

Powers of judicial review of supreme court and constitution of india

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Abstract :

the coordination that has been established in our constitution between the parliaments so overweight and the written constitution with the provision of judicial review is a unique achievement of the Winters the constitution of various against of the government . An extreme balance of power is hat possible and in practice the ultimate decision must be made by one of them. That is why the united states and powers and restraints and balance on various Anshan tailed in the actual Program. The judiciary has acquired so much authority over the power of the constitution that is has been called the security force of the constitution, chief justice use once even even said that we are galling on the day of the constitution but the constitution is what the judges say ¹. That is the constitution is what the supreme court. It can allow it to scuttle any law passed by the legislature as a whole not only on the ground that it crouches upon the legislative powers and at by the constitution we this right violates the prohibition embodies in deed but also on the ground that is goes against the general principles embodied in all person vaguely like due process. It is not expressly carried in the principle. These can be decided only by the supreme court. Thus the American judiciary decides on the third house are supreme house of the legislature.

If the exercise of the power of judicial review by the supreme court's is studied, then it becomes clear that the supreme court has exercised its power in a judicious manual and self conscience. But but from the supreme court judgment in the case of Golaknath VS state of Punjab² till 1973 certain trends have been observed which have made it an object of criticism.

Key words:

Review, supreme court, justice, judgment, constitution, parliament, law case, judicial Review, constitutional Power legislative, inc lion constitution.

Introduction :

clearly it can be said that the supreme court has so far acted as a Protector of individual liberties and civil right. But it is also that supreme court has acted as an allegiant court and power on property related question/ while exercising the power of judicial review by the supreme court on the hand some land return laws passed lenience the abolition of zamindari and jagirdari from.

1950-51 were declared illegal and on the other hand weaving company rule in 1953 was illegal and similar act was done by the supreme court in the state of kerla K. Kuhi konam VS state of Kerala ⁴ the kerla agriculture act was declared illegal by the supreme court of India.

India is a democratic Public welfare state and in such a state it is expected from the judiciary that it will be helpful in taking the state forward in the direction of public welfare. But the supreme court of India on the Basis of its certain judgments has acted as a hindrance in stead of being helpful in the progress of the goal there is a demand to reconstitute the supreme court and limit the power in it.⁵

Indian constitution and amendment

Article 368 of the constitution of India empowers the parliament of amend the constitution ad reduce the need to restart to the judiciary by making the amendment process much simple than in the united states. Hower the less, in the implementation of he India constitution review has been opened in India in almost the same way as it is in America. The thing to think about is that the are judicial intervention is bairn out of the tendency of the legislature to mead the constitution reputedly and these amendment were being eaten at the heart of the constitution which have been called basic teacher b the supreme court. In this regard, the court future said that the amendment to the constitution has been passed not only on the basis of procedure laid done in article 368 of the relevant Bill. Rather , it can set off on the basis of the establishment act has violated any fundamental feat wle of the constitution.

At the same time, it was also provide that if the legislature does not implement the provisions of the constitution in time, that it is the duty of the court to. He should make necessary changes according to the demands of the progressing society it can be said that just as a rose has Thomas, similarity some Thomas are present in judicial review. During the last decade some new theories have been propounded by the supreme court of India such as the mod inn structure Bhavishya

laxmi implantation this unproven fundamental rights. The Indian constitution for these principles. In the present context it will be sufficient to state that it this trend is not rocked than it will be to lead to wrong result. To no netter how good the intimation of the makers of the judicial minimum max be?

