

LEGALFOXES LAW TIMES

CONSTITUTIONAL AMENDMENTS IN NEW DIMENSIONS TOWARDS JUDICIAL REVIEW (ARTICLE 31 A, 32 B AND 31 C) READ WITH THE 9TH SCHEDULE OF CONSTITUTION

By UPASANA BORAH

ABSTRACT

It is the primary responsibility of the Supreme Court of India to interpret and safeguard the Indian constitution in 1951, which brought about various amendments to the fundamental rights of India, and the beginning of the land reform era by means of constitutional mechanisms, as well as the Supreme Court of India with the primary responsibility of interdisciplinary authorities. Aside from that, it acts as a watchdog to ensure that people's Fundamental Rights are protected. Accordingly, the Supreme Court uses its authority to determine whether or not any legislation are constitutionally valid in order to accomplish this. A law, or any portion thereof, may be overturned if it is declared to be unconstitutional by the Supreme Court of the United States. The judicial review power of the Supreme Court is referred to as the judicial review authority of the Supreme Court. The High Courts have this authority in each of the fifty countries even if the Supreme Court of the United States often reverses, modifies or upholds their rulings. Written constitutions in many countries have in recent decades contained provisions for judicial review, and the concept has been incorporated in many of them. The principle of the separation of power is grounded in it, which is a crucial component of the rule of law and an essential characteristic of the Indian Constitution. The Supreme Court of India grants the ability to perform judicial review. The High Court has the power to conduct a judicial review under Articles 226 and 227 of the Constitution; in the Supreme Court case, Articles 32 and 136 of the Constitution allow the Supreme Court, respectively, the ability to conduct a judicial review. The Indian judiciary is gaining influence over all government and public functions by applying

judicial review, allowing it to intervene in nearly every decision. This method is used to scrutinise the functioning of the legislature or the executive branch as a whole, and to monitor the actions of the legislative and executive branches. A court with the judicial review authority may, where it is contradictory to a higher authority, declare laws and acts and governmental actions unconstitutional; for example, if the executive decision is unlawful, it may be declared unconstitutional or if the Statute violates the terms of the Constitution, it can be declared unconstitutional. If the ability of a court to perform a judicial review is demonstrated, executive judgments may also declare unconstitutional. The capacity of the Supreme Court to carry out judicial review extends to both Constitutional amendments and other statutes.

However, the judicial assessment of constitutional revisions was a difficult political matter in the past, given fundamental rights and the legal legality of those amendments. This article gives an overview of the subject of judicial review and includes its history, features and legal approach, as well as references to notable cases. In two different but comparative legal systems, the judicial review is often understandable: first civil law, and then common law, and then two different theories of democracy understand the government firm in the context of the standards and doctrines of legislative supremacy and therefore the separation of powers. In two independent, though concurrent, systems of law, first civil and then common law, the judicial review is often defined and two distinct democratic views are articulated about how the government is organised. A number of decisions announced after the emergency have been vehemently criticised as infringements of the fundamental human rights of Indian citizens. The judge was forced to adjust his approach to the constitutional interpretation by stating that the Supreme Court is subject to judicial scrutiny of all laws. The judiciary was forced to resign after the emergency.

KEYWORDS: Amendment, Constitution, India, Emergency, Legal System.

INTRODUCTION

Judicial review is an important way in which the Court examines the acts of the Executive, legislature and other government institutions, and then judges whether or not the actions are constitutional and are governed by the constitution.

Moreover, this method or approach has been strongly linked to legal activism, which is defined simply as the use of judicial review to overturn government action. It also tends to raise the court to a super-legislative entity. The Supreme Court and the Supreme Court also play a key role in the constitutional governance of India, ensuring that the union and State Governments remain within their respective competence. It just sounds like a court hearing in which a judge reviews the validity of a government agency decision or action. This is also a challenge to the procedure by which the judgement is arrived, rather than to the accuracy or incorrectness of the decision.

