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COMPARATIVE ANALYSIS OF JUDICIAL REVIEW IN INDIA AND USA

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Abstract:

The researcher ¹ in this paper has done a comparative analysis of judicial review in countries like India and USA. In this research the researcher will compare the role of judicial review. Judicial Review is basically power of the court to review the actions of the legislative, executive and judiciary. India has the longest written constitution whereas USA has the shortest constitution.

The main object of the researcher is to go on a comparative analysis of judicial review and elements related to it in countries of India and USA. This paper offers an clear idea of the extent to which U.S.A and India adhere to the judicial review in practice and also about their differences that they both have.

Judicial review is an important thing observed under any law and is an must thing in constitutionalism. It observes the actions on all branches of law and hence this paper will describe the roots, features, application, importance and scope with its purpose.

Keywords: Indian Constitution, Judicial Review, India, USA, Comparative Study

Introduction:

Judicial Review acts as guardian to protect the rights of citizens, one of the functions of judiciary is to ensure that the laws passed by the legislature and the actions of executive are competent and correct with the constitution.

Judicial Review is the power of the Supreme Court or High Court to examine and look upon

executive or legislative act and to invalidate that act if it is contrary to constitution.¹ Constitution gives such power and it can be seen and are incorporated in Articles 13, 32, 131, 146, 226, 246, 251, 254, 372.

Article 32 is included in Part 3 of Constitution of India as a fundamental right which enforces any fundamental right given under Part 3. Mainly Article 226 and 227 are observed and given prime importance by Courts in India when judicial review is to be seen.² Judicial review with this article under constitution acts as a cornerstone to Constitution looking upon actions of legislative and executive actions within constitutional framework.

Judicial Review acts as a base to courts for exercise their review jurisdiction over administrative action in the interest of efficiency, fairness and accountability. This process, is inspired by the US system tailored into Indian context.

Meaning Of Judicial Review

Judicial Review plays a vital role in Law or whole judicial system as whether a law passed by the parliament, or any law enacted by a state legislature or any provision in the constitution doesn't violate provisions as to constitution it's a power conferred upon the n determining the constitutionality of the legislation, the court is not concerned with the wisdom, experience or policy of legislation. Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if the Court arrives at the conclusion that the law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable. The Constitution of India provides an independent judiciary that acts as an guardian of the Constitution and protects the rights of citizens.³ It's an key function that ensure that the laws passed by the legislature and the actions of the executive are in line joined to the constitution. This in nutshell is Judicial Review. And this is a very essential thing for the Indian Constitution.

Judicial Review so seen playing an important role in constitution is an process inspired by the U.S system yet uniquely tailored to Indian context serves as guardian to citizens rights and a

¹ Raman, R. (n.d.). A COMPARATIVE STUDY OF JUDICIAL REVIEW IN INDIA, THE UNITED STATES AND THE UNITED KINGDOM. In LAW MANTRA THINK BEYOND OTHERS (Vol. 3, Issue 10). <https://journal.lawmantra.co.in/wp-content/uploads/2016/04/18.pdf>

² S.P.Sathe, Judicial Activism in India, 2nd. Edition-,Oxford India Paper Backs, P.1.

³ Arthur T. von Mehran ,Peter L. Murray, Law in the United States, Cambridge University Press, 2 nd Edition, p.134.

ladder to fight against arbitrary governance.⁴ In this exploration, we go deep into multifaceted nature of the judicial review, tracing into the history and historical origins, understanding its big scope and appreciating its impact on Indian and US Constitutions.

The amending power of the Constitution is vested in the Legislature. Different countries hold varying views with respect to judicial review of constitutional amendments. Some countries argue that being political in nature, it is outside the purview of judicial decisions.⁵ Whereas, others argue that even though it is a political question, it is the duty of the judiciary to exercise its constitutional responsibility.

A constitution is in fact and must be regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning and meaning of an act passed by the legislature.” He further said that if there was any conflict between the two, that is the constitution and the law, the judges should prefer the constitution as it is supreme. This became the basis of judicial review.

