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Principles of Judicial Review in a Social Welfare Country

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ABSTRACT

The law has a significant role in contemporary society. People gave up their rights and entered into a contract with the government in exchange for protection against wrongdoing. This is known as Hobbes's Social Contract Theory. In this phase of Rule of Law, law without justice can become arbitrary and be abused. In order to maintain a check and balance on the authority of each branch of government, we have implemented Judicial Review. Judicial review is the procedure through which the court considers unconstitutional any statute that violates the constitution. We have accepted this provision from the United States Constitution. However, it took several years to amend this aspect of our constitution. In this sense, the judiciary has played an essential role. Judicial Review is applicable to Constitutional Amendments, Legislative Actions, and Legislative Laws. In this research paper, Indian case law will be used to examine the origins, development, characteristics, and kinds of judicial review.

There are three branches of government in India: The Legislature, the Executive, and the Judiciary. The Legislature is responsible for enacting laws, the Executive for their execution/implementation, and the Judiciary for ensuring that the laws enacted and executed do not violate the Indian Constitution. Separation of Power is a component of our constitution that ensures these organs operate within their prescribed boundaries. Article 50 of the Indian Constitution addresses the separation of powers.

As a defender of the founding fathers' constitutional ideals, the Judiciary performs a crucial role. They attempt to reverse the damage caused by the legislative and the administration, as well as providing every citizen with the protections guaranteed by the Constitution's Directive Principles of State Policy. All of this is feasible because of the authority of judicial review.

All of this was not accomplished in a single day; it took fifty years to get to where we are now. If anyone believes that it has been a smooth ride without any obstacles, they are mistaken; the judiciary has had to contend with numerous politicians, technocrats, academicians, attorneys, etc. One of the few significant problems is corruption and the power of criminal contempt. In this paper, I will examine the ups and downs of India's most prestigious institution.

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The judiciary is primarily responsible for implementing the rule of law, which is the foundation of democracy.

This is now a fundamental aspect of every constitution that cannot be changed by the exercise of additional parliamentary powers. It is the purpose of judicial review to guarantee that democracy is inclusive and that those who possess or exercise public authority are held accountable. As Edmund Burke stated, "all individuals in positions of authority should be forcefully and legally impressed with the notion that "they operate in trust" and must answer for their actions to a single master, the people who hold political sovereignty."

Keywords: *judicial review, basic structure, amendments.*

I. INTRODUCTION

India opted for a parliamentary type of democracy, in which every section is involved in policy-making and decision-making, so that every viewpoint is expressed and every sector of the population is fairly represented in every such organisation. In this type of inclusive democracy, the court plays a crucial role. This is the principle of responsibility in all republican democracies, and this fundamental theme must be kept in mind by everyone wielding public authority, regardless of any additional explicit constitutional provisions.

Numerous countries' written constitutions now include judicial review as a fundamental element. In his book Constitutional Law of India, Seervai noted that the principle of judicial review is a common feature of the constitutions of Canada, Australia, and India, despite the fact that the doctrine of Separation of Powers has no place in the Indian Constitution. However, the functions of different organs of the government have been sufficiently differentiated so that one organ cannot usurp the functions of another.

The principle of separation of powers is an integral part of the rule of law, which is a fundamental aspect of the Indian Constitution. Every State action must be weighed against the hammer of the rule of law, and the courts execute this test whenever a doubt is made in this regard. Insofar as the High Courts are concerned, the authority of Judicial Review is codified in Articles 226 and 227 of the Constitution. Regarding Supreme Court Articles 32 and 136 of the Constitution, the judiciary in India has come to control every area of government and public operations through judicial review.²

This idea is not adhered to as strictly as it is in the United States, where it originated. The

² See the observation made by Chief Justice Chandrachud in *All Saints High School v. Andhra Pradesh*, AIR 1980 SC 1042 at 1050

principle of Judicial Review was taken from the American Constitution. If the Constitution of India is violated, the Judiciary has the authority to overturn any law approved by the parliament. The Judiciary can invalidate any statute approved by the legislature that violates the Constitution. Under Article 13(2) of the Constitution of India, any law enacted by the legislature that abridges a right granted to the people in Part 3 of the constitution is void ab initio. The Judiciary has the authority to interpret the Indian Constitution in its entirety. It is the defender of the Indian Constitution. Numerous provisions, including 13, 32, 131-136, 143, 226, 145, 246, 251, 254, and 372, provide the power of judicial review.

