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Comparative study of Review Powers: Constitutional Judicial Review vs. Review Mechanism under the Civil Procedure Code

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ABSTRACT

Judicial review is a process by which the judiciary examines, determines, and invalidates the executive or legislative actions that are inconsistent with the Constitution of India. The Constitution of India explicitly establishes the mechanism for judicial review through various articles, including Articles 13, 32, 131 to 136, 143, 226, and 246. This judicial review serves as a fundamental element in maintaining the system of checks and balances within the framework of the separation of powers. It grants the judiciary the authority to oversee the actions of the legislative and executive branches and to uphold the primacy of the constitution. The judiciary's role encompasses the interpretation of the constitution, clarifying the distribution of powers among the different branches of government. Articles 32 and 226 further empower the judiciary with the crucial ability to conduct judicial review, which not only holds a significant place within the Constitution but is also considered an integral component of its basic structure.

The Civil Procedure Code (CPC) is a set of rules and regulations that govern the process of civil litigation in India. Under the CPC, there are various mechanisms for review, which allow parties to challenge and seek a re-evaluation of a court's decision. The review mechanism aims to ensure that justice is served and that errors or omissions in the original decision are rectified.

Judicial review under the Indian Constitution and the review mechanism under the Civil Procedure Code (CPC) serve different purposes and operate in distinct contexts. While judicial review is a constitutional principle that allows the judiciary to examine and invalidate laws and actions that are inconsistent with the Constitution, the review mechanism under the CPC focuses on rectifying errors or omissions in the original decision of a court.

Keywords: review power, judicial review, cpc, constitution.

I. INTRODUCTION

Judicial review is a process by which the judiciary examines, determines, and invalidates the

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executive or legislative actions that are inconsistent with the Constitution of India. The Constitution of India explicitly establishes the mechanism for judicial review through various articles, including Articles 13, 32, 131 to 136, 143, 226, and 246. This judicial review serves as a fundamental element in maintaining the system of checks and balances within the framework of the separation of powers. It grants the judiciary the authority to oversee the actions of the legislative and executive branches and to uphold the primacy of the constitution. The judiciary's role encompasses the interpretation of the constitution, clarifying the distribution of powers among the different branches of government. Articles 32 and 226 further empower the judiciary with the crucial ability to conduct judicial review, which not only holds a significant place within the Constitution but is also considered an integral component of its basic structure.

The concept of judicial review in the Indian Constitution draws its inspiration from the American Constitution. Within this framework, the judiciary possesses the authority to invalidate any legislation enacted by the Parliament if it infringes upon the principles outlined in the Constitution of India. In essence, any law passed by the legislature that contradicts the Constitution can be rendered null and void by the judiciary. Judicial review, therefore, encompasses the courts' ability to assess the constitutionality of actions taken by government organs and declare them unconstitutional if they are found to be in conflict with the fundamental tenets of the Constitution. This underscores the notion that the legislature's power to enact laws is not absolute, and the validity and constitutionality of such laws are subject to scrutiny and potential annulment by the courts.

Judicial review is considered a basic structure of the Constitution. The Supreme Court and the High Courts possess the authority to nullify any legislation, ordinance, directive, local regulation, rule, statute, notification, customary practice, or tradition that carries legal weight and is inconsistent with the provisions of the Indian Constitution.

In conclusion, judicial review is an essential part of the Indian Constitution that ensures the supremacy of the Constitution and the separation of powers. The judiciary holds the authority to overturn any legislation enacted by the Parliament if it contradicts the Indian Constitution. Judicial review is the capacity of the courts to assess the constitutionality of actions taken by government bodies and to declare them unconstitutional if they infringe upon or are at odds with the fundamental principles of the Constitution

II. THE REVIEW MECHANISM UNDER THE CODE OF CIVIL PROCEDURE

The Civil Procedure Code (CPC) is a set of rules and regulations that govern the process of civil litigation in India. Under the CPC, there are various mechanisms for review, which allow parties

to challenge and seek a re-evaluation of a court's decision. The review mechanism aims to ensure that justice is served and that errors or omissions in the original decision are rectified. Some of the key aspects of the review mechanism under the CPC are:

1. Review Petition:

A review petition is the primary method of seeking a review of a court's decision. It is filed in the same court that passed the original order or judgment. The grounds for filing a review petition include the discovery of new and important matter or evidence, a mistake or error apparent on the face of the record, or any other sufficient reason. The review petition is heard by the same bench that passed the original order, and the decision of the bench is final.

2. Limitation Period:

A petition for review must be submitted within a period of 30 days starting from the date of the judgment or order that is being sought for review. However, the court has the power to condone the delay in filing the review petition if it is satisfied that there was sufficient cause for the delay.

3. Scope of Review:

The scope of a review petition is limited to the grounds mentioned in the petition. The court cannot re-examine the entire case or consider new arguments or evidence that were not presented during the original proceedings. The purpose of the review is to correct errors or omissions in the original decision, not to re-argue the case.

4. Procedure for Review:

The procedure for filing and hearing a review petition is similar to that of an appeal. The petitioner must serve a copy of the review petition on the opposite party, and the opposite party has the right to file a reply to the review petition. The court may also hear oral arguments from both parties before passing its decision.

