in the British Common Law system. By claiming that it infringed upon basic rights and **Article 13(2)**, Zamindars contested the **First Amendment Act of 1951**. The Supreme Court, however, maintained the amendment, ruling that Article 13 did not consider constitutional changes to be "laws."¹³

Golaknath v. State of Punjab (1967), in which the Court held that Parliament could not change Part III of the Constitution, laid the groundwork for contemporary judicial review. In this landmark case they overturned prior rulings of *Shankari Prasad case and Sajjan Singh v. State of Rajasthan (1965)* and questioned the validity of the **Seventeenth Amendment Act, 1964**. By a vote of 6:5, the Court ruled that Article 13's definition of "law" included constitutional amendments, so restricting Parliament's ability to

¹⁰ Constitution of India 1950, art. 131-136.

¹¹ Constitution of India 1950, art. 245, 246(3).

¹² Constitution of India 1950, art. 251, 254.

¹³ Shankari Prasad v. Union of India, AIR 1951 SC 458.

make changes to the Constitution¹⁴.

In an attempt to uphold Parliament's power to change any provision of the Constitution, the **24th Amendment Act of 1971** intensified the debate. This dispute was resolved in the famous case of **State of Kerala v. Kesavananda Bharati (1973)**. The **Kerala Land Reforms Act of 1969** and its revisions were contested by Edneer Mutt's pope, Kesavananda Bharati, who claimed that they violated his basic rights. The **24th, 25th, and 29th Amendments'** legitimacy was also called into doubt in this case. The "Basic Structure" concept was adopted by the Court by a 7:6 majority, which held that although Parliament can modify the Constitution, it cannot change its essential structure. This ruling preserved the core of the Constitution and struck a balance between the authority of Parliament, guaranteeing the stability of India's federal structure¹⁵.

In **Minerva Mills v. Union of India (1980)**, decided seven years later, the Court upheld the Basic Structure theory, holding that changes could not nullify the fundamental elements of the Constitution. It maintained **Article 31C** in its enlarged form but ruled that **Sections 4 and 55 of the 42nd Amendment** were invalid. By guaranteeing the integrity of the Constitution against any misuse of legislative authority, the ruling cemented the Basic Structure concept as the cornerstone of Indian constitutionalism¹⁶.

JUDICIAL REVIEW: COURT'S SUO MOTU APPROACH

The court has ruled that judicial review is possible for directives that are issued unlawfully or unreasonably¹⁷. It was made clear in **Vinay Kumar v. State of UP** that writ petitions in public interest issues can only be considered on behalf of a third party if it can be demonstrated that the impacted person or class is unable to seek remedy because of economic, social, or poverty-related obstacles. This proves that a third person who is not directly involved in the lawsuit cannot normally assert locus standi. The court may, however, take into consideration a third-party intervention in extraordinary circumstances when the real victim is unable to appear in court because of illiteracy or extreme poverty. Even in cases where the third party's credibility is questioned, the court may act suo motu if the issue at hand is

¹⁴ I.C. Golak Nath & Ors v. State of Punjab, AIR 1967 SC 1643.

¹⁵ Kesavananda Bharati v. Union Of India, (1974) 4 SCC 225.

¹⁶ Minerva Mills v. Union of India, 1981 1 SCR 206.

¹⁷ Executive and Managing Director B.P.L. Ltd. v. S.P. Gururaja, AIR 2003 SC 4536

important¹⁸.

In *Raju Ramsingh v. Mahesh Deorao*, the Supreme Court addressed locus standi and stressed that some issues, such as whether caste-based appointments are valid, usually involve the employer and the employee. However, when a matter of grave public importance arises, the Court may take cognisance suo motu, which allows for deeper scrutiny, particularly when allegations of constitutional fraud are made. The Court ruled that even if the issue stems from a private interest, the court must carry out its duty if the investigation serves a larger public interest and has significant social repercussions¹⁹.

JUDICIAL REVIEW VS. PARLIAMENTARY SOVEREIGNTY

According to the UK-originating theory of parliamentary sovereignty, Parliament is the ultimate legislative body with the capacity to enact, modify, and repeal laws independently of the court and other authorities. This idea guarantees that representatives of the people are answerable to them, representing "the will of the people." Although it has been commended for its democratic alignment and clarity, it has also drawn criticism for potentially facilitating unrestrained lawmaking by consolidating too much authority in the legislature. Some nations still firmly believe in parliamentary sovereignty, which represents the legislature's supreme power to create and amend laws.

