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Judicial Scrutiny of Constitutional Amendments: A Guardrail for Democracy

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ABSTRACT

Formal modifications to a country's basic law are included in constitutional amendments, which play a crucial role in determining its government. An essential component of this process is judicial scrutiny, which protects democratic values and individual rights. The idea of the "basic structure" in India restricts some revisions in order to preserve the integrity of the constitution. In a democracy, amendments are important because they are flexible, encourage diversity, and offer legal remedies. Legal review guarantees that laws are consistent with constitutional frameworks. Cases such as Kesavananda Bharti v. State of Kerala and Shankar Prasad Singh v. Union of India demonstrate the complex dynamics and function of the court. Maintaining stability while allowing for necessary change emphasizes how constitutional concepts are still evolving.

Keywords: *Constitutional amendment, Judicial scrutiny, Individual rights, Democracy, Constitutional framework.*

I. INTRODUCTION

Formal alterations, additions, or removals made to a nation's constitution are referred to as constitutional amendments. The constitution acts as the fundamental law that creates the framework for governmental organization, outlines the allocation of powers, and provides citizens with certain essential rights (Constitutional Amendment). Constitutional amendments can take many different forms, such as adding new sections, changing current laws, or eliminating outmoded components. A constitution's internal provisions usually specify the processes to be followed in order to update it. This ensures that changes are made after careful thought and agreement. Since modifications to a national constitution have the power to drastically alter a nation's political structure or institutions of government, they are typically subject to a prescribed process.

In order to adapt to new needs or shifting public demands, to modify provisions that have proven insufficient or unworkable, and to reflect changing notions of rights, constitutions must evolve throughout time. A living constitution will frequently alter naturally as a result of evolving

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judicial decisions and political traditions (Human rights and constitution making). There will always be flaws and inadequacies in constitutions. Amendments offer a way to clear up errors, clarify unclear passages, and deal with potential unforeseen problems. For this reason, guaranteeing the advancement, observance, and defence of the fundamental rights and human rights is an essential component of any constitutional amendment.

II. PURPOSE OF JUDICIAL SCRUTINY

In the context of constitutional modifications, judicial scrutiny fulfils a number of vital functions, contributing significantly to the preservation of individual rights, democracy, and the integrity of the constitutional framework. By ensuring that modifications do not compromise or change the underlying structure of the legal framework, judicial scrutiny serves as a defender of the fundamental principles and core values ingrained in the constitution (Protecting Fundamental Rights). People have fundamental human rights because they are part of the human race, which gives them these rights regardless of any constitution. These fundamental rights have inherent value, which makes them significant. The courts scrutinize modifications to make that these rights, which are guaranteed by the constitution, are not violated or diminished.

Checks and balance allowed one arm of government to restrain and balance the authority of the others. Role of checks and balances and states clearly that the purpose for which they are necessary is to prevent elite control of the government from enslaving the people, stating that "Ambition must be made to counter ambition." That such devices should be required to control the abuses of government may be a reflection of human nature (Holcombe). By guaranteeing that no one branch of government may unilaterally change the constitutional balance, it upholds the idea of checks and balances.

Judicial scrutiny guards against the tyranny of the majority in democratic systems, where decisions are frequently made by majority vote. The judiciary safeguards minority groups' rights by ensuring that changes adhere to democratic principles. In order to provide clarification on the application and interpretation of new or changed provisions, scrutiny clarifies legal ambiguities and uncertainties resulting from constitutional modifications.

III. OVERVIEW OF CONSTITUTIONAL AMENDMENTS

Formal modifications made to the wording of a nation's constitution are known as constitutional amendments. These modifications, which may include additions, subtractions, or other adjustments, are intended to amend the country's basic legislation. Although constitutions are

meant to last, they must be adjusted to account for changes in society, politics, and the economy. A constitution can be amended to be current and adaptable to the changing requirements and ideals of a community. By enabling the improvement of power structures, election procedures, and governance frameworks, constitutional modifications support democratic systems in operation. The court established the concept that is today referred to as "the basic structure." Any provision of the Constitution may be changed by adhering to the steps outlined in Article 368 (NOORANI, 2001). However, no section of the Constitution may be changed in a way that would "alter the basic structure." It cannot be changed. Currently, constitutional modifications are being used to improve democratic governance, solve modern challenges, and adjust to societal changes.

A common complaint is the quantity of modifications. It is argued that the Indian Constitution has undergone far too many modifications. Every decade since the Constitution's adoption, with the exception of the first, has seen a constant stream of changes. This indicates that changes had to be made from time to time regardless of the political landscape or the party in power (Constitution as a living document). We could claim that this consensus made it necessary to make certain modifications to represent the societal ambitions and the dominant political philosophy. In actuality, this pattern is evident in a large number of the changes made after 1984.