History Of Judicial Review

In the United States, the courts have the ability to scrutinize statutes, administrative regulations, and judicial decisions to determine whether they violate provisions of existing laws, or whether they violate the individual State or United States Constitution. A court having judicial review power, such as the United States Supreme Court, may choose to quash or invalidate statutes, laws, and decisions that conflict with a higher authority. Judicial review is a part of the checks and balances system in which the judiciary branch of the government supervises the legislative and executive branches of the government.⁶ So in simpler words viewers, the concept of judicial review itself was originated in the United States, where the Supreme Court established its authority to strike down laws that were in violation of the US Constitution.⁷ In our country India, the concept of judicial review was borrowed from the US Constitution, as it was an good concept that can also be applied in the Indian context. US Constitution is one of the Sources of Indian Constitution. India has adapted this concept to fit its unique constitutional and societal fabric. This history and the journey reflect the India’s commitment and a promissory feature to a dynamic

⁴ A comparative study on judicial review in India and USA. (n.d.). <https://www.legalserviceindia.com/legal/article/7332-a-comparative-study-on-judicial-review-in-india-and-usa.html>

⁵ (1952) SCR 597 (1952) SCJ 253, AIR 1952 SC196

⁶ Hindustan Times, December 14,2000.

⁷ <http://www.preservearticles.com/2011100314414/essay-on-the-indian-supreme-court-unlike-the-us-supreme-court.html>

and evolving judicial system that is capable of addressing the complexities of such an diverse and popular democracy.

So firstly, when we peek into the history of Judicial Review in India, we see a case popular called as Shankhri Prasad Vs Union of India 1951 which was first established by Supreme court and the power of judicial review was seen and recorded. So, where it was held that the Constitution did not provide for any limitation on the amending power of the Parliament.

Judicial review is something that was admirable into Indian Context, it was praised by many scholars and India being a diverse nation accepted the powerful tool.⁸

John Marshall, one of the most powerful Chief Justices of the U.S. Supreme Court. Marshall's decision in Marbury v. Madison was supposed to have created the practice of Judicial Review. However, it was eminent Historian Edward Corwin who rendered a concrete explanation of the term "Judicial Review" as the power and duty of the Courts to disallow all legislature or Executive acts of either Central or the State Government.

Judicial Review In U.S.A

The Constitution of America, which is written and also democratic in its own and origin, is based on the Rule of law. It provides for the separation of powers with checks and balances. One of the main thing researchers thinks that the processes in the America to determine the validity of law is Judicial Review.⁹ USA in its constitution does not provide express provisions for judicial review but it is incorporated in the Articles 3 and 5. Judicial review is a positive barrier on popular government and is a part of the Constitution Scheme of America. The constitution is observed on a major role and also the Hans Kelson Grundnorm theory was believed and given importance in USA. Alexander Hamilton intended the Supreme Court to have the power to set aside the Congressional legislation. He suggested Independent Judiciary as an excellent barrier to the encroachments and oppression of the representative body.¹⁰

Article VI section 2: all treaties made under the authority of the United States shall be the supreme

⁸ <http://archives.dawn.com/archives/67335,%2021.10.13>

⁹ <http://vishwabhusan.blogspot.in/2011/09/judicial-review-concept-origin-and.html,%2021.10.13>

¹⁰ About the Supreme Court. (n.d.). United States Courts. [https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about#:~:text=The%20best%2Dknown%20power%20of,Madison%20\(1803\).](https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about#:~:text=The%20best%2Dknown%20power%20of,Madison%20(1803).)

law of the land.

Article III section 2: “The judicial power shall extend to all cases, in the law and equity, arising under this Constitution, the laws of the United States, and the treaties made or which shall be made, under this authority.”

In USA there is both federal government and government of individual states. Which performs judicial review at national level and its status got high.

