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CLASH OF POWERS: LEGISLATIVE CHALLENGES TO JUDICIAL PRECEDENTS IN DEMOCRATIC GOVERNANCE

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Abstract:

In a parliamentary democratic governance, the Legislature and the Judiciary are the crucial pillars, essential for upholding the rule of law and ensuring the smooth functioning of the state. The Legislature, comprising elected representatives, holds the responsibility of enacting laws that govern the nation, while Judiciary is responsible for the adjudication of the laws made by the Legislature. Together, they form the cornerstone of checks and balances, crucial for maintaining the integrity of the system. But the delicate balance of power between the legislature and the judiciary has often faced challenges, particularly when legislative bodies enacted laws that seemingly undermined or negated judicial rulings. This study aims to analyze the underlying factors of such imbalance, with a focus on understanding how the legislature enacted laws that directly contravened the established judicial precedents or decisions. Through a thorough examination of specific cases where legislative actions have clashed with judicial rulings, this study aims to understand the broader implications for the rule of law, separation of powers, and democratic governance. The study ultimately aims to find a common ground to establish the balance of power between the two organs.

KEYWORDS: Legislature, Executive, Separation of Power, Rule of Law, Democratic Governance

Background:

In a parliamentary democratic governance, the Legislature and the Judiciary are the crucial pillars, essential for upholding the rule of law and ensuring the smooth functioning of the state. The Legislature, comprising elected representatives, holds the responsibility of enacting laws that governs the nation, while Judiciary is responsible for the adjudication of the laws made by the Legislature. Together, they form the cornerstone of checks and balances, crucial for maintaining the integrity of the system.

However, there are instances when the equilibrium between these two pillars is disrupted. This disruption often occurs when laws passed by the legislature seem to challenge or undermine the decisions made by the judiciary. Such conflicts highlight fundamental questions about the distribution of power within a democratic society and the principles of separation of powers.

Judiciary has the power to lay down precedents. According to Article 141¹ of the Indian Constitution, the decisions of the Supreme Court are binding on all courts within the country's territory. When the Supreme Court, sitting as a constitutional bench, sets a precedent, it is not only binding on other courts but also establishes legal principles that become the law of the land.

The Legislature has the authority to enact laws and make amendments to existing legislation and the constitution. Sometimes, these laws come into conflict with judicial rulings, leading to a clash between legislative and judicial authority. In response to unfavorable judicial decisions, the legislature may pass new laws or amend existing ones in an attempt to nullify the impact of these rulings. This creates a disbalance of power between the organs of the government.

The situation of imbalance of power is pretty evident from Champakam Dorairajan² case in 1951 to Golaknath case³ in 1967 to the recent Electoral Bond case⁴ judgment in 2024.

This study aims to analyze the underlying factors of such imbalance, with a focus on understanding how the legislature enacted laws that directly contravened the established judicial precedents or decisions. Through a thorough examination of specific cases where legislative

¹ INDIA CONST. art. 141

² State of Madras v. Champakam Dorairajan (AIR 1951 SC 226)

³ Golaknath v. State of Punjab (1967 AIR 1643)

⁴ Association for Democratic Reforms & Anr v. Union of India & Ors. (2024 INSC 113)

actions have clashed with judicial rulings, this study aims to understand the broader implications for the rule of law, separation of powers, and democratic governance. The study ultimately aims to find a common ground to establish the balance of power between the two organs.

Literature Review:

1] Title: " Reviewed Work: Controlling Administrative Power: A Historical Comparison"

Author: Stephen Gageler

Date Published: July 2017

This article offers a comprehensive analysis of the book "Controlling Administrative Power: A Historical Comparison" which is a comprehensive analysis of the evolution of administrative law and judicial review mechanisms. Through a historical point of view, author examines the growth of legal frameworks aimed at controlling governmental actions and ensuring responsibility. By comparing historical practices and legal doctrines across different jurisdictions, author sheds light on the various approaches to regulate administrative power. The book delves into the theoretical support of judicial oversight and its role in maintaining the rule of law in democratic societies. This research provides valuable insights into the challenges and complexities of balancing administrative discretion with legal constraints, offering a fine perspective on the historical trajectory of administrative law and its importance to contemporary governance structures.⁵