Article 372(1) discusses judicial examination of pre-constitutional laws in effect prior to the enactment of the Constitution of India.

Article 13(2) stipulates that any measure passed by the legislature after the ratification of the constitution shall be deemed null and unconstitutional by the Court.

The Supreme Court and High Court are believed to be the guardians of constitutionally mandated fundamental rights. If a person's fundamental rights are violated, he or she may petition the court under Article 32 or Article 226 of the Constitution.

Articles 251 and 254 declare that if there is any discrepancy between federal and state law, federal law will prevail and the state legislation will be ruled null and invalid.

II. HISTORY OF JUDICIAL REVIEW

In the *Dr. Bonham Case*, the term judicial review first appeared before the court. The Royal College of Physicians prohibited Dr. Bohnam from practicing medicine in London due to his lack of a valid license. This case is also notorious for its breach of the Principles of Natural Justice, since it involves Pecuniary prejudice.³ As Dr. Bonham is penalized for practicing medicine without a licence, the fine would be divided between the king and the college.

In 1803's *Marbury v. Madison*, the term judicial review was subsequently defined. In this instance, the federalist President Adam's tenure expired and the anti-federalist Jefferson assumed control. Adam appointed the members of the federal party as judges on his last day in office. But when Jefferson assumed power, he opposed this. Therefore, he prevented Secretary of State Madison from mailing the appointment letter to the justices. One of the justices, Marbury, petitioned the Supreme Court with a writ of mandamus. The court declined to hear the appeal and resisted the order of the legislature, i.e. Congress; hence, the US Supreme Court adopted the idea of judicial review.

³ Dr. Tilok Nath Arora, *Judicial Strictures*, Universal Law Publishing Co. Pvt. Ltd., 2001 ed., pp. 3-4

III. ROLE OF INDIAN JUDICIARY

1. Union of India v. Shankari Prasad AIR 1951 SC 458

In this case, the Zamindars challenged the constitutionality of the First Amendment Act of 1951 on the grounds that it infringes basic rights and Article 13(2) of the Indian Constitution, and argued that Article 31 is unconstitutional. The court ruled that any change made according to Article 368 is not a law under Article 13 of the constitution. Therefore, the First Amendment Act is lawfully legitimate.

After this case, the Fourth Amendment Act was passed, which introduced Article 31(2A), which specified that there would be no compensation unless the acquired property was given to the state or a state business. It further said that the sufficiency of compensation to be determined by law is not unjustifiable.

In 1964, the 17th Amendment was passed with retroactive effect. It included Article 31A(2)(a)(iii) and stipulated that an estate includes any property used for agricultural or auxiliary purposes, including waste or forest land.⁴

2. Sajjan Singh V. State of Rajasthan , AIR 1965 SC 845

In this case, the constitutionality of the 17th Amendment Act of 1964 was contested. The court ruled that Article 368 grants the authority to change Article 13 by a ratio of 3:2. (2). In this instance, the ruling in Shankari Prasad was sustained.⁵

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

In this case, the constitutionality of the 17th Amendment Act of 1964 was challenged once more and submitted to a bigger panel of 11 judges. By a vote of 6 to 5, the court reversed its prior ruling in Shankari Prasad and Sajjan Singh and decided that the phrase "law" in Article 13 included constitutional amendments made under Article 368.

CJI Subba Rao, arguing on behalf of five judges, ruled that Article 368 gives merely the method and not the power to alter. As it derives its authority from Article 248, i.e. Residuary Power (which is not expressly addressed), which is an ordinary law, Article 13's criteria will apply.⁶

The 24th Amendment of 1971 neutralized the impact of the Golaknath case. Article 13(4) states that any alteration made under Article 368 is not a law under Article 13. It also modified the marginal note of Article 368 to read Power of parliament and procedure for amending the

⁴ Union of India v. Shankari Prasad AIR 1951 SC 458

⁵ Sajjan Singh V. State of Rajasthan , AIR 1965 SC 845

⁶ I.C. Golak Nath & Ors v. State of Punjab , AIR 1967 SC 1643

constitution.

Soon thereafter, the 25th Amendment of 1971 modified the word "compensation" in Article 31(2) to "amount" to remove the need that the government provide compensation.

It introduced Article 31C to the constitution, which states that Articles 14, 19, and 31 will not apply to a legislation established to implement the policy underlying Article 39(b) and (c) [DPSP].

