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JUDICIAL REVIEW AND ITS IMPACT ON CONSTITUTIONAL INTERPRETATION-AN OVERVIEW

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I. ABSTRACT:

This legal research paper, which focuses specifically on India, gives an outline of judicial review and how it affects constitutional interpretation. A key component of the Indian Constitution, judicial review is essential to the functioning of the political system. The purpose of the paper is to look at how judicial review and constitutional change are related. It also looks at how judicial review has historically developed in various constitutional systems, looks at case studies that show how judicial review affects constitutional interpretation, and evaluates how it affects the balance of power between the three branches of government. The primary research approach utilized is doctrinal in nature, involving an examination of legal provisions, case laws, and academic literature. The study comes to the conclusion that judicial review has a big impact on how the constitution is interpreted and that it can eventually change how constitutional ideas are understood and applied.

II. Keywords:

Judicial review, Constitution, India, Power, Amendments, Basic structure

III. INTRODUCTION

Judiciary is most essential organs of government; it places a vital role change in society. Judicial review is the one of the most cardinal features of Indian Constitution. plays the important and crucial role in the constitutional system of many countries. The court has the power to review the actions and laws of legislative and executive bodies. In spite smooth functioning of constitution there is check and balance among the organs of government. In this paper it has discussed about Organ and development of Judicial review, the scope of judicial review

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discussed in detail manner, limitation of judicial review, and related provision of judicial review in constitution, the landmark judgements were mentioned ,finally with some criticisms noted.

IV. RESEARCH OBJECTIVES

1. To investigate the relationship between judicial review and constitutional change, including the role of courts in interpreting and adapting constitutional provisions over time.
2. To examine the concept of judicial review and its historical development in constitutional systems around the world.
3. To explore comparative case studies or landmark judicial decisions illustrating the impact of judicial review on constitutional interpretation and its practical implications.
4. To assess the impact of judicial review on the balance of power among the three branches of government in a democratic system

V. RESEARCH QUESTIONS

1. What does the role of Judicial review play in maintain the rule of law in democracy of India?
2. What impact has judicial review had on the balance of power between the Judiciary, Legislature, and Executive?

VI. RESEARCH HYPOTHESES

The process of judicial review has a substantial impact on constitutional interpretation, resulting in an evolution in knowledge and implementation of constitutional concepts throughout time.

This hypothesis implies that decisions made through judicial review can have a significant impact on how constitutional principles are read and applied. It suggests that as cases are reviewed and decisions are rendered, precedents can be established that will impact future interpretations of the constitution. This is an interesting area

of study because it investigates the dynamic nature of constitutional law and its ability to adapt to societal developments.

VII. RESEARCH METHODOLOGY

The research methodology adopted in this paper is purely doctrinal in nature. Doctrinal research, also known as library-based research, is a distinctive method of conducting legal research that involves the study and analysis of existing legal provisions, case laws, and scholarly works. This methodology is well-suited for examining the theoretical and conceptual aspects of law and for providing a systematic exposition of legal doctrines and principles. The primary sources relied upon in doctrinal research include statutory materials, judicial precedents, and authoritative texts, while secondary sources such as commentaries, articles and legal digests are also consulted. The research process involves the identification, collection, and critical analysis of these sources to draw logical conclusions and offer insights into the legal issues under investigation. Through doctrinal research, this paper seeks to provide a comprehensive and coherent understanding of the legal framework governing the subject matter at hand.

VIII. LITERATURE REVIEW

In Dr. Banamali Barik's, " JUDICIAL REVIEW IN INDIA: AN ANALYSIS OF THE CONSTITUTIONALITY OF LAWS", the author has stated that Indian constitution has adopted both the judicial supremacy system and principles of parliamentary supremacy and he also stated the weakness of judicial review analyzed by the constitution framers and incorporation of judicial review with the laws in order to maintain the balance of federalism, to give freedom and equality and for protecting the fundamental rights. He also discussed about the concept of judicial review in the ancient times and the modern times and method of working of judicial review in the different countries like USA, UK and India and also analyzed the basic ideas of judicial review like avoidance of violations, protection of rights, uplifting socio-economic sectors and to verify the legislation in conformity to the constitution and he also discussed about the apex court power to make judicial review and he also stated that the main purpose of the judicial review is to prevent the authorities from

abusing their power and to ensure just and fair treatment and he said that in India the concept of judicial review is based on the constitutional supremacy.

IX. ORGIN AND DEVELOPEMENT OF JUDICIAL REVIEW:

The United States is where the idea of judicial review first emerged, when the US Supreme Court established its jurisdiction to strike down legislation that violated the US Constitution². The idea of judicial review was taken from the US Constitution and modified for the Indian legal system John Marshall initially advanced the judicial review theory in the well-known **Marbury v. Madison**³ case. The Indian constitution grants the higher courts the authority to conduct judicial reviews. Given that the fundamental component of the constitution is the judicial review. After independence, concrete provisions for 'judicial review' in the Indian Constitution were required to ensure individual and collective rights. Judicial review is the "heart of the Constitution," according to Dr. B.R. Ambedkar, the chairman of the Indian Constituent Assembly's Draft Committee. "The Union or the States shall not make any law that takes away or abridges any of the fundamental rights, and any law made in contravention of the aforementioned mandate shall, to the extent of the contravention, be void," states Article 13(2) of the Indian Constitution. The ability to scrutinize the activities of the legislative, executive, and administrative departments of government is granted to courts through judicial review. An activity is deemed unconstitutional and rendered null and invalid when it conflicts with the constitution.