2] Title: "Judicial Review of Constitutional Amendments in Light of the 'Political Question' Doctrine"

Author: Mohammad Moin Uddin and Rakiba Nabi
Date Published: July – September 2016

In this article authors delve into the complex realm of judicial review concerning constitutional amendments in Bangladesh, India, and the United States. The authors meticulously analyze the jurisprudence of the Supreme Courts of these countries, focusing on the controversial issue of the "political question" doctrine and its implications for the separation of powers and democratic governance. By comparing and contrasting the approaches of these courts, the authors provide valuable insights into the role of the judiciary in upholding constitutional principles and ensuring the integrity of the amendment process. Through a comprehensive examination of legal precedents, authors offer a fine understanding of the challenges and opportunities associated with judicial review of constitutional amendments, shedding light on the evolving dynamics between

⁵ Stephen Gageler, Reviewed Work: Controlling Administrative Power: An Historical Comparison by Peter Cane, Vol. 76 CLJ, pp. 430, pp. 430-433 (2017)

the judiciary and the legislative branches in different legal systems.⁶

3] Title: "Our Supreme Court An Appellate Legislature" Author: Dr. B. B. Jena

Date Published: July-September-December 1964

In this article the author delves into the role of the Supreme Court as an Appellate Legislature in India. Author highlights the original right of the Indian people to establish principles for their government, highlighting the prominent and permanent nature of the Constitution as the act of the people themselves. The article discusses how the Constitution organizes governments, assigns powers to different organs, and sets limits to ensure universal obedience. Author also explores the Supreme Court's function as the final allocator of reason, highlighting the importance of balancing personal liberty with societal interests. Through a thorough study of constitutional principles and judicial responsibilities, the author presents a compelling argument for the Supreme Court's key role in upholding the Constitution and ensuring the smooth functioning of the legal system in India.⁷

4] Title: "Legislative Wisdom, Executive Discretion, and Judicial Review" Author: P. Leelakrishnan

Date Published: January-March 1989

In the article the author explores the complex relationship between the judiciary, legislative wisdom, and executive discretion in the context of Indian democracy. Author raises questions about the role of the judiciary in safeguarding civil rights when faced with unreasonable exercise of executive discretion or legislative inaction. The article discusses instances where the judiciary has intervened to ensure the proper implementation of laws and to address social issues that require legislative attention.

Author's study highlights the challenges faced by the judiciary in balancing its role of upholding the rule of law while respecting the separation of powers. By examining case studies and legal principles, the author advocates for a subtle approach that allows for judicial review in cases where executive actions or legislative decisions may intrude upon individual rights or fail to address pressing societal concerns.⁸

⁶ Mohammad Moin Uddin & Rakiba Nabi, JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS IN LIGHT OF THE "POLITICAL QUESTION" DOCTRINE: A COMPARATIVE STUDY OF THE JURISPRUDENCE OF SUPREME COURTS OF BANGLADESH, INDIA AND THE UNITED STATES, Vol.58 JILI pp.313, pp. 313-336 (2016)

⁷ B. B. Jena, Our Supreme Court An Appellate Legislature, Vol.25 IJPS pp.250, pp.250-257 (1964)

⁸ P. Leelakrishnan, LEGISLATIVE WISDOM, EXECUTIVE DISCRETION AND JUDICIAL REVIEW, Vol.31 JILI pp.75, pp.75-80 (1989)

5] Title: "Judicial Review of Parliamentary Privileges: Functional Relationship of Courts and Legislatures in India"

Author: D. C. Jain

Date Published: April-June 1967

This article delves into the dynamics between the judiciary and the legislative branches in India. Author explores the challenges faced in balancing the powers of these institutions within the framework of a democratic society. By examining specific cases and constitutional provisions, author highlights the complexities of upholding parliamentary privileges while ensuring judicial review and protection of fundamental rights.

The article raises questions about the implications of the functional relationship between courts and legislatures on governance and the rule of law in India. Author provide insights on the valuable contribution to the discourse on the separation of powers, constitutional interpretation, and the evolving nature of democracy in the Indian context.⁹

Research problem:

In the complex landscape of democratic governance, clashes between legislative enactments in the form of laws and amendments by the legislature and the precedents sent by supreme court emerge often. It reflects the tension between the legislature's power to make laws and the judiciary's role in interpreting and applying those laws. These clashes also highlight the issue about the separation of power within the legal system. It is important to understand and address these clashes for maintaining the rule of law and also to find a common ground to establish the balance of power between the two branches.