4. Kesavananda Bharti V. State of Kerala AIR 1973 SC 1461

In this case, the 24th and 25th Amendment Act of 1971 was challenged. A Judge Bench of 13 Judges was constituted. With the ration of 7:6 held that:⁷

- i. Power to amend the constitution is to be found in Article 368. It is hard to believe that it lies in residuary power.
- ii. There is a difference between ordinary law and constitutional amendment.
- iii. Parliament cannot destroy or amend the basic structure of the constitution.

Justice Sikri gave the list of the Basic structure though not exhaustive;

- The supremacy of the constitution.
 - Republic and democratic form of government.
 - Secular character of the Indian Constitution.
 - Separation of Power.
 - Federal character.
- a. Court also held that "compensation" cannot be replaced with "amount".
 - b. Article 31(c)(i) was held valid but Article 31(c)(i) was declared invalid.

5. Indira Nehru Gandhi V. Raj Narain AIR 1975 SC 865

In this case, the 39th Amendment Clause 4 was challenged as it puts a bar to challenge the election of Speaker and Prime Minister. It was struck down in this case and the court declared it unconstitutional.⁸

6. Minerva Mills V. Union of India AIR 1980 SC 1789

In this instance, more Judicial Review was introduced to the Basic Structure of the constitution

⁷ Kesavananda Bharti V. State of Kerala AIR 1973 SC 1461

⁸ Indira Nehru Gandhi V. Raj Narain AIR 1975 SC 865

with the balance between Fundamental Rights and Directive Principles.

7. I.R. Coelho V. State of Tamil Nadu AIR 2008 SC 861

In this case, the court ruled that any act added to Schedule 9 is subject to judicial review, but only those enactments added after April 24, 1973.⁹

IV. FEATURES OF JUDICIAL REVIEW

a) Power of judicial review can be exercised by both the Supreme Court and High Courts:

Under Article 226, a person may petition the High Court for infringement of any basic or legal right. Also, under Article 32, a person may petition the Supreme Court for any infringement of a basic right or an issue of law. However, the Supreme Court has the ultimate authority to interpret the Constitution. The Supreme Court is the nation's highest court, and its rulings are binding nationwide.

b) Judicial Review of both state and central laws:

Both federal and state laws are subject to judicial scrutiny. Article 13(3) of the Indian Constitution permits judicial review of all legislation, orders, bylaws, constitutional changes, and other notifications.

c) Judicial review is not automatically applied:

The notion of judicial review must be introduced and implemented. The Supreme Court itself cannot seek judicial review. It may only be utilised when a point of law or regulation is contested before the Honorable court.

V. PRINCIPLE OF PROCEDURE ESTABLISHED BY LAW

Article 21 of the Indian Constitution stipulates "Procedure established by law" as the governing basis for Judicial Review. The law must pass the constitutionality test before it can be passed into law. In contrast, the court can rule it invalid.

(A) Judicial Review of Ordinances

Articles 123 and 213 of the Indian constitution permit the president and the governor of a state to promulgate an ordinance. A presidential or gubernatorial ordinance is subject to the same constraints as a legislation enacted by the legislature. This authority is only exercised in extraordinary circumstances by the president or governor. The authority should not be abused.

⁹ I.R. Coelho V. State of Tamil Nadu AIR 2008 SC 861

According to a report provided by the House of People, as of October 2016, the president had issued 701 ordinances.

In *AK Roy v. Union of India*¹⁰ it was determined that the president's authority to adopt an ordinance is not susceptible to Judicial Review.

In *T. Venkata Reddy v. State of Andhra Pradesh*¹¹, it was stated that just as legislative authority cannot be questioned, neither can an ordinance based on purpose, non-application of mind, or necessity.

(B) Judicial review of the Money Bill

Article 110(3) of the Indian constitution stipulates that whenever a question arises regarding whether a law is a money bill or not, the judgement of the speaker of Lok Sabha must be final.

In the current context, a "money bill" is not subject to Judicial Review.

Article 212 of the Indian Constitution prohibits courts from investigating any procedural irregularities in legislative processes.

Article 255 of the Indian constitution states that the suggestion and prior authorization are only formalities.

In the case of *Mangalore Ganesh Beedi Works v. State of Mysore*¹², it was determined that the appellant was liable for sales tax under the amended coinage act of 1955. Therefore, the argument was that because the measure increased the tax, it should have been enacted as a money bill, and because it was not passed as a money bill, the tax should be deemed unconstitutional.