BACKGROUND

The term "Judicial review" was initially used in a court of law in the case of *Thomas Bonham v. College of Physicians* (1610) 8 Co Rep 114 in which Bonham was denied permission by the Royal College of Physicians to practise medicine in London because he was unlicensed for doing so. This case is also remarkable for the violation of the Natural Justice Principles, as a financial prejudice is proven in this instance. If Dr Bonham is punished without a licence for practising medicine, money is split between the King of England and the College itself. In 1803 the Supreme Court summarised the case of *Marbury v. Madison* after President Adam, who belonged to the federalist group, ended his final term and Jefferson, of the anti-federalist faction, became the president. On his final day in office, Adam selected members of the federal party to the position of judges. However, he was firmly opposed to it when Jefferson came to power. He subsequently blocked Madison, the State Secretary, from distributing the letter of appointment to the courts. Marbury (one of the justices) lodged an appeal for mandamus to the Supreme Court, and the Court refused to consider the matter. The Court instead supported the Congress and first resisted the legislative order; this is how the US Supreme Court formed a doctrine of judicial review.

JUDICIAL REVIEW HAVE THE FATURES:

As established in Article 226 of the Constitution, the Supreme Court the Hon'ble Supreme Court may exercise the jurisdiction of judicial process; for infringement of any fundamental human

rights or for effective enforcement of any legal right, a citizen may seek the Supreme Court. Additionally, the person may register a petition under Article 32 with the Supreme Court where an individual thinks that a fundamental right has been violated or has a criminal issue. On the other side, the Supreme Court has the last decision on how to enforce the Constitution. The US SUPREME COURT is the Country's highest court and its decisions are legally authoritative.

Article 13(3) of the Indian constitution stipulates that both the laws of the State and of the Central Law must be subject to judicial examination by the laws passed both by the Center and the States.

In addition to laws, orders, constitutional amendments, by-laws, ordinances and all other notifications, all other notifications contained in the Constitution of India also have judiciary review.

Judicial review is not applied automatically. In order to be effective, the notion of judicial review must be attracted and implemented. The Supreme Court does not initiate judicial review procedures, but can only be summoned if a petitioner has brought the matter of law or regulation before the court.

- The concept of procedure controls the conduct of judicial review proceedings, as laid down in Article 21 of the Indian Constitution. The constitutionality test shall, however, be passed by law; if it does, it shall be enacted; if it does not, the bill shall be ruled by the judiciary null and unconstitutional.
- Orders subject to judicial review; Articles 123 and 213 of the Indian Constitution here allow the authority for the law to be adopted by the President and the governor of the State. In addition, a president or governor's act of ordinance shall be subject to the same restrictions as when a legislative bill is passed by the parliament. This authority should be employed only in rare instances by the president or governor and should never be abused in this way.
- Article 110(3) of the Indian Constitution gives a right to judicial revision of the money bill which states that when a question arises as to whether or not a bill is a money bill, or whether it is not, the President of Lok Sabha's decision is final. A money bill is outside the jurisdiction of the judicial review process in the existing circumstances.

Three types of reasons exist for judicial review:

- (1) Constitutional modification of the judicial review;
- (2) administrative action judicial review and
- (3) Administrative action judicial review.

All additions that violate basic rights are found to be null and void and the court considers the amendments to be unlawful. The history of judicial review of constitutional modifications dates back to the late 19th century. The scope of this judicial review has been developed in three dimensions: firstly, to establish the fairness of administrative action; secondly, to safeguard constitutionally guaranteed fundamental rights; and thirdly, to decide, among other things, on matters relating to legislative jurisdiction between the Centre and the States.

APART FROM THE BASIC STRUCTURE, THE JUDICIAL REVIEW WAS DEVELOPED IN THE HISTORIC CASE OF KESAVANAANDA BHARATIYA v. THE STATE OF KERALA (AIR 1973 SC 1461), The theory of the basic structure, governed by the majority of the nine judges, stated that no law issued should violate basic rights and should make changes. In general, the legislature has the authority to pass an Amendment, perhaps the revisions do not alter the essential structure of the database. However, it was also said that the core structure had been created on the values of personal liberty that could never be changed under any situation. Furthermore, the accompanying occurrences are demonstrative and may not constitute a complete list of all constitutional amendments. Moreover, it was underlined that fundamental rights are primarily important and therefore must be maintained with the proper regard of the State and conditions attached to safeguard them and, when necessary, destroy them. This case raised issues as to the legitimacy of the 25th amendment and so declared that, according to Article 368, the legislative organ of fundamental rights or the State should not be infringed and that the second portion of the Article removed the competence of the tribunal.

Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789, was an important case dealing with the extended part of Article 31C, which was removed entirely on the grounds of violation of essential rights under Article 368. In this context, the judgement maintained the principle of

judicial review which, in the event of a breach of basic rights, is not made accessible to the broader public.

This case was the subject of S.P. 1 SCC 124 at page 128, according to Sampath Kumar v. Union of India (1987) (citing Minerva Mills Ltd.), In this instance, the judicial review was stated as a fundamental and crucial part of the Constitution and thoroughly defined and resolved. In addition, if the judicial review authority were to be repealed totally, the Constitution would lose its basic structure.

JUDICIAL REVIEW WITH RESPECT TO ARTICLES 31-A, 31-B, AND 31-C

The First amendment to the Indian Constitution, adopted in 1951, adds to the Constitution Article 31-A. A number of provisions of the Constitution have been replaced by the fourth amendment. In accordance with the terms of this Article, the people of India were allowed the right to possess and dispose of their property. The Government is therefore entitled to seize the people's property, so long as the fundamental rights enshrined in Articles 14 and 19 of the Indian Constitution are not violated. More importantly, in other words, Article 31 A of the Indian Constitution, which provides for the rights to equality and freedom, was immune from Articles 14 and 19 of the Indian Constitution respectively. This amendment removed the system of Zamindari when the government seized land from the Zamindars and used it through redistribution or agriculture for the general welfare. The government has also acquired ownership of a number of private companies to encourage economic growth. While this was possible for a limited time, control had to be regained, and the government redeployed mining rights from mine lords, as well as control over the production and distribution of many other resources, which led to re-establishment of control.

For Waman Rao & others V. Union of India & others (1981) 2 SCC 362 and I R Coelho v. State of Tamil Nadu (2007)(1) SC 137, both the initial amendments to Article 31A and the fourth amendment replacing the additional provisions of that Article were ruled lawful. It is therefore possible to conclude, based on the Minerva Mills, Waman Rao and I R Coelho rulings, that Article 31A is constitutionally valid.

Similarly, Article 31-B of the First Amendment Act of 1951 was added to protect against objection against the declared actions, on the basis that they violated Part III of the U.S.

Constitution. In addition, it has a retroactive impact, as can be shown from the fact that the words are never void. Furthermore, the IX Schedule of the Indian Constitution contains a list of actions and laws not subject to inquiry in a tribunal and is referred to in the acts and laws of the IX Schedule of the Indian Constitution. In other words, it is essentially impossible for the Indian judiciary to implement any of the actions specified in this schedule. This exclusion from Indian court jurisdiction is laid down in Article 31b of the Indian Constitution, which implies that provisions in Article 31a are not unlawful on the ground that they may be in violation of fundamental rights protected by the Indian Constitution under Articles 14, 19, and 31. It was the 25th amending act of 1971 which brought into existence Article 31-C of the Indian Constitution and via this the government tried to prioritise some of the State Policy Principles on fundamental rights. It also provides immunity from any defiance based on the infringement of Articles 14, 19 and 31 and immunity from any challenge arising from the violation of any law enacted in accordance with paragraphs b) and c) of Article 39 to carry out the Directives. The Supreme Court declared unconstitutional Article 31C (amended section of the 42nd Amendment Act).

In the matter of *Bharat Coking Coal Ltd. v. M/s, 1983 SC 239 Sanjeev Coke Manufacturing Company* on the premise that it contradicted basic rights. The aims laid down in Part IV must be realised without prejudice to Part III resources. Given its complementing ideas of the directive and fundamental rights, there is no inconsistency between them, as well as the Court has decided that Article 31C, as initially established by the 25th Amendment, was legally acceptable. For the application of Article 31(c), there are two requirements to fulfil: first, the legislation applying the policies of the Country about the application of the Directive in Article 39(b) of the law implementing state policy implementing the Directive Principle in Article 39(c) .

Secondly, a statement was released by the Legislature itself in that regard.

