

New Dimensions of Judicial review with reference to Constitutional Amendments in India

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Introduction-

In India, the concept of judicial review holds significant importance, and it plays a crucial role in upholding the supremacy of the Constitution. The judiciary has the power to interpret the Constitution and review legislative and executive actions to ensure their conformity with the constitutional framework. Constitutional amendments in India have been subject to judicial review, giving rise to new dimensions in the Indian context.

The introduction of new dimensions of judicial review concerning constitutional amendments in India has emerged due to several landmark cases that have shaped the interpretation and application of the Constitution. These dimensions encompass various aspects and raise important questions regarding the authority of the judiciary to scrutinize and strike down constitutional amendments.

One of the dimensions of judicial review in India is the doctrine of basic structure. The Supreme Court of India, in the landmark case of **Keshavananda Bharti vs. State of Kerala**¹, established the doctrine that certain fundamental features or the basic structure of the Constitution are beyond the reach of the amendment power of Parliament. The judiciary holds the authority to determine the basic structure and can invalidate constitutional amendments that violate these fundamental features, ensuring the preservation of the core principles of the Constitution.

Another dimension is the examination of the constituent power of Parliament. The judiciary examines whether Parliament, in exercising its amending power under Article 368 of the Constitution, has exceeded its limits or acted in violation of the procedural requirements. The courts

play a crucial role in ensuring that the amendment process adheres to the prescribed procedures and does not violate the constitutional scheme.

Meaning, Concept, Scope and Extent of Judicial Review:-

Judicial review refers to the power of a court or judiciary to review and examine the actions, decisions, and laws of the legislative and executive branches of government. It involves the authority of the courts to assess the constitutionality, legality, and procedural fairness of governmental actions and ensure they align with the principles and provisions of the constitution.

The Concept of judicial review allows the judiciary to act as a check on the exercise of power by other branches of government. It grants courts the ability to interpret the constitution and determine whether laws or government actions are consistent with its provisions. Through judicial review, courts can declare laws or actions as unconstitutional, nullify them or require that they be modified or repealed.

The primary purpose of judicial review is to uphold the rule of law, protect individual rights and liberties, and maintain the separation of powers. It serves as a safeguard against potential abuses of power by the government, ensuring that actions and laws are in conformity with the constitution and its underlying principles. Judicial review also prompts legal consistency, as court decisions set precedents for future cases and guide the interpretation and application of laws.

The scope and extent of judicial review vary across different legal systems and jurisdictions. In some countries, like the United States, judicial review is a well-established and widely accepted practice, with the power explicitly granted to the courts. In other countries, the power of judicial review may be derived from constitutional provisions, statutory law, or common law principles.

Overall, judicial review is a vital component of constitutional democracies, enabling the judiciary to serve as a guardian of the constitution and ensure the legality and constitutionality of government actions. It contributes to the maintenance of a just and accountable system of governance by balancing the powers of different branches and protecting the rights and interests of individuals.

VARIOUS DIMENSION OF JUDICIAL REVIEW:-

The **Kesavananda Bharati vs. State of Kerala case**ⁱⁱ indeed played a significant role in shaping the doctrine of the basic structure and establishing the concept of judicial review as part of it. This landmark case before the Supreme Court of India resulted in a seminal judgment that had far-reaching implications for the power of constitutional amendments.

The case revolved around the constitutional validity of the 24th, 25th, and 29th amendments, which sought to restrict the power of judicial review and curtail fundamental rights. In its judgment, the Supreme Court upheld the power of judicial review and established the doctrine of the basic structure, which imposed limitations on the power of amendment.

The court held that while Parliament possesses the power to amend the Constitution under Article 368, this power is not absolute and unlimited. The court recognized that certain fundamental features or the basic structure of the Constitution are beyond the amending power of the legislature. These basic features are considered essential and integral to the constitutional scheme and cannot be altered or abrogated by any amendment.

The judgment, while not explicitly defining the specific elements of the basic structure, emphasized that it encompasses the essential features that form the foundation of the Constitution. These features include the supremacy of the Constitution, the democratic and republican form of government, separation of powers, judicial independence, federalism, secularism, and protection of fundamental rights.