A major take the use of judicial review by the supreme court it is also objected that the supreme court it is also objected that the supreme court has been continuously making changes in its earlier decisions, as a result of which misconceptions. Have arisen about. There is no doubt that the supreme court and the high court are legally empowered to reconsider and modify their decisions justice huge regard it as a part of judicial review. In fact since 1967-73 just thought in the period from 1967 to 73 it cannot be called proper the following examples can be given in this regard. First in the case of shankuri prasad vs union of india⁶ and sajan singh VS state of Rajisthan ⁷ respective the court held that parliament can amend any part of the constitution including fundamental right, can be amended by the parliament if the prescribed procedure is followed in that regard. But in golaknath vs state of punjab⁸ the supreme court held that parliament would that have the right to amend any of the provision of part 3 of the constitution in such a way as to take away the fundamental rights but. Second- it was held by the in state of Gujrat VS shantilal mangal das ⁹ that after 4th amendment to the constitution, it was beyond the jurisdiction of the court to consider the adequacy of compensation. But when the nationalization act of the Bank was challenged in the supreme court in 1969 it self, the supreme court. Declare it invalid on the ground that the principles of compensation contained in it are irrelevant thirdly similarly in Osman ali VS sagamal¹⁰ that supreme court unanimously ruled that the entire system related to the merger of princely states into the Indian union and the privy purse act. Is political not legal. The system is not political and neither the statutory and its related obligation can not be implemented by the people of the nation but in 1971 of them, when the arduous relating to the abolition of the former and the withdrawal of the recognition of the monarch were challenged in the supreme court, the supreme court declared the ruling invalid. In valid uncertain changes in its judgment by the supreme court have led to an uncertain system of law nothing can be more tarantula than this that the law of the country itself in uncertain the way in which the power of judicial review was exercised by the supreme court in the period from 1967 to 1973, it is clear that the

supreme court, while exceeding its constitutional limits tried to play the role in the Indian policy. Even while adopting judicial review in India its limits have been set and judicial review in the India constitution is not to the extent that this system is in America according to justice S.R. Das. The court can analyze and interpret the constitution and find out its true meaning. But once it is done, it cannot challenge. Its wisdom and policy the constitution should be accepted by the court as it please, even if it does not conform to the prejudices of its ideal constitution

But in some of the subsequent judgments and subsequent judgment of Golaknath VS State of Punjab¹¹ the supreme court has exceeded the limits imposed by the constitution on its power of judicial review. Due to judicial Review there is always a fear that the law made by the parliament and the policy adopted by the government may be declared invalid by the judiciary in such a situation there is an atmosphere of instability in socio- economic and political life, which is finally very harmful to the whole system.

Due to the Power of judicial review, when laws made by parliament are declared unconstitutional by the judiciary, a situation of conflict arises between the parliament and judiciary and when there is such a situation between the two major organs of the polity, the government cannot function properly. At present, the supreme court has given a new interpretation of judicial review attempts have been made to establish control over the outgrowth of the legislature and the executive. In fact there is a famous case IR Coelho Vs Tamilnadu¹² if the legislature makes such a law and puts it in the ninth schedule which violates the fundamental Right in part 3 of the constitution. Then those laws can be reviewed by the court if they are against law if those laws are found to be illegal, the court can declare them to be void. The supreme court has also tried to clarify this by the case of E.P. Muthu Kumar Reddy Vs State of Andhra Pradesh¹³ to clarify that the president's pardoning power is subject to judicial review under article 72 of the constitution in that area in Rajaram Pal Vs the Privileges enjoyed¹⁴ by the MPS under Article 105 are subject to judicial review as well all know articles 131 and 132 of the Indian constitution give the right to review the laws made by the central and state government of the supreme court similarly article 13 fundamental rights. Thus article 13 and 32 confer similar powers on the supreme court with respect to fundamental rights, article 246 may be read in this regard by which the nature of the division of law making power are between the center and the

states has been determined thus provides for judicial review for which the 2 powerful grounds for judicial review are the federal system and the fundamental right according to article 137 of the constitution, the decision of the order if it thinks fit, it may make necessary changes thereing. This is done when there is any doubt that the supreme court has not done justice to any party in its decision this can be done even if any new facts have come to light in relation to that constitutional limits by the legislature. In india , the constitution is supreme and the parliament and the state legislatures have to work within their limits keeping and fundamental rights .