X. EMERGENCE OF JUDICIAL REVIEW

The judicial review classified into the following three categories by Justice Syed Shah Mohamed Quadri :

1. Judicial review of constitutional amendments.
2. Judicial review of legislation of the Parliament and State Legislatures and subordinate legislation.

² Written in 1787, ratified in 1788, operation since 1789

³ Decided on 1803

3. Judicial review of administrative action of the Union and State and authorities under the state.

Judicial review was 1st established in the case of *Shankari Prasad vs Union of India*⁴ challenging the validity of 1st constitutional amendment 1951, and whether term “law “used in art 13(2) of constitution includes law to amend the constitution. It was upheld that the constitution did not provide any limitation or restriction to the parliament power to amend. Next to the case the changeover had been done in landmark case *Kesavananda Bharathi vs UOI*⁵ the supreme court held that the constitution does not provide absolute power to the parliament there were limitations on making amendments, without altering the basic structural doctrine the parliament can amend the constitution.

XI. SCOPE OF JUDICIAL REVIEW:

1. Constitutionality of Laws: Courts can evaluate and determine the legality of laws passed by the legislative branch. This means deciding whether a law is consistent with the laws and principles of the constitution. If a statute is determined to be unconstitutional, the court may invalidate or strike it down, making it unenforceable.
2. Executive activities: Judicial review can apply to executive branch activities such as administrative decisions, regulations, and executive orders. Courts can determine whether these acts fall within the limits of the executive's authority and meet constitutional and legal standards.
3. Fundamental Rights⁶: Judicial review generally involves determining whether laws or acts violate the fundamental rights provided by the constitution. Courts have the authority to assess whether a legislation or do infringes fundamental rights such as free speech, religion, equality, privacy, due process, and others. If a statute or action is determined to be in violation, the court may overturn it or impose appropriate sanctions.

⁴ 1951

⁵ 1973 4 SCC 225 AIR 1963 SC 1461

⁶ Part 111 of Indian Constitution

4. Procedural Fairness: Courts can evaluate administrative procedures to ensure that they are fair, follow due process, and comply to natural justice principles. This includes determining if decision-making processes are transparent, neutral, and give impacted parties adequate opportunity to be heard.
5. Jurisdictional Issues: Judicial review may also include examining whether a specific department of government has exceeded its jurisdiction or acted *supra vires* (beyond its legal power). Courts can determine whether a government body operated within the scope of its authority as established by the constitution or applicable legislation.
6. Constitutional Amendments: In some legal systems, judges may have the jurisdiction to assess constitutional amendments to ensure they are consistent with the constitution's basic structure or essential principles. This authority empowers judges to prevent the amendment process from being manipulated to undermine or deny the core principles of the constitution.

XII. LIMITATION OF JUDICIAL REVIEW:

1. Judicial Review restricts how the government may operate. It is only acceptable to the degree that it determines whether the choice itself was made appropriately and the process used to arrive at it.
2. Once the judges' views are obtained in any case, they serve as the benchmark for deciding subsequent cases.
3. Only higher courts, such as the Supreme Court and the High Courts, are authorized to use it.
4. The judiciary is not allowed to get involved in political or policy issues unless it is absolutely essential.
5. Overriding any existing legislation is a violation of the constitutionally mandated restriction on the use of authority.

Instead of the division of powers, a separation of functions is observed in India.

6. In the judicial review process, the idea of the separation of powers is not properly followed. However, a system of checks and balances has been established so that any unlawful legislation enacted by the legislature may be overturned by the courts.
7. The constitution provides certain privileges and immunities for the president, Governor, and Judges of Supreme court and High court. The court should not enquire these individuals till unless they have act on the personals.

XIII. CONSTITUTION PROVISIONS FOR JUDICIAL REVIEW:

1. Article 13: Nullifies laws inconsistent with or in derogation of Fundamental Rights.
2. Article 32: Guarantees the right to move the Supreme Court for the enforcement of Fundamental Rights and allows for the issuance of directions or orders or writs.
3. Article 131: Provides original jurisdiction to the Supreme Court in centre-state and inter-state disputes.
4. Article 132: Provides appellate jurisdiction to the Supreme Court in constitutional cases.
5. Article 133: Provides appellate jurisdiction to the Supreme Court in civil cases.
6. Article 134: Provides appellate jurisdiction to the Supreme Court in criminal cases.
7. Article 134-A: Deals with the certificate for appeal to the Supreme Court from the High Courts.
8. Article 135: Empowers the Supreme Court to exercise the jurisdiction and powers of the Federal Court under any pre-constitution law.
9. Article 136: Authorizes the Supreme Court to grant special leave to appeal from any court or tribunal (except military tribunal and court martial).
10. Article 143: Authorizes the President to seek the opinion of the Supreme Court on any question of law or fact and on any pre-constitution legal matters.