Moreover, the court highlighted that the protection and preservation of fundamental rights are essential components of the basic structure. It ruled

that the state has an obligation to protect and preserve fundamental rights, and any amendments that seek to abrogate or dilute these rights would be violative of the basic structure and hence unconstitutional.

b. **The Minerva Mills Ltd. vs. Union of India**ⁱⁱⁱ case is indeed another significant case that contributed to the jurisprudence surrounding judicial review and the protection of fundamental rights in India. The case dealt with the constitutional validity of certain amendments, including an expanded section of Article 31C, which sought to limit judicial review in cases involving violations of fundamental rights.

c. In the case of **S.P. Sampath Kumar vs. Union of India**^{iv}, the significance of judicial review and its status as a fundamental aspect of the Constitution was indeed highlighted, drawing upon the precedent set by the Minerva Mills Ltd. Case.

In **S. P. Sampath Kumar vs. Union of India**, the court emphasized the pivotal role of judicial review in the constitutional framework of India. It reiterated that judicial review is an essential element of the Constitution and a necessary mechanism for ensuring the rule of law upholding the rights of individuals, and maintaining the balance of power among the different branches of government.

II. A LEGAL OUTLOOK IN REGARD TO CONSTITUTIONAL AMENMENTS:-

a) Judicial Review in India is indeed an essential component of the Indian legal system. It allows the judiciary to examine the constitutionality of laws, including constitutional amendments. If an amendment is found to violate fundamental rights enshrined in the Indian Constitution, it can be declared unconstitutional and void. Judicial Review serves the purpose of safeguarding individual liberties and freedoms by ensuring that the government acts within the limits set by the Constitution. However, it is true that some Indian scholars argue that the scope of Judicial Review in India is narrower compared to the United States, and Indian courts have limited jurisdiction in certain areas.

b) The right to constitutional remedies is indeed a fundamental right in India. It can be enforced through common law writs such as

habeas corpus, mandamus, quo warranto, prohibition, and certiorari. These writs serve various purposes, including releasing someone who is unlawfully detained, directing a public authority to perform its duties, removing someone from an office they assumed wrongfully, and transferring a case from a lower court to a higher court. These remedies provide individuals with a legal recourse to protect their rights and seek justice.

- c) The constitutionality of amendments to the Indian Constitution that impact Fundamental Rights has been a subject of contention. The doctrine of basic structure, established in the landmark Kesavananda Bharati case in 1973, allows for judicial review of such amendments. According to this doctrine, while Parliament has the power to amend the Constitution under Article 368, any amendment must not infringe upon the basic structure of the Constitution, including Fundamental Rights. Any legislation passed in violation of this provision would be considered null and invalid.
- d) In the case of **I. C. Golak Nath vs. State of Punjab**^v, the court upheld that Amendment Acts under Article 368 of the Indian Constitution cannot amend Fundamental Rights, as it would violate Article 13. The doctrine of prospective overruling was applied for the first time, which meant that the 17th amendment was held valid but would not affect pending cases. Additionally, the court upheld the constitutional validity of the 24th Amendment Act but struck down the 25th Amendment Act because it exempted laws violating Fundamental Rights from judicial review. These cases demonstrate the judiciary's role in reviewing and safeguarding the constitutional amendments in India.

III. Rules for the judicial review procedure:-

The court has developed a few rules for the judicial review procedure that should be followed, and they are as follows:

a. Doctrine of Severability:-

The Doctrine of Severability is a legal principle that enables a court to remove or invalidate a specific provision or provisions of a law or contract while preserving the remainder of the law or contract. This principle is applied when a court determines that a particular provision is unconstitutional, unenforceable, or invalid, but the rest of the law or contract can still be given effect and remain valid.

The Doctrine of Severability is based on the idea that an unconstitutional provision should not necessarily render the entire law or contract invalid if it can be separated from the valid portions. By severing the offending provision, the court aims to uphold the intention of the lawmakers or parties involved to the extent possible.

The application of the Doctrine of Severability depends on various factors, including the specific language and structure of the law or contract, the legislative or contractual intent, and the impact of severing the provision on the overall scheme of the law or contract. Courts will analyze these factors and make a determination as to whether the invalid provision can be severed or if the entire law or contract must be invalidated.