However, it is not a question of the legislature's declaration that it intends or is not meant to achieve the purpose set out in Article 39(b) and (c) which is dependent on the substance of the act found by the Court.

REVIEW OF THE LEGAL OUTLOOK ON CONSTITUTIONAL AMENDMENTS

During this period, any constitutional revisions made by the authority shall be subject to judicial examination and any changes which have been proven to be in violation of fundamental rights

shall be declared invalid and the modification shall be deemed unconstitutional. The entire judicial review of constitutional amendments can be traced back to the early stages. Even in the above case laws, we can see that constitutional amendments were disputed and that any changes in violation of the Constitution were deemed to be unconstitutional, null and illegitimate. In the above cases, we can see in action the footprints of the judicial review of the constitutional change. According to the Indian Constitution, the fundamental duty of the Judicial Review is to preserve people's rights to freedom and freedom. Some Indian philosophers have observed that the range of judicial review in India is extremely narrow, and the Indian courts in the United States do not have the same broad jurisdiction. The right in itself to constitutional solutions is a fundamental right and can be enforced using common law writings, such as first, habeas corpus, which is used in order to order the release of a person who has been unlawfully detained, second, mandamus, which is used for ordering a public authorities to carry out their duties, third, quo warrant, which is used to order a person to do so. The evaluation of constitutional changes by the court on fundamental rights and the legal validity of constitutional amendments was a difficult political topic. The concept of a fundamental structure has enabled judicial review to be applied to constitutional modifications affecting fundamental rights and other issues. This idea was formed in 1973 in the case of Kesavananda Bharati and in addition the parliament can amend the Constitution in accordance with Article 368, but such changes must not be taken away or violated, and any bill passed that violates the rule is considered invalid (Article 13). The constitutional validity of the 24th Amendment (which enables the Parliament by means of amendments to the Constitution to dilute fundamental rights and empowers it to amend any provision of the Constitution), 25th Amendment (without the legal revision of the law having effect of Article 39(b) and (c)). The 24th Amendment Act has been upheld by the Court, which ruled that even though Parliament has the power to modify every article of the Constitution, the amendment is null and unconstitutional since it denies essential fundamental rights to the population. The validity of three constitutional modifications (the first, fourth and seventeenth) was also challenged in Golak Nath against the state of Punjab AIR 1967 SC 1643 and it was reaffirmed that, for the most part, the power to amend the Constitution and the legislative power were the same in the light of the law. The amendment acts pursuant to Article 368 cannot therefore modify fundamental rights, as this is in breach of Article 13. In this case, the principle of future overruling was first used, and the 17th amendment was established as constitutional.

With reference to the judicial review procedure, the Court has set a number of guidelines which should be observed during the entire process and which are:

- The Court must evaluate whether or whether the whole law or parts of it are unconstitutional when analysing the contested statute under the separability theory when interpreting it. The Court has the power, depending on the circumstances, to make the contested law completely or in part unconstitutional.
- The guidance of the Indian judiciary is founded on the idea of progressive interpretation. This idea holds that in the light of the social, economic and legal realities that existed at the time the Constitution was interpreted, the Courts interpreted the articles of the constitution.
- The doctrine of prospective overruling is based on the idea that a court dismissal or a new interpretation will not influence previous transactions or rights acquired, but only in future transactions and subsequent transactions.
- Doctrine of Empirical Adjudication—In carrying out judicial review authority, courts must ensure that hypotheses are not dealt with; therefore, a subject brought before the court must be of a concrete nature in order for the court to exercise its authority. The tribunal between the parties concerned in a particular case seeks to limit the judgments to the specific facts of the case under consideration as much as feasible.

Unless there is a genuine doubt about the constitutional legitimacy of the legislation, the court will not proclaim a statute ultra vires, because there always exists a presumption in favour of the constitutional law. The tribunal always begins by assuming that the legislative body does not exceed its jurisdiction and does not pass legislation that is contradictory to the spirit of the Constitution as laid forth in the Constitution.

