Journal of Advances and Scholarly Researches in Allied Education
Vol. 15, Issue No. 9, October-2018, ISSN 2230-7540

A Critical Analysis of Indian Constitutional Law Regarding Judicial Review

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Abstract - The constitution is referred to in the constitution of democratic nations as the supreme and highest national legislation, and it serves to safeguard citizens' rights. The Constitutional law serves as the source of authority for all other legislation in the country. The rule of law is crucial to society. The idea of law is always evolving. Laws are passed by the legislative, carried out by the executive branch, and reviewed by the court prior to passage utilizing the judicial review authority. The Constitution requires that legislation be examined for legitimacy. Because of this, several nations today have proudly included judicial review into their national constitutions.

Keywords - Judicial review, Constitution, law Indian

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INTRODUCTION

Law is necessary for order, and without order there can be no peace or advancement. Let's consider the cosmos while gazing at it. All things, from the tiniest atom to the vast celestial entities, are subject to laws that govern how they move. According to Blackstone, the law in its broadest and most inclusive definition is a set of guidelines for behavior and is applied uniformly to all types of behavior, whether it be alive or inanimate, rational or illogical. In order to control its motion and behavior, nature has established a rule that applies to every inanimate item in the cosmos. Life is conceivable on our planet because even inanimate objects implicitly follow the rule. There would be a tremendous disaster and all soothe-sayers would be proved right in their predictions of the end of the world if one celestial body were to violate the rule and travel about in an irregular fashion so as to crash with earth. Therefore, the only reason life exists is because these inanimate substances follow the natural laws and act in a preset and predictable way. Humans are subject to the same rules that apply to inanimate things. There would be anarchy if every person were allowed to behave irrationally at his or her whim. Because of this, the value of law as a tool for controlling social behavior and business for the advantage of everyone has been recognized since the dawn of human civilization. Law for human beings was likewise thought to have divine origins, just as law for inanimate things is of superhuman origin. As a result, no human creature, not even the king or monarch, could claim to be above the law.

Hindu India's king served as the only administrator and source of all laws throughout the Vedic era. Only he was the source of all justice. But this ruler was subject to the law, not above it. He may be punished like any other State citizen if he disobeyed the established law of the country. The law is regarded as the king of monarchs, according to the Brihadaranyak Upanishad. Therefore, no one is above the law, not even monarchs, in accordance with our Dharma Shastras. The Hindus place law in a dominant position because they believe that it was created by God and is thus sacrosanct, not by man. The Dharma Shastras included both legal and religious information. The Brihad-Aranyak Upanishad (1.4.14) and the Shatpath Brahman (XIV.4.2.26) both establish the law's supremacy "Even kings and rulers are subject to the law. As a result, law is the highest authority. Even a weakling may defeat a powerful person with the help of the law.".

MEANING & ROLE OF JUDICIAL REVIEW

Man is an imitation-based creature. He is fundamentally similar to water in nature, one of the five components that make him up. When he is born, he lacks every form, color, and hue. He enters the world simply having his body, which is naturally his. However, he soon becomes aware of others around him since he is sharp and perceptive. He observes and mimics. He studies and muses. He adopts the form of the mold that he observes his loved ones occupying. There are, of course, exceptions, just as there are to any norm. Nevertheless, generalizations should not be made based on exceptions. Generals, not exceptions, are what we are interested in. Modern man imitates every move he does. Please don't see the aforementioned sentence as an insinuation. Although strictly speaking he doesn't, my purpose is not to imply that contemporary man is devoid of any original bones. My point is simply that man picks up new skills by copying the animals and objects around him. He thrives on

parallels, both in life and in fiction. The aim of the discussion above is just to make the point that, if I am just learning something new, how would I describe it to someone who knows nothing at all? By establishing analogies between the novel, unfamiliar notion and an established, well-known concept. "A FOR APPLE," like they said in kindergarten.