5. Effect of Review:

If the court allows the review petition, it may either modify, reverse, or confirm the original decision. The decision of the court on the review petition is final and binding on the parties, subject to any further appeal that may be available under the law.

In conclusion, the review mechanism under the Civil Procedure Code provides a way for parties to challenge and seek a re-evaluation of a court's decision. The review petition is the primary method of seeking a review, and it must be filed within the prescribed limitation period. The scope of the review is limited to the grounds mentioned in the petition, and the court's decision on the review petition is final and binding on the parties.

III. A COMPARATIVE ANALYSIS

Judicial review under the Indian Constitution and the review mechanism under the Civil Procedure Code (CPC) serve different purposes and operate in distinct contexts. While judicial review is a constitutional principle that allows the judiciary to examine and invalidate laws and actions that are inconsistent with the Constitution, the review mechanism under the CPC focuses on rectifying errors or omissions in the original decision of a court.

Here is a detailed comparison of these two mechanisms:

1. Scope:

Judicial Review under the Indian Constitution:

Judicial review in India is a fundamental feature of the Constitution, primarily governed by Articles 13, 32, and 226 of the Indian Constitution. It allows the judiciary, particularly the High Courts and the Supreme Court, to review the constitutionality of laws, government actions, and executive orders. Judicial review extends beyond civil and criminal cases to include matters of public interest and constitutional significance.

Judicial review has certain limitations. The process of judicial review functions as a check and balance in the separation of powers, but it is not an absolute power. The judiciary cannot interfere with the legislative or executive functions of the government unless there is a violation of the Constitution. The scope of judicial review is also limited to the grounds mentioned in the petition, and the court cannot re-examine the entire case or consider new arguments or evidence that were not presented during the original proceedings.

Review Mechanism under the Civil Procedure Code (CPC):

The CPC provides the procedural rules for the conduct of civil cases in India. It does not primarily deal with constitutional matters or the review of laws. The review mechanism under CPC pertains to the review of civil cases by higher courts, such as District Courts, High Courts, and the Supreme Court, based on grounds like errors of law or fact, procedural irregularities, or newly discovered evidence.

The review mechanism under the CPC is also subject to certain limitations. The scope of the review is limited to the grounds mentioned in the review petition, and the court cannot re-examine the entire case or consider new arguments or evidence that were not presented during the original proceedings. The decision of the court on the review petition is final and binding on the parties, subject to any further appeal that may be available under the law.

2. Authority:

Judicial Review under the Indian Constitution:

The authority for judicial review is derived directly from the Constitution itself. The power to strike down laws or government actions as unconstitutional rests with the judiciary, especially the High Courts and the Supreme Court. Judicial review is governed by the principle of "Procedure established by law" as given in Article 21 of the Indian Constitution. The judiciary has the power to declare a law null and void if it is found to be unconstitutional. This principle ensures that the actions of the government are legitimate and that the Constitution is protected from any undue encroachment by the government.

Review Mechanism under the Civil Procedure Code (CPC):

The CPC's review mechanism is procedural in nature and is governed by the rules established under the CPC. It allows higher courts to review lower court judgments on matters related to civil cases, ensuring the correct application of law and procedure. The review mechanism under the CPC is governed by the provisions of the CPC itself. It provides a specific procedure for filing and hearing a review petition, and the decision of the court on the review petition is final and binding on the parties, subject to any further appeal that may be available under the law.

3. Objectives:

Judicial Review under the Indian Constitution:

The primary objective is to uphold the supremacy of the Constitution and protect the fundamental rights of citizens. It serves as a check on legislative and executive actions to ensure they comply with constitutional principles. Judicial review is a mechanism for ensuring the supremacy of the Constitution and the separation of powers. It allows the judiciary to examine and invalidate laws, ordinances, orders, bye-laws, rules, regulations, notifications, customs, or usages that are incompatible with the terms of the Constitution. The scope of judicial review is broad, and it can be exercised in various forms, including concrete cases or controversies and only after the fact.

Review Mechanism under the Civil Procedure Code (CPC):

The primary objective is to ensure that civil disputes are resolved fairly and in accordance with established legal procedures. It allows parties to seek a review of decisions made by lower courts to correct errors of law, fact, or procedure. The review mechanism under the CPC aims to rectify errors or omissions in the original decision of a court. It is a procedural tool that allows parties to challenge and seek a re-evaluation of a court's decision. The scope of the review is

limited to the grounds mentioned in the review petition, and the court cannot re-examine the entire case or consider new arguments or evidence that were not presented during the original proceedings.

IV. CONCLUSION

In conclusion, judicial review under the Indian Constitution and the review mechanism under the Civil Procedure Code serve different purposes and operate in distinct contexts. While judicial review is a constitutional principle that allows the judiciary to examine and invalidate laws and actions that are inconsistent with the Constitution, the review mechanism under the CPC focuses on rectifying errors or omissions in the original decision of a court. Both mechanisms play important roles in ensuring justice and upholding the rule of law in India.

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