In the United States, there is both a federal government and the governments of the individual states. The legislative branch, which consists of two chambers with roughly equal authority, the executive branch, headed by a president, and the judicial branch, which performs judicial review, all have equal status at the national level In the United States, there is both a federal government and the governments of the individual states. The legislative branch, which consists of two chambers with roughly equal authority, the executive branch, headed by a president, and the judicial branch, which performs judicial review, all have equal status at the national level In the United States, there is both a federal government and the governments of the individual states. The legislative branch, which consists of two chambers with roughly equal authority, the executive branch, headed by a president, and the judicial branch, which performs judicial review, all have equal status at the national level

LANDMARK CASE OF MARBURY v. MADISON:

The power of judicial review was again used with judicial authority to declare the Act of Congress unconstitutional in 1803 the historic landmark case of Marbury v. Madison. When President John Adams did not win a second term election in 1801, he utilized the last few days of his administration to make a substantial number of political arrangements and misused them, Researcher puts light on the point that, At the point when the new president ‘Thomas Jefferson’ took the charge and office, he told his Secretary of State - James Madison, not to give the official printed material to the administration authorities who had been named by Adams.¹¹ In this way, the administration authorities, including William Marbury, were denied their new employment. Thus, William Marbury filed a writ petition of Mandamus in the U.S. Supreme Court to compel which means to force somebody to do something.¹²

¹¹ Judicial review in the United States | Office of Justice Programs. (n.d.). <https://www.ojp.gov/ncjrs/virtual-library/abstracts/judicial-review-united-states>

¹² Marbury v. Madison. (n.d.). Encyclopedia Britannica. <https://www.britannica.com/event/Marbury-v->
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Judicial Review in India

The system of Judicial Review in India too is not a one day implemented thing but it has a long evolution which predominantly was based on the constitutional thoughts and ideas in the different stages of the constitutional evolution of India. Rule of law plays a vital role in the scope of judicial review. The basic idea of Judicial Review is that law should be the generator of peace, happiness and harmony; the ruler has no legal authority to inflict pain, torture and tyranny on the ruled and to usurp the basic rights of freedom and liberty of people which are rooted in the ancient Indian civilization and culture.

The ancient Indian concept of law is that law is the king of kings, and nothing can be higher than law by whose aid even the weak prevail over the strong. The Vedic concept of sovereignty was that the State was a trust and the monarch was the trustee of the people. The address of the people to the monarch at the time of coronations and the reply of the consecrated king to his people on the occasion of Abhisheka (coronation) embodied in the yajurveda reveals the concept of ideal, kingship and the democratic concept of law and order which enshrined in the doctrine of Judicial Review. Thus, the spirit of Judicial Review can be drawn from the fundamental concept of law and governance which required ancient India.

The "Government of India Act, 1858" and the "Indian Council Act, 1861" limited the powers of the Governor General in Council to evade laws, However, there was no Judicial review by the judiciary until *Emperor v Burah* In this case,¹³ the court determined that an "aggrieved party" might seek a reversal. *Annie Besant v Madras* Because the Privy Council established a distinct divide between the imperial Parliament and the subordinate Indian Legislature, the Privy Council decreed that any act carried out by the latter that went beyond the bounds of the former's authority or that violated the limits of the former would be deemed illegal.

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Madison/additional-info

13 *Emperor v. Burah*, ILR, Calcutta, 63 (1877).

activity between the imperial Parliament and the subordinate Indian Legislature, the Privy Council decreed that any act carried out by the latter that went beyond the bounds of the former's authority or that violated the limits of the former would be deemed illegal.

So observed Justice Patanjali Shastri in *State of Madras v. V.G. Rao*, Justice Khanna, former judges of the Supreme Court of India have in his book "Judicial Review or confrontation" made the following remarks in this connection - Judicial Review has constitutional system and a power has been vested in the High Court and the Supreme Court to decide about the constitutional validity of the provision of the statutes.¹⁴

Both the Supreme Court and High Courts exercise the power of Judicial Review. But the final power to determine the constitutional validity of any law is in the hands of the Supreme Court of India. Judicial Review can be conducted in respect of all Central and State laws, the orders and ordinances of the executives and constitutional amendments.¹⁵ The Supreme Court does not use the power of judicial review of its own. It can use it only when any law or rule is specifically challenged before it or when during the course of hearing a case the validity of any law is challenged before it. Judicial Review in India is governed by the principle: 'Procedure Established by Law'. Under it the court conducts one test, i.e., whether the law has been made in accordance with the powers granted by the Constitution to the law-making body and follows the prescribed procedure or not. It gets rejected when it is held to be violative of procedure established by law.