Now, perhaps without seeming too childish, I have one request for you: forget for the next few seconds what your profession is and imagine yourself as a skilled, accomplished gardener. A fresh garden has been given to you to tend to and grow. Standing at the edge of the garden, you look over your domain. It is a nicely and painstakingly designed garden. A staggering diversity of plants, herbs, flowers, and fruits are available, along with a wide range of flora and wildlife. Nothing wrong with the fundamental design, though. However, there are many creepers, untrimmed shrubs, uncut branches, and untamed outgrowths. You are aware of what must be done. Instead of starting a new garden, prune existing one. Just add a garnish to what has already been prepared; nothing further has to be created. You are aware that everything that jeopardizes the health and success of your botanical extravaganza must be routinely removed, including creepers, undesirable shrubs, unhealthy leaves, and diseased fruit. You must simply halt the decay; you must not interfere with a plant's growing process. The vital fertilizer that promotes growth must be added seldom, followed by quiet observation. Your job is to enrich lives rather than to provide them.

The idea of judicial review is precisely what this is. The "courts" are the "gardener," the "Legislature" is the "garden's architect," and the "laws that alter the fundamental structure of the Constitution" are the "weeds and the unwanted growth," which pose a threat to your democratic garden and require the courts to defend the nation at all times by preventing the rot from eroding the Republic's founding principles.

After a protracted political conflict during which many patriots lost their lives and countless more endured hardships in order to obtain self-government, India attained independence on August 15, 1947. However, self-rule was not the goal in and of itself. It served as a tool. They toiled and suffered in order to establish fundamental human rights and freedom, to ensure social, political, and economic justice in order to create a welfare state from which illiteracy, poverty, and disease could be eradicated, and in order to lay the groundwork for a powerful independent Republic that would command the respect of the entire world. They did not simply seek to replace foreign rulers with their chosen representatives. Because history had taught them the harsh lesson that individuals must never be allowed authority over other men and that no country can really claim to be a democracy if the individual is not his own master, the founders of this new Republic desired a state governed by law rather than by men. They started their job, beginning a Sisyphean chore. It's almost as if the Almighty was involved in framing the Constitution for a nation split by time, history, religion, language, mountains, rivers, kings, and colonizers. They set out to merge a nation that was home to rulers, poets, philosophers, snake charmers, the very wealthy, the impoverished, and the severely destitute. A place where Hindus and Muslims may coexist peacefully without walls, as they have never done in any place on earth at any given time. In our region of the globe, nice fences don't always create good neighbors.

All men dream, not only poets, but those who dream while they are awake are the most dangerous. The Sovereign, Socialist, Secular, Democratic Republic of India's Constitution was granted to the Indian people on January 26, 1950, by the founding assembly. one that guaranteed to turn the desert into paradise. The mechanism of judicial review protects this Constitution from intrusions on its integrity and fundamental structure, the ideals that form the basis of our democratic State, and those freedoms that constitute the sixth element in a person's body, without which a person is no more than a piece of furniture. It also protects those rights, whose premise is found in the human mind, which cannot be given to a person but are his by virtue of his being a man. Although these rights are as necessary as the oxygen we breathe and are protected by the Constitution in a civilized society, mankind regard them no more highly than they do the air we breathe.

ORIGIN OF JUDICIAL REVIEW

The American Supreme Court invented judicial review when Chief Justice George C. Marshall said, in the famous Marbury v. Madison decision from more than a century and a half ago, "Constitution is what the Judges say it is." But the origin of judicial review dates back considerably deeper. Certain ideas that were formerly considered "basic" and to be a part of "higher law," which even Parliament could not change, may be traced back to the common laws. In the famous dicta he delivered in the Bonham case in 1610, Chief Justice Coke said, "And it seems that when an act of Parliament is contrary to common justice and reason...the common law will regulate it and adjudge such legislation as invalid." The Americans were the first to be drawn to this notion since it provided a handy defense against the pretensions of the Parliament during the uprising that led to the revolution. 6 An further justification for judicial review was proposed with the development of a written Constitution. Hamilton expounded on this justification in Federalist No. 78 while keeping in mind the forthcoming federal Constitution "The courts have the right and distinctive authority to interpret the law. A court must recognize that a constitution is a basic law. Therefore, it is their responsibility to determine the intent of any specific act coming from a legislative body and, in the event of an impasse between the

two, to give precedence to the will of the people as stated in the Constitution above that of the Legislature as represented in the statute ".