Research questions:

1. What are the various incidents where the clashes between legislative enactments and judicial precedents have emerged?
2. What are the implications of clashes between legislative enactments and judiciary precedents for the separation of powers within the legal system?
3. How can the clashes between the legislative enactments and judicial precedents be

⁹ D. C. Jain, JUDICIAL REVIEW OF PARLIAMENTARY PRIVILEGES: FUNCTIONAL RELATIONSHIP OF COURTS AND LEGISLATURES IN INDIA, Vol.2 JILI pp.205, pp.205-222 (1967)

resolved in order to find a common ground?

Research objectives:

- To assess the impacts of the clashes between judiciary and legislature on the legal system
- To identify and analyse the various situations where the conflicts between these two organs have emerged.
- To identify and understand the factors that led to the clashes between the legislative enactments and the judicial precedents.
- To find a common ground to establish the balance of power between the two organs.

Hypothesis:

In Indian parliamentary democratic governance, the legislature and the judiciary is not superior to one another but provides checks and balances to the system.

Scope and Limitation:

This research paper will focus primarily on the clashes between legislative enactments and judicial precedents in parliamentary democratic systems, with a particular emphasis on the Indian context. The study will examine both historical and contemporary cases as well as amendments to assess the evolution of legislative-judicial conflicts over time. While the primary focus will be on legal analysis, the research may also incorporate political, institutional, and socio-economic perspectives to provide a comprehensive understanding of the underlying dynamics of conflicts between the legislature and the judiciary in democratic governance.

Methodology:

The research will follow the doctrinal method as it is mostly compilation of data from various places. The sources are mostly secondary. We have consulted several sources including books and Journals and also different articles, internet sources and lectures of leading legal thinkers from India and around the world. The following methods will be relied upon to fulfill the objectives of the study and collection of necessary data. In addition, various case laws, provisions as well as amendments are referred in this paper.

Chapter II - The various incidents where the clashes between legislative enactments and judicial precedents have emerged.

Introduction:

The fundamental principle of rule of law lies upon the existence of the three organs of the government i.e the Legislature, the Executive, and the Judiciary. Separation of powers between these three organs is an essential feature for a democratic governance. In a parliamentary democratic governance, the Legislature and the Judiciary are the crucial pillars, essential for upholding the rule of law and ensuring the smooth functioning of the state. The Legislature, comprising elected representatives, holds the responsibility of enacting laws that governs the nation, while Judiciary is responsible for the adjudication of the laws made by the Legislature. Together, they form the cornerstone of checks and balances, crucial for maintaining the integrity of the system. However, there are instances when the equilibrium between these two pillars is disrupted. This disruption often occurs when laws passed by the legislature seem to challenge or undermine the decisions made by the judiciary. Such conflicts highlight fundamental questions about the distribution of power within a democratic society and the principles of separation of powers.

Incidents of Clashes:

1. Champakam Dorairajan case and 1st Amendment -

It all started from the case of State of Madras v. Champakam Dorairajan¹⁰ in the year 1951, just after the Constitution had come into force, where there was conflict between Article 15, Article 29(2) and Article 46 of the constitution and the issue was reservation. There should be equality according to Fundamental Rights, but Directive Principles of State Policy is asking to promote interests of weaker section. The five-judge bench of the Supreme Court in its verdict held that in case of conflict between Fundamental Rights and Directive Principles, Fundamental Rights would always prevail. It was further held that Directive principles have to work as a supplement with Fundamental rights & Parliament can't amend Fundamental Rights.

¹⁰ State of Madras v. Champakam Dorairajan (AIR 1951 SC 226)

As a response to Champakam Dorairajan case, the Parliament made 1st amendment to the Indian Constitution and added clause 4 to Article 15 of the constitution, which created a way to provide reservation as special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

This was the first major incident of clash between the two organs of the government.

2. ***Golaknath case and 24th, 25th Amendment –***

In the landmark case of Golaknath and Ors v. State of Punjab¹¹, the 11 judge-bench of the Supreme Court held that the Parliament cannot amend the fundamental rights in order give effect to the Directive Principles of the constitution.