The system of judicial review is an essential part of the Indian constitution, but the struggle between the parliament and the judiciary is not in the interest of the policy. There for , the following suggestion¹⁵ can be make to remove this conflict :

1st such constitutional conventions should be developed for which all 3 can work together within the boundaries of their respective organs without inter principle of separation of power should be clearly and transparently accepted

2nd the second court should not take a harsh and liberal approach with respect to any part of the constitution, otherwise social and economic progress will be blocked.

3rd the parliament should not drag the supreme court into politics and no matter which party is in government, it should not mix politics with the judicial system. Otherwise the entire constitution is structured

4th it is the duty of the parliament to implement the directive principle of policy the it is also the duty of the parliament not to interfere on the fundamental rights .

5th the way and permanent hardship is established in the court, that bench should be established permanently and such questions which are related to fundamental should be made for his hearing at a speedy pace so that the contrary of the constitution can be successful and the dignity of the constitution remains.

For the last few years there has also been a dispute about whether the parliament has the power to amend the fundamental rights are not, this question is definitely related to judicial review. Thus the above assessment should have the power to amend the fundamental rights can be given behind the power of parliament such as¹⁶

1. the highest echelon of the people of a country can be represented only by the parliament not by any court.

2. the deprive the parliament of such power would be disterst of the democratic system itself.
3. it is absolutely necessary that the constitution and laws are in line with the social change and the changing of the community. Failur to do so will hinder socio-ecomonic and political progress.
4. the constitution it self provides for suspension of fundamental rights undr certation circmstances. Hence it cannot be accepted these rights are immutatable.
5. Article 368 the power vested in the parliament to amend the contituion is sovereign in nature on which no limit can be imposed.
6. if the parliament is not given the power to amond the constitution, then the path of revolu will have to be adopted for socio- economic change, which cannot be called proper.
7. it is mark practical to suggest that whenever the need to amend the fundamental rights is felt, the constitution assembly should be convened at the same time
8. in cast, the framers of the indian constitution attempted to strike a balance between parliamentary supremacy and judicial review, and that coordination must be maintained
9. the independence of the judiciary should be respected by the government and the limits of these powers should be kept in view rather than the judges themselves keeping their powers in view.

Thus, in a way the principle of judicial review acts as such a check on the legislature by which the legislature can be prevented from going outside the preview of the constitution and this constitutional balance can be maintained. It is indispensable for maintain the unity and intercity of the state and establishment of a public welfare state and is always welcome in this way overall satisfaction should be expressed on the efficiency of the court on the assessment form the coming in to force of the 1950 constitution till date. The way the legislature and the executive are failing to fulfill there obligation, the responsibilities of the court increase of the judiciary has fulfilled this responsibility very well the court, in exercise of its power of judicial review. Declared all those laws unconstitutional are void which were country to the provisions of part 3- fundamental rights of the constitution and the work done to widen the area of part 3 is very commendable.

It is cleared from the above descriptions that the principle of judicial review enshrined in article 13 (2) of constitution gives the of weighing on the scales of the unconstitutional tree and the law which is not in accordance with the provisions of the constitution. It is declared void in the event of a conflict of the constitution.

Conclusion :

finally, it can be said that article 13 of the Indian constitution can declare all those laws which came into force before or after the commencement of the constitution, to the exert of their inconsistency we deficiency, as voice under the article 13 of the Indian constitution, not only has the legislature act been mode case – worthy. But this article has been given the name of a tooth for excise of fundamental rights.

It is good that the, article acts as a key to the enforcement of the fundamental rights. This articles along with giving power to the courts, also imposes an obligation on them to declare those laws as voice which are incompatible with the fundamental rights. For this purpose, the high court and the supreme court have been enclosed with wide powers of judicial review under article 13. in conclusion, it can be said that the power of judicial review is exercised by the supreme court of India according to the Indian system of government.

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