There is a chance that amendments will be abused and used to trample on democratic ideals or solidify power. A recurring difficulty in the amendment process is striking a balance between preserving the stability of the legal framework and permitting essential amendment.

The ability of the parliament to alter the constitution and its processes is covered in Article 368 of Part XX of the Constitution. It says that any provision in the Constitution may be added to, changed, or repealed by the Parliament by following the procedures established for that purpose. Nevertheless, certain clauses that make up the "basic structure" of the Constitution are unamendable by the Parliament. The Supreme Court made this decision in the *Kesavananda Bharati* case in 1973. It allows for two different kinds of amendments: those made with the consent of the special majority in Parliament and those made with the consent of the special majority in Parliament plus the simple majority ratification of half of the state legislatures (THE CONSTITUTION OF INDIA). A simple majority of members present and voting in each house is required to modify certain parts of the Constitution. Article 368 does not consider these changes to constitute modifications.

(A) Significance of the amendments in a Democracy:

Democracies are flexible by nature. A formal and systematic method for adapting to societal shifts, technological developments, and changing cultural standards is provided by amending the constitution.

The improvement of representational methods, election procedures, and governance frameworks is made possible by amendments. By resolving flaws in the original constitutional architecture, they enable citizens to take an active role in the democratic process. A firmly established constitution prevents a single political party from altering its provisions for personal gain.

Amendments can play a crucial role in supporting inclusive policies and modifying discriminatory legislation in response to society demands for more equality and justice. Amendments help to keep democratic institutions stable by establishing a legal procedure for change (Advantages and Disadvantages of the Amendment Process, n.d.). They provide a fair and lawful way to settle disagreements and conflicts, which promotes political stability.

By limiting the abuse of power via the democratic process, they make guarantee that minority groups' rights are upheld. By eliminating uncertainty and offering precise criteria for interpreting the law, amendments help to create a more certain legal system. The legal system cannot operate effectively without this clarity.

A democracy can adapt to shifting moral and ethical norms through the use of amendments. They ensure that the constitution continues to reflect the common conscience by reflecting the development of society values.

Public trust is protected by a constitution that can be changed through legal, open, and transparent methods. It proves that the administration and legal system adapts to the wishes of the people.

IV. JUDICIAL REVIEW

The word "judicial review" refers to the judiciary's ultimate authority to examine and assess the legality of a statute or regulation. The "procedure established by law" principle, which governs this system in India, has one test: whether or not a law was produced via legal procedures; if not, it will be deemed unconstitutional (Judicial review - A brief analysis, n.d.).

The constitution is the ultimate law of India, when there is a rule of law. The Indian judiciary has the authority to invalidate any statute that deviates from the fundamental framework of the constitution, which is the supreme law of the land. Although the Indian Constitution has

numerous clauses that clearly explain judicial review, the term "judicial review" itself is absent. The Indian judiciary is empowered to review legislative, executive, and administrative actions taken by the government to make sure they comply with the constitution's requirements. Should it be determined that this clause is unconstitutional, it will be nullified.

V. CASE STUDY

Existing state and federal legislation, as well as executive and constitutional amendment ordinances, are subject to judicial examination. In the Indian constitution of the 9th schedule included in the legislation is not subject to judicial review. There isn't an appeal process for supreme court rulings because all lower courts across the nation uphold the court's interpretations.

It is the first case *Shankar Prasad Singh vs. Union of India* (*Shankari Prasad Singh v. Union of India*) involving the constitutional amendment clause. States like Bihar, Uttar Pradesh, and Madhya Pradesh passed agrarian land reform laws after the Constitution was ratified, depriving zamindars of a sizable chunk of their land holdings. Articles 31A and 31B that denigrate land reform laws were added, shielding them from judicial review. The ninth schedule was established by Article 31B, which prevented laws included in it from being challenged in the Supreme Court on the grounds that they violated fundamental rights. The argument used to challenge the First Amendment Act's constitutionality was that it allegedly violated Article 13(2)'s limitation on taking away or abridged rights granted by Part III, making it unconstitutional. The Supreme Court refuted the aforementioned argument and emphasized that article 368 contains the authority to change the Constitution, including Part III, and that the term "law" under article 13(2) only refers to ordinary law, not constitutional law.