The federal convention was made aware of judicial review as a way to ensure that state legislation and constitutional clauses are in compliance with the "supreme law of the nation." Long-running controversy over this issue was ultimately resolved in 1803 by Justice Marshall's famous decision. The American Judiciary has used this power of judicial review in several important instances, but Justice Marshall's ruling has never been overturned despite much discussion.

JUDICIAL REVIEW IN INDIA

In India, the right role of the judiciary and its judicial review authority should be understood in the context of the political system that our Constitution's authors chose by compromising between the British system of parliamentary sovereignty and the American notion of judicial supremacy. The Parliament of England is the ultimate body, and it has almost limitless legislative authority. Courts in England are only permitted to interpret and implement the laws established by Parliament; they are not permitted to overrule any legislative legislation. "The Constitution has set no boundaries to the power of the Parliament over all issues and individuals within its jurisdiction," as Lord Erskine May puts it. A legislation may be unfair and in conflict with good governance standards, but the Parliament is unchecked in its decision-making, and when it makes mistakes, it can only fix them on its own. The legislative authority for the United States, however, rests with Congress, but since the Constitution is the "supreme law of the nation," all legislation established by the Parliament must adhere to its guidelines. The United States Supreme Court has the authority to strike down a law passed by Congress on the grounds that it violates legislative authority as well as the inherent "goodness" or "badness" of the law or the wisdom of the legislative policy, as covered by the nebulous, undefinable term "due process of law."

In order to achieve the aim of a social revolution, the designers of the Indian Constitution selected the British model of parliamentary governance and made Parliament the center of political action in the nation. However, unlike its English equivalent, they did not establish it a sovereign legislative body. They gave the Legislature as much authority as they could, but they had to limit it since, unlike Great Britain, India had a long written Constitution, a federal system of power allocation, and a list of essential rights. According to Chief Justice Kania, "The primary point of distinction between the British and Indian Parliaments remains that the Indian Parliament is a creation of the Constitution of India, and its powers, rights, and privileges have been found in the relevant Articles of the Constitution of India. As a result, the ministers are accountable to the Legislature under the Indian Constitution, and in that sense, the British Parliament's structure is transferred to the Indian Legislature. It is not an independent entity with unrestricted authority. The Indian Constitution limits the Indian Parliament's powers and authority under some other Articles included in Chapter Three, which deals with Fundamental Rights, and grants it the authority to create legislation in relation to issues mentioned in suitable schedules ".

As a result, the judiciary in India was given the authority of judicial review via which it was to maintain a check on the legislative authority of the Parliament and ensure that it complied with the Constitution. The Judiciary may declare a statute unconstitutional if it believes that it exceeds the legislative branch's authority under the Constitution's established power allocations or if it modifies the Constitution's fundamental design. Despite the fact that the Indian judiciary is supposed to have some judicial review authority, its authority pales in contrast to that of the US Supreme Court. Judicial review was greatly constrained in the protracted argument over individual rights in relation to societal interests that characterized the debates in the constituent assembly. In contrast to the United States, the phrase "due process of law" is not used; rather, it is "method established by law." While in India we must rely on the "method established by law," courts in the US may debate whether a specific legislation, judgment, or action is subject to "due" or "undue" legal process. Although the phrase "judicial reviews" is not mentioned anywhere in the Indian Constitution, the founders intended for the courts to utilize this authority when interpreting the Constitution and determining whether a legislation approved by Parliament and State Legislatures is legal. The Indian courts have the authority to exercise judicial review, and they have the authority to invalidate laws passed by State and central legislatures if they do any of the following: a) go beyond their legislative authority as defined by Articles 245, 246, and 248 of the Constitution; b) violate any fundamental rights as defined by Article 13; or c) violate any other provision of the Constitution.