As a result of this judgement, the Parliament made 24th amendment to the Indian Constitution where it added clause 4 to Article 13 and Clause 3 to Article 368 which gave the Parliament the power to amend the fundamental rights. This nullified the Golaknath judgement.

The Parliament also made 25th amendment, where Article 31C which said that any law which is made to give effect to Directive Principles of State Policy cannot be declared unconstitutional on the grounds that it violates Article 14, 19 and 31 of the Indian Constitution.

3. ***Kesavananda Bharti case and 42nd Amendment-***

The most landmark case of the Indian Constitution, also regarded as mini constitution, Kesavananda Bharati v. State of Kerala¹², the 13 judge-bench of Supreme Court propounded the basic structure doctrine, where the Parliament can amend the Constitution including the fundamental rights to the extent that it does not hamper with the basic structure of the Indian Constitution. The Court held the second provision Article 31C as invalid and unconstitutional because it was taking away the power of judicial review from the courts.

The Parliament made 42nd Amendment to the constitution during the time of emergency where many changes were made. Article 32A was added which denied the Supreme Court the power to

¹¹ Golaknath and Ors v. State of Punjab, 1967 AIR 1643

¹² Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461

consider the Constitutional validity of the State law.

Article 144A was added where the minimum number of judges of the Supreme Court required to decide the Constitutional validity of a Central or State law was fixed to at least 7, and this required a two-thirds majority of the judges to declare the law as unconstitutional. Several restrictions were imposed on the High Court's power to issue writs 'for any other purpose'.¹³

Fundamental Rights became subordinated to Directive Principles, and any legislation enacted by the Parliament to that purpose was exempt from court scrutiny. High Courts power of judicial review was curtailed.

4. *Shah Bano case and Muslim Women (Protection of Rights on Divorce) Act, 1986-*

In the case of Mohd. Ahmed Khan v. Shah Bano Begum¹⁴, the Supreme Court held that a muslim woman has a right to claim maintenance under Section 125 of Cr.P.C as the Code is a criminal law and not a civil law. According to Supreme court there was no conflict between Section 125 Cr.P.C and Muslim personal laws because Section 125 applies to all regardless of caste creed or religion and it is criminal in nature unlike Muslim personal law which is civil.

This was not well received by the Public and led various protests. As a result, the Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act in the year 1986 which limited the liability of husband to pay the maintenance till the iddat period only which was mentioned in Muslim personal law. After the iddat period if the woman is unable to support herself her relatives which would have inherited her property would maintain her and if she has no such relatives the waqf board will pay for the maintenance.

This judgement thus effectively nullified progressive elements of the Shah Bano judgment, subverting secular tenets of the Constitution.

5. *Indra Sawhney case and 77th Amendment –*

¹³ Textbook.IAS, <https://testbook.com/ias-preparation/42nd-amendment-act>. (last visited on 6 April 2024)

¹⁴ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

In the case of *Indra Sawhney v. Union of India*¹⁵, the Supreme Court laid down the concept of creamy layer and it was directed that such a creamy layer be excluded while identifying backward classes. Maximum reservation was capped at 50% and no reservations in promotions were allowed. It overruled *T. Devadasan v. Union of India*¹⁶ (1964) by declaring carry forward rule as constitutional as long as it does not exceed the 50% ceiling.

As a result of this judgment, the Parliament made 77th Amendment to the Indian constitution, where Article 16(4A) was added by which the Government nullified the effect of *Indra Sawhney*. Article 16(4A) allowed the State to provide reservations to a SC/ST in matters of promotion, as long as the State believes that the SC/ST is not adequately represented in government services.

6. ***1975 Emergency, Habeas Corpus case and Puttaswamy case –***

In June 1975, a state of national emergency was declared, and all fundamental rights were suspended. Then followed the 42nd Amendment Act of 1976, which aimed to place the issue outside the purview of the judiciary by placing priority on the directive principles of state policy over fundamental rights. The preventive detention laws passed by the Parliament during the emergency which threw everyone's constitutional rights into turmoil.

In the case of *ADM Jabalpur v. Shivakant Shukla*, popularly known as the Habeas Corpus case, the 5-judge bench of the Supreme Court in a 4:1 verdict held that the right to not be unlawfully detained can be suspended during the time of emergency. The Supreme Court 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.