In the case of *Sajjan Singh vs State of Rajasthan* (*Sajjan Singh v. State of Rajasthan*) it was said that changing Article 31 A, the Constitution (Seventeenth Amendment) Act of 1964 added forty-four statues to the Ninth Schedule. It was contested on the grounds that it interfered with High Court authority granted by Article 226. It was also agreed upon that the states had to have accepted the 17th amendment when it was voted by Parliament. Since this procedure, which is outlined in Article 368, was not followed, it was argued that it was invalid. The primary question was: Was the 1964 17th Amendment Act unconstitutional? According to the majority, it had no bearing on Article 226. Additionally, the court restated its ruling in *Shankari Prasad*, which addressed the connection between article 13 and article 368. Additionally, it denied the idea that fundamental rights are unalienable and untouchable and upheld Parliament's authority to modify the Indian Constitution in its entirety.

In *IC Golak Nath v. State of Punjab* (*IC Golak Nath v. State of Punjab*) The opposing opinions previously stated provided a foundation for contesting the constitutionality of the First, Fourth, and Seventeenth Amendments. A panel of eleven judges rendered the decision by a vote of 6:5. The petitioners in this case were Henry Golak Nath's kin. They filed the petition on the grounds that the land they owned was being incorrectly valued by the Financial Commissioner and that, as a result, it violated their fundamental rights as guaranteed by articles 19(f) and (g) and 14. It was asked that specific directives be given stating that the three aforementioned amendment acts violate fundamental rights. By a vote of 6:5, the Supreme Court overturned the rulings in the *Shankari Prasad* and *Sajjan Singh* cases, holding that Parliament has limited amending power and is not allowed to restrict or eliminate the Fundamental Rights under Part III.

In the *Kesavananda Bharti v. State of Kerala* (*Kesavananda Bharti v. State of Kerala*) case, Swami Kesavananda Bharti, the chief of a mutt in Kerala, filed a writ suit contesting the constitutional validity of the 24th and 25th Amendment Acts. After hearing arguments from both sides for sixty days, a bench of thirteen judges decided on April 24, 1973, by a majority of 6:7. It was noted that article 368 contains the amendment power itself. Furthermore, it was concluded that one of the most important clauses in our Constitution deals with the amendment process. Golak Nath's opinions were overruled, while the opinions stated in the cases of *Shankari Prasad* and *Sajjan Singh* regarding the modifying authority were upheld. The idea that there are distinctions between ordinary law and constitutional law was now acknowledged by the court. It meant that the authority granted by Article 368 might be used to restrict the Fundamental Rights as well as other provisions of the Constitution. The aforementioned clause did not grant the Parliament unrestricted modifying authority because it still needs to pass the test of the Doctrine of Basic Structure; any modification that eliminates any fundamental elements will be deemed *ultra vires*.

In the other case, *Raj Narain v. Indira Gandhi* (*Raj Narain v. Indira Gandhi*) The three principles of democracy—separation of powers, natural justice, and equality—were overturned. Article 329 clause (b) stipulates that a petition to an authority designated by the Legislature in accordance with the legislation will initiate the judicial process for resolving an electoral dispute. This modification attempts to weaken the aforementioned provision by inserting provision 329A, which attempts to undermine the fundamental component of a democracy, namely Free and Fair Elections. The court emphasized that the intended meaning of the Constitution's founders was control rather than uncontrol, as it has been observed recently to develop. Therefore, the ruling made by the Supreme Court was required to limit the unrestricted authority granted to the Parliament by me through the amendment of Article 329 and had

captured the judiciary, which is the third and most significant pillar of democracy.

However, as held in Kesavanand's case, the Supreme Court's Constitution Bench invalidated clauses (4) through (5) of Art. 368 in the case of *Minerva Mills v. Union of India* (*Minerva Mills v. Union of India*). This was because the 42nd Amendment Act, 1976, introduced these provisions with the intention of excluding judicial review, which was deemed to be a fundamental component of the Indian Constitution. "As long as this ruling remains in effect, the Supreme Court will have the ability to review all Constitution Amendment Acts to determine whether they significantly altered any of the fundamental elements of the Constitution or the procedural protections found in the other sections of Article 368."

VI. CONCLUSION

In democracies, formal modifications to a country's fundamental law, known as constitutional amendments, are necessary to adjust to changing societal norms and changing conceptions of rights. Judicial scrutiny protects against undermining the fundamental principles of the constitution, especially in cases such as *Kesavananda Bharati*. It safeguards minority rights, keeps the majority from becoming tyrannical, and makes sure revisions follow democratic norms. Amendments are essential for fixing problems and modifying governing frameworks. Important events that shaped the formation of India's constitution serve as examples of the careful balance that must be struck between stability and adaptability. The dynamic resilience of democratic institutions is guaranteed by the synergy between judicial review and modifications.

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