INDEMNIFICATION LIMITATIONS IN JUDICIAL REVIEW

The presumption of legality is not as large as in the case of law when it comes to the judicial scrutiny of administrative activity. However, in the event of administrative action, the presumption of legitimacy is stronger than in the case of statutes. Whenever the legislation expressly defers an administrative authority's judgement, the courts have taken a cautious position on the subject. Another argument is that, unless and until the abuse of discretionary

power, including the exercise of power for the wrong reason, the decision is totally relied on the irrelevant considerations or disregard of the relevant factors, and in some cases unreasonable exercise of discretionary power and the legality for exercise of discretionary power cannot be challenged in the court of law.

DISCUSSION OF POINTS -

- According to the observer, judicial review is undemocratic since it provides the tribunal the power to determine the fate of the legislation passed by the legislature which represents the people's sovereign will.
- The Indian Constitution does not clearly describe the judicial review mechanism, but is based on a number of constitutional sections. The day on which the Supreme Court determines that a statute is unconstitutional is effective. A statute may also be susceptible to judicial review only if a question of its legitimacy emerges before the Supreme Court in any case. Consequently, when the court determines that it is unlawful, it produces administrative issues, and the judgement of the judicial review might cause more problems than it ultimately resolves.
- Moreover, many critics of the judicial examination system characterise it as a reactionary system, arguing that when determining the constitutional validity of any law the Supreme Court takes a legalistic and conservativist approach, and can therefore reject progressive legislation passed by a legislature.
- The judicial review process can take time and be ineffective. As regards the implementation of a legislation, the public and law enforcement officials in general and, in particular, may elect to take their time or keep their fingers crossed to prevent discomfort. They also prefer to participate and enable the Supreme Court to decide first whether or not, in a case likely to precede that, it is constitutionally permissible.

The Supreme Court has reversed its prior decisions on several occasions, as has been reported. The Supreme Court reversed both the Golaknath and the Kesavananda Bharati and cases were also reversed by the Supreme Court of India. It has been pronounced justifiable, then invalid, and then again justifiable; these reviews also show the element of subjectivity within the rulings and the issue of judicial discretion.

Many are opposed to legal review who do not accept the critic's arguments; they say that judicial review is an essential and incredibly useful mechanism for the liberal democratic and federal structure of India and should be maintained. It has played an important role in protecting and developing the Constitution and in this respect it is greatly desired. The observers point out that the Judicial Review is essential to protect the supremacy of the Constitution and prevent the legislative and executive branches misuse of authority. In addition, it protects the rights of the general people. The enlargement to the judiciary of the judicial review authority would also be crucial for furthering the stature of the judiciary. The independence of the judiciary must also be safeguarded, which is why this is so important. On this occasion, it was noted that the Judicial Review Authority aided the Supreme Court of India in its constitutional duties

CONCLUSION

Although judicial review is essential, it cannot be provided in its entirety. When India's Constitution and its courts recognised judicial review as a necessary component of their respective constitutions, the system of checks and balances took on a fundamentally different meaning. The right to judicial review is a basic feature of the Indian Constitution. According to Articles 226 and 32 of the Indian Constitution, the Supreme Courts and the Supreme Court are the only bodies that have the authority to legislate, and judicial review is critical in protecting the values of constitutional order and ensuring their preservation. As required by the Indian Constitution, which is considered to be the supreme law of the land, you should alter your behaviour and activities in attempt to optimise your overall performance. Because of its implementation, the Constitution 44th Amendment Act 1978 commemorates the end of the most contentious fundamental right to property, which resulted in a torrent of changes and criticism as a result of its implementation. A violation of Article 31 was found, as was a violation of Article 19(1)(g) and Article 31C, and in order to transform the fundamental right to property into a constitutional right, the second half of Article 31C continued to shrink in the field of property law. In the end, we devised the concept of judicial review, which was later included into the basic structure theory in the case of *Minerva Mills v. Union of India*. The basic structural concept also helps to the preservation and safeguarding of the constitutional spirit, the preservation and safeguarding of the essence of Indian democracy, and the protection of people's

rights in general. Also evident is that any amendment or law that violates the rights of the people is imposed by the court on the basis of the fundamental doctrines of structure, and that any law that seeks to change the fundamental constitutional structure is therefore unconstitutional under the doctrine of fundamental structure. In order to protect individual rights, prevent abuse of arbitrary power, and prevent a miscarriage of justice, it is correct to state that a judicial review is currently underway.