The Supreme Court determined that because the Coinage Amendment Act of 1955 replaced old coins with new ones, it was not a tax.

By way of obiter dictum, it was remarked that if it were a tax bill, it would likewise be excluded from judicial review processes.

VI. GROUNDS FOR JUDICIAL REVIEW

(A) Constitutional Amendment

In this phase, all of the authority's constitutional amendments undergo judicial review. All amendments that violate fundamental rights are considered null and invalid, and the amendment is deemed unconstitutional. All judicial assessment of constitutional changes is documented

¹⁰ AK Roy v. Union of India (1982) 1 SCC 271

¹¹ T. Venkata Reddy v. State of Andhra Pradesh (1985) 3 SCC 198

¹² Mangalore Ganesh Beedi Works v. State of Mysore, AIR 1963 SC 589

throughout history. We have previously seen in the above-mentioned case law that constitutional modifications have been contested, and those deemed invalid and declared null and void. *Shankari Prasad vs. Union of India*; *Sajjan Singh vs. State of Rajasthan*; *I.C. Golaknath vs. State of Punjab*; *Kesavananda Bharti vs. State of Kerala*; *I.R Coelho vs. State of Tamil Nadu* are situations where judicial review of a constitutional change may be traced. This paper has addressed each of these instances in depth.

(B) Administrative Measures

In principle, the constitutionality of the administrative action can be determined using the standards outlined by Lord Diplock in *Council of Civil Services Union v. Minister of Civil Services*. Our Constitution in India is predicated on the notion of Judicial Review. These tests included:

- i. Illegality
- ii. Irrationality
- iii. Procedure used

Illegality

The law governs decision-makers, and they must recognise this. Their actions and judgments may be deemed unlawful if they fail to comply with the law. Therefore, an action might be deemed unlawful if the public body lacks the authority to make decisions on its own or if it has exceeded its authority. For instance, if a law pertaining to a public body lacks the required authority and does not specify boundaries, their authority may be utilised. The term "ultra vires" is used to denote public entities that behave illegally.

The law also permits the exercise of broad and unrestricted discretion by governmental bodies. It states that a duty may be discharged under specific conditions, but does not specify a method for determining whether such conditions exist in a given instance.

Irrationality

The courts can also intervene to invalidate a judgement if they deem it unreasonable because the decision maker was "irrational" or "perverse." In 1948, the *Wednesbury* case established a precedent for this notion of judicial review. Judges seldom have the opportunity to assess the prominence of administrative decisions on the basis of review, since the standard for judicial intervention is high and rarely achieved. In the *Wednesbury* case, Lord Greene argued that for a review to be effective, the administrative decision must be such that a nonsensical person might imagine that it is within the authority's authority.

Inappropriate Procedure

In this instance, decision-makers should make decisions fairly. Contrary to the substance of the conclusion obtained is the principle that only pertains to procedural problems. This matter should be decided and heard only by the appointed individuals. The following are the rules:

- A person should not be his own judge;
- The individual must also hear the other person.

Before proceeding with a matter, authority must behave honestly. Unfair behaviour on the part of a government entity is an abuse of authority. This means-

- The Legislation must adhere to decisions if they express methods outlined in the legislation.
- It should not violate the principles of natural justice. People should be permitted to make judgments and have opinions that may lead them to prejudiced conclusions.

(C) Legislative Authority

If a case is filed, the courts decide the legality of a legislative act. On the grounds of legality, the court may declare a legislative act invalid. The legislative, executive, or administrative branch determines whether or not judicial review is forbidden by the constitution. The courts have the authority to examine the constitutionality of laws and government acts. The superior courts cannot judge the validity of legislation by examining whether the legislature has adequate information.

VII. CONCLUSION

We have accepted the notion of Separation of powers in India, thus we cannot assume the whole authority of judicial scrutiny. If the courts assume complete and arbitrary power of judicial review, all government agencies will operate poorly. So as to maintain the appropriate operation of all functions, each must operate inside its designated domain. In India, the notion of judicial review is ingrained in the fundamental framework of the constitution. It aids the courts in maintaining a check and balance on the other two branches of government so that they do not abuse their authority and operate in line with the constitution. In the case of *Minerva Mills v. Union of India*, we have invented the notion of judicial review, and it has become part of the case's fundamental structure. Finally, it is accurate to state that judicial review has expanded to protect individual rights, end the exercise of arbitrary authority, and prevent miscarriages of justice.