According to the theory of judicial supremacy, the judiciary has the final say over how laws and the Constitution should be interpreted, and all other organs of government are subject to its decisions. This authority enables courts to rule that laws or acts are unconstitutional, guaranteeing that constitutional principles are not violated by legislative or executive overreach. The Supreme Court of the United States, which is regarded as one of the most influential and strong courts in the world, is a prime example of the American-born idea. South Africa, Canada, India, and other nations also exhibit judicial supremacy.

Protecting individual rights and guaranteeing government responsibility to the Constitution are two important objectives of judicial supremacy. The judiciary contributes to preserving the integrity of the constitution by serving as a check on the legislative and executive branches and preventing abuses of power. Additionally, there are concerns that the court may overreach, which might upset the distribution of power among the government's parts and lead to an excessive concentration of

¹⁸ Vinay Kumar v. State of Uttar Pradesh, AIR 2001 SC 1739.

¹⁹ Raju Ramsingh Vasave v. Mahesh Deorao Bhiavapurkar, AIR 2008 9 SCC 54.

power in the hands of the judiciary.

- **Judicial Review vs. Parliamentary Supremacy**

Judicial review guarantees that the objectives and moral principles of the Constitution are upheld by laws passed by Parliament. Although the Constitution fails to explicitly outline the roles of the legislative and judicial branches, it does give Parliament the right to alter it and requires the court to make sure that any changes do not conflict with its fundamental framework. This dynamic is best shown by the **National Judicial Appointments Commission (NJAC)** dispute. The Supreme Court reaffirmed the judiciary's position as the Constitution's custodian in 2015 when it ruled that the NJAC Act and the **99th Constitutional Amendment** were invalid, despite the fact that Parliament had passed both.

- **Early Clashes: Shankari Prasad and Sajjan Singh Cases**

The debate on the scope of Parliament's amending power began with the **Shankari Prasad case (1951)**, where the Supreme Court upheld the First Constitutional Amendment, asserting that amendments under Article 368 were not subject to Article 13's prohibition on laws abridging Fundamental Rights²⁰. This precedent was reaffirmed in **Sajjan Singh v. State of Rajasthan (1965)**, where Parliament was deemed competent to amend any constitutional provision, including Fundamental Rights. However, these rulings granted Parliament sweeping powers, raising concerns about potential authoritarianism²¹.

- **Golaknath Case: Curtailing Parliamentary Authority**

The **Golaknath case (1967)** marked a turning point. By a narrow majority, the Supreme Court held that constitutional amendments were subject to **Article 13**, restricting Parliament's power to amend Fundamental Rights. This decision overturned earlier judgments and emphasized that amendments affecting Fundamental Rights could not bypass judicial scrutiny. In response, Parliament enacted the **24th Amendment (1971)**, nullifying the Golaknath verdict and reinforcing its authority to amend the Constitution²².

- **Kesavananda Bharati Case: Basic Structure Doctrine**

The **Kesavananda Bharati case (1973)** introduced the

²⁰Supra No.14.

²¹Sajjan Singh v. State of Rajasthan 1965 AIR 845, 1965 SCR (1) 933.

²²Supra No.15.

transformative doctrine of the Constitution's "**basic structure**." While affirming Parliament's power to amend the Constitution, the Court ruled that amendments altering its essential framework were unconstitutional. This doctrine struck a balance between judicial and legislative supremacy, ensuring that Parliament could legislate without undermining the Constitution's fundamental principles²³.

- ***Indira Nehru Gandhi Case: Judicial Supremacy Affirmed***

In the aftermath of the Emergency, the Supreme Court reaffirmed the basic structure doctrine in ***Indira Nehru Gandhi v. Raj Narain (1975)***. The Court invalidated the **39th Amendment**, which sought to shield the Prime Minister's election from judicial scrutiny. This judgment underscored the judiciary's role as a check on legislative overreach, emphasizing the principles of separation of powers and the rule of law²⁴.

