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Judicial Review: A Comparative Study between India and US

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The author has tried to inculcate various aspects of the topic of judicial review which is a very valuable aspect of the constitution. The comparison of Judicial Review in India and Judicial Review in the US is a unique one as the Indian Parliament has adopted the structure of Judicial Review from the Constitution of the US. This research paper tries to draw a comparison with the help of case laws as they are the guiding light to the application of the laws. The question of every part of the law being reviewed is answered. Does the Indian Constitution adequately explain the procedure for Judicial Review vis-à-vis US? is the question addressed? Various jurisdictions perceive the idea of Judicial Review differently and have different views on the hierarchy of governmental norms. The method and scope of re-evaluation differ per nation and state.

Keywords: *judicial review, jurisdiction, government norms.*

INTRODUCTION

The potential of judicial review is a significant aspect of the judiciary. The SC and the HC have the authority to use judicial review to determine whether state and federal executive orders and acts of the national and local legislatures are constitutional. The SC has the authority to declare legislation unconstitutional or ultra-vires of the constitution if it is determined that any of its

provisions violate the constitution. A law that has been declared unconstitutional by the court cannot be implemented by the government.[1]

"A court has the authority to determine if a statute, executive order, or other official action violates the written constitution and, if so, to declare it unconstitutional and invalid", according to Redform[2] "The legitimate and distinctive domain of the courts is the interpretation of the laws," the person wrote. Therefore, they must ascertain the purpose of any law. He said that "judges should favour the constitution since it is paramount if there is a disagreement between the two, i.e., the law and the constitution. This served as the foundation for judicial review."[3]

The judiciary upholds conformity with the constitution of the other two branches by using this power.[4] The operation of power separation is a principle in a contemporary political structure that is shown through judicial review (where the judiciary is one of three branches of government).[5] Varied jurisdictions have diverse interpretations of this concept, and they also have different perspectives on the order of govt. rules. The reassessment process and domain vary from country and state.[6]

JUDICIAL REVIEW IN INDIA

The 1st Amendment Act was contested before the SC in the matter of Shankari Prasad vs Union of India[7] because it violated the 'right to property' and it was unconstitutional because it violated Article 13(2)[8] prohibition on changing basic rights. The SC rejected the argument and unequivocally determined that Article 368's[9] provisions are entirely applicable to all situations and provide the senate the power to amend the constitution.[10]

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[1] Abhishek Pandey, 'Judicial review vis-a-vis comparative analysis between U.S.A and India' [2020] SSRN Electronic Journal
[2] *Ibid*
[3] Soli J Sorabjee, 'Introduction to judicial review in India' (1999) 4 Judicial Review 126–129
[4] *Ibid*
[5] Abhishek Pandey (n 1)
[6] *Ibid*
[7] *Shankari Prasad v Union of India* AIR 1951 SC 458
[8] Constitution of India, art 13(2)
[9] Constitution of India, art 368
[10] *Ibid*

The constitutional legitimacy of the authority of the Parliament to pass the Seventieth amendment was contested in the precedent of Sajjan Singh[11], a five-judge panel because Article 31(A) of the Fundamental Rights of the Constitution was infringed.[12] The SC reaffirmed its initial stance in the Shankari Prasad case. Golak Nath vs State of Punjab, [13]three constitutional amendments—the first, fourth, and seventeenth—were contested as being legitimate.[14] By a vote of 6 to 5, the Supreme Court overturned its previous ruling and ruled that parliament lacks the authority to reduce or eliminate the Basic rights of the constitution under Article 368.

In the case of Keshavananda Bharti[15], what is the scope of the amendment authority granted by Article 368 of the Constitution, was the issue at hand? It was argued by the respondent that the ability to alter the Constitution is unrestricted and that any amendment may be made barring its abolition.[16] The petitioner, on the other hand, argued that the modifying authority was broad but not boundless. According to Article 368, Parliament cannot change the constitution's "basic feature."[17]

JUDICIAL REVIEW IN THE US

In the case of Plessey v Ferguson[18], it was decided that the right to "equal facilities," not "same facilities," is guaranteed under the 14th Amendment.[19] The SC laid down the idea of "separate but equal" in this decision. In the case of Weeks v United States[20], Federal authorities searched Fremont Weeks' house and removed some of his files because they believed he was selling unlawful lottery chances via the U.S. postal system. In a unanimous ruling, the Court determined that the agents had improperly looked for, taken, and retained Weeks' letters.[21] This

[11] *Sajjan Singh v State of Rajasthan* AIR 1965 SC 845
[12] *Ibid*
[13] *Golaknath v State of Punjab* AIR 1967 SC
[14] *Ibid*
[15] *Keshvananda Bharti v State of Kerala* AIR 1973 SC
[16] *Ibid*
[17] *Ibid*
[18] *Plessy v Ferguson* 163 US 537 (1896)
[19] *Ibid*
[20] *Weeks v United States* 232 US 383 (1914)
[21] *Ibid*

important decision paved the way for the "Exclusionary Rule," according to which the use of evidence gathered during an unauthorized search in court is forbidden.