The Doctrine of Severability plays a crucial role in maintaining legal certainty and upholding the validity of laws and contracts while addressing any unconstitutional or unenforceable provisions. It allows courts to strike a balance between preserving the valid parts of a law or contract and removing the parts that violate legal principles or constitutional rights.

b. Doctrine of Progressive Interpretation:-

The concept you described as the "doctrine of progressive interpretation" is indeed an essential aspect of modern legal systems. However, it is more commonly known as "progressive interpretation" or "evolutive interpretation."

Progressive interpretation acknowledges that the meaning and application of laws and legal provisions can evolve over time to keep pace with the changing values, norms, and circumstances of society. It recognizes that laws are not static but should be interpreted dynamically to address contemporary challenges and meet the needs of society at different points in time.

The reasons for adopting progressive interpretation include:

Changing Societal Norms: Societies and their values change over time, and the law should adapt to these changes to remain relevant and effective.

Evolving Technology: Advancements in technology create new legal challenges and require the interpretation of existing laws in light of these advancements.

Socio-Economic Conditions: Economic and social conditions vary over time, and laws may need to be interpreted differently to address new situations.

Human Rights and Equality: Progressive interpretation is often used to ensure that laws uphold fundamental human rights and promote equality, even when societal attitudes change.

Judicial Precedents: Courts play a role in shaping the interpretation of laws, and over time, legal principles can evolve through the accumulation of judicial precedents.

Legislative Intent: Progressive interpretation takes into account the underlying intent of lawmakers, which might be intended to be adaptable to future developments.

Through progressive interpretation, legal systems can maintain their relevance and effectiveness while respecting the rule of law and established principles. Courts and legal authorities play a crucial role in adopting this principle and ensuring that laws are interpreted in a manner that promotes justice, equality, and the welfare of society as a whole.

c. Doctrine of Prospective Overruling :-

The Doctrine of Prospective Overruling is a legal principle that allows a court to modify the effect of its decision and apply it only to future cases, while leaving the previous cases unaffected by the new ruling. It is a mechanism that enables the court to change its interpretation or application of the law without disturbing the settled legal expectations and outcomes of past cases.

The purpose of prospective overruling is to strike a balance between the need for legal certainty and the need for the law to evolve and adapt to changing circumstances. It recognizes that abrupt changes in legal principles can cause disruption and unfairness to parties who relied on the previous

understanding of the law. By limiting the impact of a new ruling to future cases, the court aims to mitigate these negative consequences.

In India, the Supreme Court first applied the doctrine in the case of **I.C. Golaknath vs. State of Punjab in 1967^{vi}**. In this case, the SC. declared that the Parliament did not have the power to amend certain fundamental rights guaranteed by the Indian Constitution. However, the Court also provided for the continuation of the operation of the previous decisions that had upheld the validity of the amendments, so that the parties that had relied on these decisions would not be prejudiced.

d. Doctrine of Empirical Adjudication:-

The doctrine of empirical adjudication is a legal principle that emphasizes the importance of empirical evidence in legal decision-making. This doctrine holds that courts should base their decisions on empirical data, rather than on abstract legal theories or political considerations. The goal of empirical adjudication is to promote fairness and accuracy in the legal system by ensuring that decisions are based on the most reliable and relevant evidence available.

e. Restrictions on Judicial review:-

Judicial review is crucial aspect of the legal system that ensures government action is consistent with the constitution and other legal principles. However, there are limitations to this process that need to be considered.

1. Doctrine of Political questions:-

Which holds that certain issues are better left to the political branches of government rather than the judiciary. This can result in the courts declining to review certain actions or decisions made by the government.

2. Deference given to government agencies in their decision-making processes-

Courts often defer to the expertise of these agencies, which can limit the scope of judicial review.

3. Finally, judicial review is limited by the fact that courts can only address issues that are brought before them. This means that important legal issues may go unaddressed if no one brings them to the attention of the courts.

4. **Overall**, while judicial review is an essential part of the legal system, these limitations need to be carefully considered to ensure that is ti effective in ensuring government accountability and upholding the rule of law.

References

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- ⁱ AIR 1973 SC 1461
ⁱⁱ AIR 1973 SC 1461.
ⁱⁱⁱ AIR 1980 SC 1789.
^{iv} AIR. 1987 SC. 386.
^v AIR 1967 SC 1643.
^{vi} AIR 1967 SC 1643