JUDICIAL ACTIVISM & JUDICIAL RESTRAIN

In India, the two opposing mindsets of "judicial activism" and "judicial self-restraint" have at various points characterized court rulings. After independence, there was a noticeable trend toward "moderation" and "restraint" in court rulings over the first fifteen years. The Gopalan case, Ramesh Thapar v. the State of Madras, M.S.M. Sharma v. Sri Krishna (Searchlight case), Dorajan v. the State of Madras, Shankari Prasad and Sajjan Singh case, and M.S.M. The Gopalan cases, which established a solid foundation for judicial self-restraint as a guiding principle for subsequent judgements, thereby heralded the beginning of a period of stringent and literal

judicial interpretation. Although tensions were evident between the judiciary, the legislature, and the executive branch, the judiciary and the executive branch had not yet clashed. In a political system like that of India, which after gaining independence from the British tried to establish a balance between social welfare and individual rights, tensions are not necessarily "unhealthy." But in 1967, when the constitutionality of the 17th Amendment was disputed in the Golaknath case, this tension escalated into a conflict. The court determined that the Parliament lacked the authority to alter Part III of the Constitution. The court's past rulings in the Shankari Prasad and Sajjan Singh cases, where the ability to modify the Constitution was seen as limitless, were effectively overturned by this decision.

The Supreme Court's period of assertiveness began with the Golaknath case. During this period, the Supreme Court issued a decision that was unfavorable to the nationalization of banks and the abolishment of privy purses. The political circles in the nation were somewhat uneasy as a result. In the first week of March 1971, midterm elections were quickly scheduled to request a new mandate from the populace. The 24th, 25th, 26th, and 29th Amendment acts were pushed through Parliament as a consequence of the overwhelming majority that the legislature received in the elections. The judiciary believed that these terms had reduced the judicial review's breadth. The crucial issue of the "fundamentalness" of fundamental rights arose, and the government responded by arguing that these rights could not be interpreted in a static or absolute manner but rather had to be defined in the context of the social, political, and economic circumstances of the time and, as a result, should adapt to meet the changing needs of society. Judicial rulings from 1950 to 1967 show greater judicial restraint than judicial activism. During this time, judicial review was unable to find a comfortable middle ground between the legislative preference for social change and the judiciary emphasis on constitutional protection of individual liberty.

CASE OF KESAVANANDA BHARTI

The important decision in Kesavananda Bharti v. State of Kerela must be mentioned in every paper on judicial review (Fundamental Rights case). The case of Kesavananda Bharti may go down in history as the Republic of India's greatest contribution to constitutional law. It is crucial to identify the actual consequences of the Kesavananda case right away. In such scenario, it has been explicitly stated that the right to property is not a component of the Constitution's fundamental design. The Supreme Court ruled in the Kesavananda Bharati case that even though the Parliament has the authority to amend any part of the Constitution (including the chapter on fundamental rights), that authority cannot be used in a way that undermines the Constitution's fundamental principles and framework. This ruling was upheld and applied in the Mrs. Gandhi case, which involved a constitutional amendment that would have made the Prime Minister's election to the Parliament impeachable in a court of law. The Supreme Court's reasoning for its ruling in the basic rights issue was clear and persuasive. Only the Constitution has the power to create the Parliament. The Rajya Sabha leaves office and the Lok Sabha is periodically dissolved, but the Constitution remains in place. If Parliament possessed the authority to alter the Constitution's fundamental principles, it would no longer be a subject of the Constitution but rather its master. Three things were advocated on behalf of the people in the Kesavananda case:

- According to Article 13 as it was before to the Amendment, Golaknath's case was correctly determined, and the Parliament shouldn't be allowed to restrict any basic rights. The 24th Amendment, which subjected Article 13 to Article 368's rules, is unconstitutional.

- The whole of Article 31C, which abrogates the basic rights for certain reasons, is unlawful.

- The later section of Article 31C, which precluded judicial examination, is illegal. The Parliament cannot use its amending authority to change or eliminate the Constitution's fundamental structure in order to cause the Constitution to lose its identity. The Supreme Court rejected the first two arguments in the Kesavananda case but accepted the third.

During the emergency, section 55 of the 42nd Amendment act was enacted, inserting clauses (4) and (5) in Article 368 with the intention of overturning the aforementioned Kesavananda case ruling and giving the Parliament total and limitless modifying authority. The following were the clauses:

a) The ability of the Parliament to change the Constitution "must not in any way be limited."

b) No Constitutional Amendment, whether enacted "before" or "after" the implementation of the 42nd Amendment, "shall be called in question in any court of law," and the court's authority to examine the legality of any such Amendment is abolished. Political science research proves without a shadow of a doubt that the 42nd Amendment's guiding principles are the core of authoritarianism. In the case of Minerva Mills Ltd v. Union of India, the Supreme Court was forced to invalidate sections 4 and 55 of the Constitution 42nd Amendment Act 1976. It restored the trust of those who see the Supreme Court as the Constitution's guardian.

