

History of Conflict Between the Legislature and the Judiciary

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Abstract:

The history of conflict between the legislature and the judiciary in India unfolds through the lens of judicial review, a pivotal tool ensuring governmental actions align with the Constitution. The judiciary's power, though not explicitly termed "judicial review," is derived from Article 13. Early clashes emerged with the interpretation of property rights and land reforms, leading to amendments and counteractions. The landmark Golaknath case (1967) challenged parliamentary authority, introducing the concept of the "basic structure." Subsequent amendments and the 42nd Amendment reflected attempts to redefine the balance between fundamental rights and directive principles during the tumultuous period of emergency. The Supreme Court's role in upholding constitutional principles and the precedence of fundamental rights over legislative actions remains a cornerstone in India's constitutional framework.

Keywords: Legislature, Judiciary, Executive, Constitutional Machinery, Clash, Judicial Review, Federal System.

INTRODUCTION:

The history of conflict between the legislature and the judiciary in India has been marked by pivotal moments, with one of the earliest clashes arising from the exercise of judicial review. Judicial review, a crucial tool in the hands of the judiciary, ensures that legislative and executive actions align with the constitutional framework. This conflict traces its roots to the struggle between the supremacy of judicial review and parliamentary sovereignty in interpreting the Constitution.

The judicial review is a very important tool in the hands of the judiciary, especially in a federal system, to keep the legislature and executive measures well within the framework of the Constitution. It is largely the outcome of the written Constitution.

Judicial Review and its Scope

The rigid procedures for 'judicial review' may be defined as "the power of any court to hold unconstitutional any law or any official action based upon it, as illegal or void".

Therefore, it is the power of the courts to examine the actions of the government, so as to ensure that such actions conform to the provisions of the Constitution of the country. It is also based on the fact that although courts use wisdom and experience while delivering judgements, yet some mistake or error may be committed by them unintentionally.

The Supreme Court of India is, therefore, vested with the power to review any of its own decisions or orders for rectifying the wrong, if any, in its earlier judgement. Such power is also necessary because

there is no appeal against the judgement of the supreme Court, except in inimical cases involving the death penalty.

The term 'judicial review' is nowhere mentioned in our Constitution but still the Supreme Court has this power as can be seen from the provisions of Article 13 which say:

All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.

The states shall not make any law which takes away or abridges the rights conferred in this part and any law made in contravention of this cause shall, to the extent of contravention, be void.

Nothing in this Article shall apply to any amendment of the Constitution made under Article 368.

It can, therefore, be seen that the scope of judicial review in our country is confined to examination on two counts:

- ✓ whether the law under challenge is within the competence of the authority that has framed it; and
- ✓ whether it is consistent with Part-III of the Constitution which relates to the Fundamental Rights.

In India, the struggle between the supremacy of judicial review vs. parliamentary sovereignty in interpreting the Constitution, began soon after the commencement of the Constitution.

Early Struggles and Land Reforms

One of the principle aspects of the struggle was the meaning of, and limitations on the right to property. The court concentrated on the meaning of compensation which, in effect, was held as the market value. The courts struck down State laws that sought to redistribute lands from zamindari estates on the ground that the laws violated the fundamental rights of zamindars.

The Parliament of India passed the First Amendment to the Constitution in 1951 followed by Fourth Amendment in 1955 to protect its authority to implement redistribution of land.

The Supreme Court countered these amendments in 1967 when it ruled in *Golaknath V State of Punjab* case¹, that the parliament did not have power to abrogate the fundamental rights including provisions on private property.

Article 368 gives power to the Parliament to amend the constitution, but SC acted as a brake upon this power and refused unbridled access to power.

Parliament right to amend constitution including Fundamental Rights have been questioned as early as 1951 itself. The land reform rules was in keeping with the election manifesto of the Congress party – a promise to implement socialistic goals of the Constitution – contained in DPSP.

Property owners who were adversely affected by these laws petitioned the Courts, Courts struck down land reforms saying that they transgressed fundamental right to property.

Piqued by these unfavourable judgments, Parliament placed these laws in the Ninth Schedule of Constitution through the first and Fourth amendments, thereby effectively removing them from judicial preview. Property owners challenged this move also, stating that it violated of Art 13(2).

In *Shankari Prasad V Union of India*² and *Sajjan Singh v State of Rajasthan*³ cases SC upheld the rights of the Parliament to amend any part of the constitution including fundamental rights. In these cases itself

¹ *Golaknath v state of punjab* (1968 AIR 1643,1967 SCR (2)762

² *Shankari Prasad V Union of India* (1951 AIR 458, 1952 SCR 89)

³ *Sajjan Singh v State of Rajasthan* (1965 AIR 845,1965 SCR (1) 933)

two dissenting judges were raising questions whether the fundamental rights in itself will become a plaything in the hands of a majority government.

Golaknath Case and Basic Structure Doctrine

In *Golaknath v State of Punjab*¹ case, the earlier position was reversed by the SC. It was held that even amendments came within the purview of judicial review. It was observed by the Court that some features of the Constitution lay at its core and required much more than usual procedures to change them. In this case M.K. Nambiar for the first time used the phrase Basic Structure while arguing the petitioner's case. But it was only in 1973 the concept surfaced again in the text of the SC verdict.