LANDMARK CASE OF SHANKARI PRASAD V/S UNION OF INDIA:

Shankari Prasad vs. Union of India.¹⁶ Here, the first Amendment Act of 1951 Researcher observed that the act was challenged before the Supreme Court on the ground that the said Act abridged the right to property and that it could not be done as there was a restriction on the amendment of Fundamental Rights under Article 13 (2). The Supreme Court rejected the contention and unanimously held. "The terms of Article 368 are perfectly general and empower

¹⁴ Prof. Wade, Sir Edward Coke, Judge Spencer Roane, Samuel Chase, Marshall CJ, & Prof. Edwin Corwin. (n.d.). Judicial Review- scope, ambit and dimensions. [https://nja.gov.in/Concluded_Programmes/2018-19/P-1110_PPTs/13.Sunday%20Club%20talk%20\(Judicial%20Review\).pdf](https://nja.gov.in/Concluded_Programmes/2018-19/P-1110_PPTs/13.Sunday%20Club%20talk%20(Judicial%20Review).pdf)

¹⁵ International Journal of Law Management & Humanities. (2021, June 27). A Comparative Analysis of the Doctrine of Judicial Review in India and the U.S.A - International Journal of Law Management & Humanities. <https://ijlmh.com/paper/a-comparative-analysis-of-the-doctrine-of-judicial-review-in-india-and-the-u-s-a/>

¹⁶ *Shankari Prasad v. Union of India*, MANU/SC/0013/1951

parliament to amend the constitution without any exception whatever. In the context of Article 13 law must be taken to mean rules or regulations made in exercise of ordinary legislative power and amendments to the constitution made in exercise of constituent power, with the result that Article 13 (2) does not affect amendments made under Article 368.

Justification of Judicial Review

India

In India where a very large number of the supporters of Judicial Review do not accept the arguments of the critics and the talks. They argue that Judicial Review is an powerful tool and an very useful system for Indian liberal democratic and federal system. It has been playing an significant and desired role in the protection and development of the Constitution. Following are the points of justifications

- 1) Judicial Review is essential for maintaining the supremacy and significance of the Constitution.
- 2) It is essential for checking the possible misuse of power by the legislature and executive.
- 3) Judicial Review is a device for protecting the rights of the people which also fosters the nation with growth and development.
- 4) No one can deny the importance of judiciary as an umpire, or as an arbitrator between the center and states for maintaining the federal balance.
- 5) The grant of Judicial Review power to the judiciary is also essential for strengthening the position of judiciary.¹⁷ It is also essential for securing the independence of judiciary. A formidable fact which justifies the presence and continuance of the Judicial Review has been the judiciousness with which it is being used by the Supreme Court and High Courts for carrying out their constitutional obligations. These have used it with restraint and without creating hindrances in the way of essential socio-economic reforms.

U.S.A

1. A thought on the whole issue will convince that the power of the judicial review has not been abused by the Court. Moreover, the effect of judicial review has not been very significant. In a period of about two hundred years or so, the Supreme Court has invalidated only about a hundred laws out of about seventy thousand laws passed by the

¹⁷ Judicial review in the United States | Office of Justice Programs. (n.d.-b). <https://www.ojp.gov/ncjrs/virtual-library/abstracts/judicial-review-united-states>

Congress.

2. In most of the nullified laws, only a part of the law concerned was declared unconstitutional. This shows that the “incidence of judicial review of congressional legislation has been extremely slight”.
3. In a country having Separation of Powers and a political system in which the executive is independent of legislative control and the legislature cannot be dissolved earlier than the expiry of its term, the power of judicial review constitutes the ultimate safeguard of individual liberty.
4. In England the need for judicial review has not been felt because in that country, the executive is responsible to the legislature and in case of difference between the two, the will of the legislature prevails. Secondly, Great Britain is not a Federation of States and hence, there is no rigid division of powers between the centre and states. The United States has a written constitution wherein the citizens have been guaranteed some fundamental rights and the states have been given separate and independent powers. Hence, the need for judicial review in the United States is greater than in Great Britain.
5. Through judicial review the Supreme Court has always continued to act as protector of those rights which are guaranteed to individuals and minorities by the Constitution. It has given decisions aiming to improve the status of the Negroes in the country. The decision in the *Brown vs. Boards of Education* is a great landmark, worth noting in this connection.