PROBLEM WITH THE JUDICIAL REVIEW

There has been discussion over the boundaries of judicial review. It has recently had the chance to express itself on a number of problems therefrom. There has been a great deal of divergence of opinion on this matter. As a consequence, the two sides are now engaged in a strident argument. Others who uphold the traditional view that the law is supreme and those who see these new government entities as a threat to the rule of law instead see them as true assistance to the executive and legislative order to promote the democratic principle, as did the Founding Fathers. In dividing the powers, they were more concerned with safeguarding against tyranny than with maximizing government efficiency. The restriction was intended to provide the necessary checks and balances for the protection of the populace against political oppression. 'A single unified administration would become the most corrupt government on earth,' Jefferson famously said." The similar idea was put out by Woodrow Wilson when he declared, "The history of liberty is the history of divided authority." In carrying out their jobs, all departments use some judgment and discretion. Furthermore, making decisions, conducting investigations, and deliberating are not always judicial functions because many executive officers frequently have to make legal decisions after hearing factual evidence "However, the fact that these matters involve the application of legal and factual judgment does not automatically place them under the purview of the judiciary. The courts have not offered any analytically conclusive standards for judicial, executive, or legislative duties. Either judicial precedent or public policy served as the general foundation for decisions. However, we can make certain generalizations.

JUDICIAL ACTIVISM

The word "judicial activism" was first used in the United States in 1947. It was created by American historian and novelist Arthur Schlesinger, who also wrote the essay "The Supreme Court, 1947," which was published in Fortune. Important supreme court justices including Justice VR Krishna Iyer, Justice PN Bhagwati, Justice O. Chinnappa Reddy, and Justice D. A. Dessai were responsible for introducing the notion of judicial activism in India. In other terms, public interest litigation (PIL) is the most well-known example of judicial activism. The idea of judicial activism and the idea of PIL are closely associated. The supreme court's judicial activism is the primary cause of the emergence of PIL. In other words, Suo moto is a result of judicial activism, and PIL is one of its outcomes. In reality, PIL is the most well-known kind of judicial activism. PIL is also a philosophy of judicial decision-making in which judges allow their personal views on public policy to trump legality. The instances of Indian judicial activism are listed below.

- In the Golaknath case, the Supreme Court ruled that Part 3's embedded Fundamental Rights are unchangeable and cannot be modified.

- In the Kesavananda Bharati decision, the Supreme Court established the notion of basic structure, according to which Parliament may revise the Constitution without changing its fundamental principles.

CONCLUSION

Excellent laws are the external expression of inner worth and are the byproduct of good civilizations. Where judicial review is the norm, it has made a significant contribution to the country's constitutional evolution. Legislation is not only judged by the Legislature. All legislative actions are subject to being evaluated in light of the Constitution. Judicial review is a powerful tool for creating and strengthening the rule of law as well as for enforcing the law. In the current political climate in India, restricting the court's ability to conduct judicial reviews is a major concern. Political philosophy in India is evolving quickly and moving in the direction of more judicial supremacy. The burden of administering justice only grows heavier on the judiciary, which is the only stabilizing factor among the three organs of government. Coalition politics are the norm, and political parties focus on myopic policies aimed at short-term gains that secure votes until the next general elections. The debate between judicial and legislative supremacy is essentially a showy and pompous conflict. The court's ability to conduct judicial reviews is based on its broad life experience and unbiased perspective. Politicians and lawmakers often need to understand the implications of a given legislative enactment from its standpoint. Judicial reviews of legislative enactments may quickly fix any legislative flaws or constitutional violations. Given that the Republic of India is made up of several political entities, faiths, and ethnic groups with divergent economic and linguistic interests, judicial review steadfastly promotes harmony between individual rights and freedoms and legislative ambition.

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