Challenges and Constitutional Amendments

In reaction to the rulings in 1971 Parliament brought out an amendment empowering itself to amend any provision of the constitution including Fundamental Rights. It brought out the 25th amendment act of 1971 making legislative decisions concerning proper land compensation as non-justiciable, pointing out to DPSP.

Even the President was made duty bound to give his assent to any amendment bill passed by both houses of Parliament. Art 19 was made subordinate to Art 39 (b) and (c) [DPSP]

The reaction of the court was very clear and assertive to these moves the parliament in its judgement in the *Keshavananda Bharti Case*. While agreeing that Fundamental Rights were subject to amendment, the Supreme Court held that the Constitution had a 'basic structure' which could not be amended.

The basic structure doctrine was reaffirmed in the *Indira Gandhi Election*⁴ case in 1975. In this case Allahabad High Court found Indira Gandhi guilty of electoral malpractices. He declared the election verdict in Rae Bareilly constituency null and void and barred Indira Gandhi from elected office for 6 years. Appeal was filed in SC. Since Court was in vacation, Justice Krishan Iyer granted a stay on the HC order on condition that Indira Gandhi will not draw any salary and speak or vote on the floor of the parliament, until the case was decided.

In the meantime Parliament brought out 39th amendment act of 1975 to the constitution by which it removed the authority of the SC to adjudicate upon petitions regarding elections of Prime Minister, President and Vice President. It called for a body to be constituted by the Parliament itself to resolve election disputes. The amendment got the seal of approval from the President and gazetted even before SC hearing began.

Attorney General took a stance that the case was no longer maintainable in SC in light of the new amendment. Counsel for Raj Narain argued that it went against the very basic structure of the Constitution.

Four of the Five judges upheld the 39th amendment act of 1975 after striking down the part which sought to curb the power of judiciary to adjudicate in the current election dispute. One judge upheld the amendment in its entirety (J. Beg). It was upheld that the election result was valid in light of the current amendment. SC accepted the parliament's power to pass laws that have retrospective effect. There was difference of opinion regarding what constituted Basic Structure of Constitution.

At the same time in a parliamentary speech Indira Gandhi refused to accept this doctrine itself.

⁴ State of Uttar Pradesh v Raj Narain (1975 AIR 865, 1975 SCR (3) 333)

Emergency and Curtailment of Rights

National emergency was declared in June 1975 and all fundamental rights were suspended in light of emergency

Then came 42nd amendment act of 1976, a part of which gave primacy to the directive principles of state policy over fundamental rights and this provision attempted to put the matter beyond the reach of judiciary

During emergency the constitutional rights of all people were in disarray because of the Preventive Detention Laws enacted by the Parliament.

In *ADM Jabalpur v Shiv Kant Shukla*⁵ case a five bench judge of SC ruled in favour of State's right for unrestricted powers of detention during emergency. It was observed that no person had locus standi to appear under Art 226 of HC to challenge the legality of detention.

The only dissenting voice was Justice H R Khanna who stated 'detention without trial is an anathema to all those who love personal liberty. At one point in time Attorney General Niren De relied to the question 'Life is also motioned in Art 21 and would government's argument extend to it also' by saying 'Even life if taken away illegally, courts are helpless.'

Restoration of Judicial Power

After Indira Gandhi lost elections in 1977 and Morarji Desai government was voted in the then law minister Shanti Bhushan brought in a series of amendments to restore back the much of the powers of SC.

The Supreme Court, in the *Minerva Mills Case*⁶ (1980) reiterated that Parliament does not have unfettered power of amendment.

Thus, Fundamental Rights continue to have precedence over the Directive Principles of State Policy . It is, therefore, clear that the Supreme Court in India, like its counterpart in America, has an extensive power of judicial review.

This controversy between the two however was resolved by the verdict of the *Kesavananda Bharati*⁷ case where the Court ruled that the Parliament can amend the Constitution barring the 'basic structure', which stands beyond the power of amendment. The Court also ruled that the Right to property is not a part of the basic structure hence it can be amended by the Parliament. It also stated that it is the discretion of the judiciary to decide whether a particular matter falls in the category of the basic structure or not.

Conclusion:

The history of conflict between the legislature and the judiciary in India has witnessed dynamic shifts, from early struggles over land reforms to the establishment of the basic structure doctrine. The judiciary's role as a guardian of constitutional principles, particularly during challenging periods like the emergency, underscores its crucial function in upholding the rule of law and protecting citizens' rights.

⁵ *ADM Jabalpur v Shiv Kant Shukla* AIR 1976 SC 1207

⁶ *Minerva Mills Case* (1980) AIR 1980 SC 1789

⁷ *Kesavananda Bharati v state of kerala* (AIR 1973 SC 1461)

REFERENCES

- The Hindu(<https://www.thehindu.com/>)
1. Oxford academic (<https://academic.oup.com/>)
 2. The Indian Express(<https://academic.oup.com/>)
 3. Studocu (<https://www.studocu.com/>)
 4. iPleaders (<https://blog.ipleaders.in/>)
 5. Jus Corpus (<https://www.juscorpus.com/>)
 6. SCC Online(<https://www.scconline.com/>)
 7. LinkedIn(<https://in.linkedin.com/>)
 8. Legal Service India (<https://www.legalserviceindia.com/>)