Critical Analysis On Judicial Review India Vs USA

1. The scope of judicial review is narrower than that of what does exist in USA but researcher puts focus on the fact that the American Constitution does not mention the concept of judicial provisions in any of its provisions.
2. In USA the judges exercise judicial review in a very aggressive manner. If the judges think that a particular law and the philosophy of it is not liked by the judges then, also the judiciary may reject the law. But such a thing never happens in India. The Indian judges reject a law only on the basis of unconstitutionality.
3. Judicial review in India is somewhat circumscribed as compared to that in the USA. In India the fundamental rights are not so broadly coded as in the USA and the limitations there on have been stated in the constitution itself and this task has not been left to the courts. The constitution makers adopted this strategy as they felt that the courts might find it difficult to work out the limitations on the fundamental rights and the same better be

laid down in the constitution itself. The constitution makers also felt that the judiciary should not be raised at the level of 'Super Legislature', whatever the justification for the methodology adopted by the makers of the Constitution, the inevitable result of this has been to restrict the range of judicial review in India.

4. The power of judicial review is exercised differently in different political systems. In countries like the United Kingdom where the constitution is largely unwritten and unitary in character and parliament is sovereign, the courts can declare an act of parliament to be incompatible with the constitution, but they cannot invalidate a law for being inconsistent with the constitution. In other words, the judiciary can only interpret the constitution.
5. Thus, we see that the scope of Judicial Review in India is somewhat smaller or inappreciable as compared to that in the U.S.A.
6. The constitution makers also felt that the Judiciary should not be raised at the level of 'Super legislature', whatever the justification for the methods logy adopted by the constitution makers, the inevitable result of this has been to restrict the range of judicial review in India.
7. Though the courts have the power of judicial review, the same cannot be exercised in an arbitrary fashion. If the law-making power of parliament is not unlimited, the courts` power to review the laws passed by parliament is also not unlimited. Like other organs or the branches of the state, the judiciary derives its powers from the constitution and the judges are as much under the constitution as anyone else. They can interpret and invalidate laws but they cannot themselves assume the law-making function; nor can they confer that function on any person or institution other than the federal or provincial legislatures. Nor can the courts make constitutional what is manifestly unconstitutional. Sovereignty is located neither in parliament nor in the judiciary but in the constitution itself.
8. The Indian Constitution is stringent and flexible due to its length and many provisions. The Indian Constitution uses specific language and vocabulary. The UK lacks a codified constitution, limiting judicial scrutiny. India has three types of judicial review. Changes to the Constitution, Laws, and Regulations Can Be Challenged in Court, The Supreme Court can evaluate any constitutionally-violating legislative or administrative act. The UK courts can examine secondary legislation, but not parliamentary legislation

Judicial Review Cases - (U.S.A)

1. Weeks v. United States (1914):

Federal agents, suspecting Fremont Weeks was distributing illegal lottery chances through the U.S. mail system, entered and searched his home, taking some of his personal papers and documents with them. The agents later returned to Weeks' house to collect more evidence, and also took the letters and envelopes from his drawers.¹⁸ ¹⁸Although the agents had no search warrant, seized items were used to convict Weeks of operating an illegal gambling ring. The matter was brought to judicial review before the U.S. Supreme Court to decide whether Weeks' Fourth Amendment right to be secure from illegal search and seizure, as well as his Fifth Amendment right to not testify against himself, had been violated. The Court, in a unanimous decision, ruled that the agents had unlawfully searched for, seized, and kept Weeks' letters. This landmark ruling led to the "Exclusionary Rule," which prohibits the use of evidence obtained in an illegal search in trial.

2. McCulloch v. Maryland :

Again, an historic case that's related to the expansion of judicial review in the United States. Facts- In this case there was a dispute regarding the powers of Federal law and State law. The facts of the case that a bank was established by Federal law (by federal government.) named Bank of America in the State of Maryland. Thereafter State of Maryland passed a tax legislation which imposes the tax on bank in relation to relative transaction. This was challenged on the ground that can State law imposes tax on bank which was established by Federal law? Held- It was held by the Court that State cannot impose tax on Union authority; court creates immunity to the National Government. According to this judgment US Supreme court formulate the doctrine of Immunity of Instrumentalities"¹⁹

3. Miranda v. Arizona (1966) :

The history of modern-day Miranda rights begins in 1963, when Ernesto Miranda was arrested for, and interrogated about, the rape of an 18-year-old woman in Phoenix, Arizona.