- ***Minerva Mills Case: Reinforcing Judicial Review***

The **42nd Amendment (1976)** attempted to curtail judicial review and enhance Parliament's supremacy. However, in ***Minerva Mills v. Union of India (1980)***, the Supreme Court struck down sections of this amendment, reiterating that judicial review is integral to democracy. The Court emphasized the balance between Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV), declaring their harmony as part of the Constitution's basic structure²⁵.

- ***Waman Rao Case: Ninth Schedule and Judicial Review***

The ***Waman Rao case (1981)*** addressed the ***Ninth Schedule***, which insulated certain laws from judicial review. The Court held that laws added to the Ninth Schedule post-Kesavananda Bharati were subject to basic structure scrutiny, reinforcing the judiciary's authority to protect constitutional integrity²⁶.

- ***Evolving Basic Structure Elements***

Over time, the judiciary has expanded the basic structure doctrine to include various principles. In the ***P.V. Narasimha Rao case***, parliamentary democracy was recognized as part of

²³Supra No.16.

²⁴Indira Nehru Gandhi vs. Raj Narain, 1976 (2) SCR 347

²⁵Minerva Mills Ltd. and Ors. vs. Union Of India, AIR 1980 SC 1789.

²⁶Waman Rao v. Union of India, (1981) 2 SCC 362

the basic structure²⁷. Similarly, in ***Kihoto Hollohan case***, free and fair elections were affirmed as essential²⁸. The ***SR Bommai case*** added democracy, secularism, judicial review, and national unity to the list, demonstrating the judiciary's dynamic role in safeguarding constitutional values²⁹.

The prudential nature of the Indian Constitution is best illustrated by the way judicial review and legislative sovereignty interact. Although Parliament has the authority to change the Constitution, it is unable to change its fundamental framework. This delicate balance has been preserved by the judiciary via seminal rulings, guaranteeing that neither institution descends into despotism. The fundamental structure theory, which upholds the democratic system and safeguards citizens' fundamental rights, continues to be a pillar of constitutional law.

RECOMMENDATIONS AND SUGGESTIONS

- Enhance the judiciary's capacity to impartially assess legislative activities while preserving parliamentary autonomy to safeguard basic rights.
- In order to eliminate uncertainty and possible disputes, the Constitution should be amended to clearly specify the limits and interactions between legislative sovereignty and courts.
- Provide a system for regularly assessing the "basic structure" doctrine's components to make sure it can be adjusted to changing social, political, and economic circumstances.
- To avoid conflicts and guarantee that constitutional provisions are interpreted harmoniously, encourage improved communication and cooperation between the legislative and the court.
- Establish an impartial constitutional review panel to evaluate and make suggestions on controversial constitutional provisions on a regular basis, making sure they are still relevant and in line with modern demands.

CONCLUSION

The difficulties in maintaining constitutional coherence in a democratic setting are highlighted by the complex

²⁷ PV Narsimha Rao v. State (Cbi/Sbi), AIR, 1998.

²⁸ Kihoto HoLlohan v. Zachillhu, (1992) 2 SCC 651.

²⁹ S.R. Bommai v. Union of India, (1994) SCC 3.

interrelationship between legislative sovereignty and judicial review. The Indian Constitution's drafters sought to establish a framework that balanced the legislature's power to modify laws with the judiciary's responsibility to protect basic rights. But crucial instances like Kesavananda Bharati and Minerva Mills, who have had a big impact on Indian constitutional law, have often put this balance to the test.

A key tool for monitoring legislative and executive activities and guaranteeing adherence to constitutional objectives is judicial review. Simultaneously, parliamentary sovereignty facilitates necessary reforms, embodying the democratic concept. Conflicts between these two fundamental components underscore the need for a balanced perspective that respects the unique roles of both branches. While concerns like legislative overstepping or judicial activism require constant examination and responsibility, the evolution of the "basic structure" theory demonstrates the judiciary's active role in defending constitutional ideals.

A cooperative strategy based on respect for one another and unambiguous constitutional principles is essential to promoting India's democratic values. India will be able to uphold its fundamental values while successfully tackling contemporary governance issues by fostering greater openness, public participation, and constitutional interpretation flexibility.