Virginia Board of Education v Bamette[22] "Local school boards are not allowed to take books out of the school library only because they disagree with the concepts they contain or because they want to impose their orthodoxy on others in terms of politics, nationalism, religion, or other ideologies."[23] He also noted the Tinker decision, which held that kids in schools enjoy First Amendment rights in class. Although schools are allowed to decide what should be in their libraries, they are not allowed to impede a student's access to education. As a consequence, schools are not allowed to exert control over their libraries in a way that fosters a biased, limited perspective on specific issues. The Court opposed eliminating or stifling ideas in classrooms.[24]

ANALYZING THE JUDICIAL REVIEW CRITICALLY

It is Undemocratic as Judicial Review gives the court the authority to determine what will happen to the laws that the authority, which represents the unrestrained will of the people, has enacted. There is a Lack of Clarity as the Indian Constitution does not adequately explain the judicial review procedure. The source of administrative issues, so when the SC proclaims a statute to be notwithstanding the Constitution, the ruling takes effect as of the day, the judgment is made. Now, legislation may only be if a case exists, subject to court scrutiny before the SC raises doubt about its legality. A Judicial Review ruling may result in more issues than it resolves. Critics see the system of Judicial Review as reactionary. They contend that the Supreme Court often takes a legal and conservative stance when deciding whether a statute is constitutional. Judicial Review is a cause of inefficiency and delay. When it comes to the enforcement of a law, both the general public and law-enforcement organizations occasionally choose to go slowly or cross their fingers.

[22] *Virginia Board of Education v Bamette* 319 US 624 (1943)
[23] *Ibid*
[24] *Ibid*

The Supreme Court's bench, which consists of three, five, or nine justices, handles judicial review cases. It allows for a mere majority vote to decide.[25] A single judge's vote alone often decides the destiny of legislation. The SC's reversal of its judgments: It is to be known that the SC did so several times.[26] The Golaknath case ruling overturned the preceding rulings, and the Keshwananda Bharati case ruling overturned the Golaknath case ruling. The same law was ruled to be legal, then invalid, and then valid once again. Such reversals highlight the subjective nature of the assessments. For all of these reasons, the judicial review system as it exists in India is harshly criticized.

It has transformed into a non-elective legislature: The Supreme Court has now been transformed into a non-elective super-legislature. It is a "third chamber," according to Laski. The Court decides the legality, appropriateness, and justice of the laws while making decisions in cases in a quasi-political capacity. Many laws have been ruled unconstitutional because they did not follow fair-minded, impartial, and judicious standards, according to the Court. "Due process of law" impacts the idea of justice and fairness, it is a political issue rather than a legal one. It condemned all communist laws, defending the right to private property and financial independence. Rail-Road Pension Act and the state minimum wage legislation are popular laws that are vetoed without even thinking twice.

The Court has used a majority vote to make rulings. One-man dictatorship has often emerged from this. Five of the judges held the statutes unlawful in the conclusion.[27] In other words, it implies that the decisions made by the lawfully elected President and Congress may be overturned by the judgment of a single judge. One-man rule and as such, an undemocratic structure are how detractors describe it. Five out of nine judges may cause chaos, which is why the Court is referred to as being an "archaic" and aristocratic political institution. [28]

[25] Shruti Bedi, 'The power of judicial review: Judicial Chutzpah or judicial desideratum' (2021) Judicial Review 277-292

[26] *Ibid*

[27] SC, 'Politics and the judiciary the Supreme Court and Judicial Review – The Supreme Court as policy' [2013] Politics in the USA 178–200

[28] *Ibid*

It has impeded societal advancement as the detractors claim that judicial review often slowed down development and prevented the implementation of social and economic changes. The Supreme Court's past demonstrates that justices play the political game. Roosevelt's attempt to cram his men into the Supreme Court was ultimately defeated thanks in large part to Chief Justice Hughes and his allies.

CONCLUSION

In the country, judicial activism has recently been on the rise. To address the complaints of those who typically cannot access justice, the doors of the court are kept open. Certain people who lack the resources, expertise, and means to address a court will be wronged if the conventional locus standi criterion is strictly followed. In such situations, courts bend regulations and decide if a public-spirited individual intervenes on their behalf. Therefore, intricate and stringent procedural procedures are not required when dealing with socially and economically disadvantaged groups or individuals who are unaware of their rights or unable of pursuing their cases in court. There have been instances when petitions and reliefs granted at this level were based on news reporting. Additionally, letters sent to the courts were "considered as petitions."

It is impossible to review every part of the law since doing so would prevent the court from using its power and jurisdiction. Several variables change how courts operate when they attempt to enjoy the feature of judicial adventurism. The idea of judicial activism has been presented as playing a key part in maintaining the checks and balances of the functioning that the state may or may not be able to consider favourably and support. The Rafael Review Petition case is a great illustration of judicial adventurism because, despite the petitioners' efforts, the court refused to give any instructions to the investigating authorities. After all, the case or deal involved a deal between two countries, which is outside the purview of the municipal court.

Thus, one of the key methods by which the courts assess the activities of the legislature, the administration, and other governmental institutions and determine whether or not these actions are lawful and within the parameters established by the Constitution is judicial review. As a

result, the courts serve as a guardian of basic rights via the authority of judicial review. Therefore, judicial review is an excellent instrument that must be utilized and implemented if people's legal rights are violated to protect them.