¹⁸ Wikipedia contributors. (2023, September 13). Weeks v. United States. Wikipedia. https://en.wikipedia.org/wiki/Weeks_v._United_States#:~:text=United%20States%2C%20232%20U.S.%20383,A%20to%20the%20U.S.%20Constitution.

¹⁹ McCulloch v. Maryland (1819) | National Archives. (n.d.). <https://www.archives.gov/milestone-documents/mcculloch-v-maryland>

During the lengthy interrogation, Miranda, who had never requested a lawyer, confessed and later convicted of rape and sent to prison. Later, an attorney appealed the case, requesting judicial review by the Supreme Court, claiming that Ernesto Miranda's rights had been violated, as he never knew he didn't have to speak at all with the police.

The Supreme Court, in 1966, overturned Miranda's conviction, and the court ruled that all suspects must be informed of their right to an attorney, as well as their right to say nothing, before questioning by law enforcement. The ruling declared that any statement, confession, or evidence obtained prior to informing the person of their rights would not be admissible in court. While Miranda was retried and ultimately convicted again, this landmark Supreme Court ruling resulted in the commonly heard "Miranda Rights" read to suspects by police everywhere in the country.

4. Reed v. Town of Gilbert, Arizona :

The Supreme Court in the recent case passed an ordinance concerned with Gilbert town which prohibits the display of outdoor sign except some signs which are political signs which defined as designed to influence the outcome of an election, and ideological signs which defined as communicating ideas and another one directional sign which defined as directing the public to church or other qualifying event. This ordinance was challenged by a church and its priest. Justice Clarence Thomas on behalf of the majority held that distinctions drawn by the ordinance were impermissible. It was held that all "content-based law" requires the exacting form of judicial review and strict scrutiny.²⁰

Court further held that content-based law which are target speech based on its communicative content are presume to be unconstitutional and may be justified only if the Government proves that they are narrowly tailored to serve compelling State interests.

5. Virginia Board of Education v. Bamente 319 U.S.624 (1943) :

"Local school boards may not remove books from school library shelves simply because they dislike the ideas contained in these books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." He also cited Tinker v. Des Moines School District, 393 U.S.503 (1969), saying that high school students have First

²⁰ Free Speech Center. (2024, February 19). Reed v. Town of Gilbert (2015) - The Free Speech Center. The Free Speech Center. <https://firstamendment.mtsu.edu/article/reed-v-town-of-gilbert/>

Amendment rights in the classroom. Although the schools have a right to determine the content of their libraries, they may not interfere with a student's right to learn. Therefore, the schools may not control their libraries in a manner that results in a narrow, partisan view of certain matters of opinion. The Court stood against the removal or suppression of ideas in schools.

Judicial Review Cases - INDIA

1. Golaknath v. State of Punjab (1967):

In this case, the Supreme Court held that the Parliament did not have the power to amend the fundamental rights enshrined in the Constitution.²¹ This decision was later overturned by the 24th Amendment to the Constitution, which allowed the Parliament to amend any part of the Constitution, including the Fundamental Rights.

2. Sajjan Singh's case:

Here, the competence of parliament to enact 17th amendment was challenged before the constitution. Bench of five judges on the ground that it violated the Fundamental Rights under Article 31 (A). Supreme court reiterated its earlier stand taken in Shankari Prasad's case and held, "when article 368 confers on parliament the right to amend the constitution the power in question can be exercised over all the provisions of the constitution, it would be unreasonable to hold that the word 'law' in article 13 (2) takes in amendment Acts passed under article 368. Thus, until 1967 the Supreme Court held that the Amendment Acts were not ordinary laws, and could not be struck down by the application of article 13 (2).²²

3. Vishaka v. State of Rajasthan (1997):

In this case, the Supreme Court recognized sexual harassment at the workplace as a violation of the fundamental rights of women.²³ The court laid down guidelines for employers to prevent and redress such harassment at the workplace.