11. Article 226: Empowers the High Courts to issue directions or orders or writs for the enforcement of Fundamental Rights and for any other purpose.
12. Article 227: Vest the High Courts with the power of superintendence over all courts and tribunals within their respective territorial jurisdictions (except military courts or tribunals).
13. Article 245: Deals with the territorial extent of laws made by Parliament and by the Legislatures of States.
14. Article 246: Deals with the subject matter of laws made by Parliament and by the Legislatures of States (i.e., Union List, State List, and Concurrent List).
15. Articles 251 and 254: Provide that in case of a conflict between central and state laws, the central law prevails and the state law becomes void.
16. Article 372: Deals with the continuance in force of pre-constitution laws.

XIV. LANDMARK CASES IN JUDICIAL REVIEW:

In India Judicial review action had been taken in many cases it plays a Vitol role. Over the years there has been several landmark cases taken in action by Indian Judiciary in form of Judicial review powers and laws were in strike down for violation of constitution.

Golak Nath vs state of Punjab⁷: In this decision, the Supreme Court ruled that Parliament may not change basic rights under Article 368 of the Constitution. The ruling highlighted the significance of maintaining fundamental rights as part of the Constitution's basic structure, but it was partially overruled by the Kesavananda Bharati case.

ADM Jabalpur vs Shivkhant Shukla⁸: During the Emergency times, this case was commonly referred to as the Habeas Corpus case, and it dealt with the suspension of habeas corpus. In an uncertain ruling, the Supreme Court ruled that during an emergency, the government might suspend the ability to seek judicial enforcement

⁷ 1967 AIR 1643;1967 SCR (2)762

⁸ AIR 1976 SC 1207

of fundamental rights. This decision was heavily criticized and later overturned by subsequent rulings.

SR Bommai vs UOI⁹: The case at issue concerned the misuse of Article 356 of the Constitution, which empowers the President to impose President's Rule on a state. The Supreme Court highlighted the limits on the President's authority and established that judicial examination of the President's Rule is subject to court scrutiny.

Vishaka vs state of Rajasthan¹⁰: This case addressed the subject of sexual harassment of women in the workplace. The Supreme Court ruled that in the absence of legislation, employers must follow court-established rules to prevent and address sexual harassment. This verdict affirmed women's entitlement to a safe and harassment-free workplace environment.

XV. CRITICISM OF JUDICIAL REVIEW:

- **Democratic Deficit:** Some claim that judicial review undermines the democratic process by permitting arbitrary judges to overturn laws passed by elected officials.
- **Judicial Activism:** One allegation leveled at the Indian court is that it has overstepped its bounds and engaged in judicial activism. Critics contend that judges have occasionally taken on the roles of policymakers and lawmakers, infringing on the authority of the government and legislature.
- **Judicial Overreach:** Some critics argue that the Indian court has periodically exceeded its constitutional authority by interfering unnecessarily in the operation of other departments of government. They say that such intervention threatens the separation of powers and upsets the delicate balance between the three departments of government.
- **Delays in Justice:** Another issue is that the Indian judiciary is burdened with a massive backlog of cases, which causes considerable delays in justice

⁹ Decided on 11th march 1994

¹⁰ AIR 1997 SC 3011

delivery. Critics claim that focusing on constitutional problems and judicial review diverts the judiciary's attention away from its fundamental job of resolving disputes and providing speedy justice.

Lack of Accountability: Some critics claim that the judiciary lacks adequate tools for accountability and transparency. They argue that the process of appointing and removing judges should be more transparent and open to inspection in order to ensure the judiciary's accountability.

XVI. CONCLUSION, SUGGESTIONS & RECOMMENDATIONS

Using the Indian context as a focal point, this research article has given an outline of the idea of judicial review and its implications for constitutional interpretation. An essential component of the Indian Constitution, judicial review functions as a safeguard for the rule of law and the defense of both individual and group rights. Courts have the authority to examine and evaluate the constitutionality of legislation, executive orders, and administrative rulings through the process of judicial review. This essay has examined the beginnings and evolution of judicial review, emphasizing significant instances that have influenced the field's limits. It has also covered the different domains in which judicial review is applicable, such as executive actions, jurisdictional concerns, basic rights, procedural fairness, and constitutional revisions. The research findings support the hypothesis that judicial review has a substantial impact on constitutional interpretation, allowing for the evolution and adaptation of constitutional principles in response to societal developments. By critically analyzing legal provisions, case laws, and scholarly works, this paper has provided a comprehensive understanding of the framework and significance of judicial review in the Indian constitutional system. Overall, the research underscores the importance of judicial review in maintaining the rule of law, upholding constitutional principles, and safeguarding individual rights in a democratic society.

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