4. Keshavananda Bharti Case:

Keshavananda Bharti case popularly known as the Fundamental Rights case, decided by Supreme

²¹ Testbook. (2024, January 18). Golaknath Case - History, Summary, Arguments & Judgement | UPSC. Testbook. <https://testbook.com/ias-preparation/golaknath-case>

²² 1967 SC1643 (12,14,23,43,44,59,61,65,75,87)

²³ Wikipedia contributors. (2023b, December 23). Vishakha and others v State of Rajasthan. Wikipedia. https://en.wikipedia.org/wiki/Vishakha_and_others_v_State_of_Rajasthan

Court on April 24, 1973. The question involved was, what is the extent of the amending power conferred by Article 368 of the Constitution? On behalf of the Union of India it was claimed that amending power is unlimited and short of repeal of the Constitution any change may be affected. On the other hand, the petitioner contended that the amending power was wide but not unlimited. Under Art. 368, Parliament cannot destroy the 'basic feature' of the constitution. A special bench of judges was constituted to hear the case. Out of 13 judges 11 complicated vague doctrine of basic structure. According to the court, the power of the Parliament to amend the constitution under Article 368 did not extend to abrogating or destroying the basic features or framework of the constitution, what features were considered by the Supreme Court as 'basic' were not spelt out or enumerated consistently in the various opinions given in this case.²⁴ The majority held that Article 368 even before the Twenty fourth Amendment, contained the power as well as the procedure of amendment.

5. Minerva Mills case :

In Minerva Mills case the Supreme Court by a majority decision has struck down section 4 of the 42nd Amendment Act which gave preponderance to the Directive Principles over Articles 24, 19 and 31 of part III of the constitution, on the ground that part III and part IV of the constitution are equally important and absolute primacy of one over the other is not permissible as that would disturb the harmony of the constitution.²⁵ The Supreme Court was convinced that anything that destroys the balance between the two part will Ipso Facto destroy an essential element of the basic structure of our constitution.

CONCLUSION

The Researcher went through many bibliographies and webliography where he went through many aspects of judicial review consisting its meaning, history origin traces, its concept, deep analysis, comparative study and case laws of judicial review in major countries like India and USA.

Judicial Review is a significant weapon to stop and eradicate the unconstitutional exercise of power by branches of law legislative and executive. In conclusion, while judicial review is a crucial aspect of the Indian Constitution, it has also been subject to criticism from various

²⁴ *Supreme Court Advocates-on-Record- Association and Another v. Union of India, Writ Petition (Civil) No. 13 of 2015 (October 16, 2015).*

²⁵ 1987 SC 386 (2,12,15,16,17)

quarters. Critics argue that it undermines the democratic process, and this can lead to judicial overreach, and may be time consuming and expensive. However, supporters of judicial review argue that it is necessary to protect the fundamental rights of citizens and ensure that the government functions within the limits set by the Constitution. Ultimately, the balance between these two perspectives will depend on how well the judiciary can strike a balance between protecting the Constitution and following the democratic process.

While the scope of judicial review is quite broad, there are certain limitations to this power, which are necessary to maintain a balance between the three organs of the state – the legislature, the executive, and the judiciary. Judicial review in India is narrower than that of what exists in USA and its an obvious thing because the concept of judicial review was originated itself in USA. Judicial Review is one of the important techniques by which the courts examine the actions of the legislature, the executive and the other governmental agencies and decide whether or not these actions are valid and within the limits set by the Constitution. Therefore, with the power of judicial review the courts act as a custodian of the fundamental rights. Hence Judicial Review is a great tool and must be used and applied where there is infringement of legal rights of the people so as to act like a guardian to them.

When comparative analysis was done by researcher, researcher found that The American principle of judicial supremacy is also recognized in our constitutional system, but to a limited extent. If proper utmost care is taken at the level of taking the administrative decisions, there will be little scope for grievance and invoking court's jurisdiction. This will not only reduce the burden on courts but will also create a sense of security and satisfaction in people which is the essence of good governance and foundation of a welfare State. Hence Judicial Review being an very vital an beneficial aspect in the overall law and constitution, it is the duty to take in account Judicial Review an mandatory aspect.

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