In this case, Honourable Justice Khanna gave the dissenting judgment where he stated “detention without trial is an anathema to all those who love personal liberty.”¹⁷

Habeas Corpus case was overruled in the case of *Justice K.S. Puttaswamy & Anr. v. Union of India*¹⁸, where the court stated Judgments rendered by all the four judges constituting the majority

¹⁵ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

¹⁶ *T. Devadasan v. Union of India*, (1964) 4 SCR 680

¹⁷ Kumarappan M, History of Conflict Between the Legislature and the Judiciary, Volume 5, International Journal for Multidisciplinary Research

¹⁸ *Justice K.S. Puttaswamy & Anr. v. Union of India*, AIR 2017 SC 4161

in ADM Jabalpur case are seriously flawed. Honourable Justice D.Y. Chandrachud said that “When histories of nations are written and critiqued, there are judicial decisions at the forefront of liberty. Yet others have to be consigned to the archives, reflective of what was, but should never have been.”

7. *Electoral Bond Scheme of 2018 and Association for Democratic Reforms & Anr v. Union of India & Ors.* –

Introduced in January 2018, the Electoral Bond Scheme allowed citizens and corporate entities to donate money electronically to political parties. Donors received interest-free bearer banking instruments redeemable exclusively by registered political parties. Anonymity prevailed throughout the process, raising questions about financial transparency and accountability.

The Ministry of Finance formulated the EBS using the authority granted by Section 31(3) of the RBI Act. The following were key characteristics of the Electoral bond scheme that debuted in 2018:

- a) Anybody may purchase EB, but only qualified political parties that meet certain requirements, are registered under Section 29-A of the Representation of the People Act, 1951 ("RP Act"), are eligible to receive electoral bonds, and can cash Electoral bond.
- b) Electoral bond granted under the plan is non-refundable in accordance with Clause 7(6), and the information provided by the buyer is to be maintained as confidential by the licenced bank, to be revealed only upon a court's order or the filing of a criminal complaint by any law enforcement agency.
- c) Under the revised provisions of Section 13-A of the Income Tax Act, 1961 (the "IT Act"), the value of the bonds is deemed income obtained from voluntary contributions received by the political party and is therefore free from income tax.¹⁹

In the case of *Association for Democratic Reforms & Anr v. Union of India & Ors.*²⁰, the Supreme Court held that the Electoral Bond Scheme was unconstitutional for violating the right to information of voters under Article 19(1)(a).

In conclusion, the clashes between legislative enactments and judicial precedents highlight the

¹⁹ Siddharth R. Gupta, Analysis and Anatomy of Electoral Bond Judgment, SCC Online

²⁰ *Association for Democratic Reforms & Anr v. Union of India & Ors.* (2024 INSC 113)

intricate relationship between the legislature and judiciary in a democratic society. Through landmark cases like Champakam Dorairajan and Kesavananda Bharti, the importance of upholding fundamental rights while considering directive principles of state policy has been emphasized. The evolution of constitutional amendments reflects the ongoing dialogue to address these clashes and maintain the integrity of the legal system. Upholding the principles of separation of powers is essential to prevent disruptions in the equilibrium between the branches of government. By fostering mutual respect and dialogue, democratic societies can navigate these challenges while upholding the rule of law and principles of justice.

Chapter III- Major implications of clashes between legislative enactments and judicial precedents for the separation of powers within the legal system

Introduction:

In India, a separation of powers is followed. It is impossible for all the organs to perform all the functions systematically and appropriately. Therefore, separation of powers provides for a system of governance where the legislative, executive and the judicial functions are separated and assigned to different organs of the government. This helps to prevent concentration of power in any one organ or individual. The particular parts and freedom of the legislative and judicial branches offer assistance to anticipate the concentration of power and secure citizens' rights²¹. A system of checks and balances have been put in place in such a manner that the judiciary has the power to strike down any law passed by the legislature, which it deems unconstitutional. It can be said that in India the functions are separated from powers rather than the other way around.

However there have been several instances where the separation of powers has been challenged and there have been clashes between legislative enactments and judicial precedents. Such kinds

²¹ Tobias Oberdieck and Enrico Moss, Principle of separation of powers between the legislature and judiciary: Distribution of state power several state bodies for this purpose limitation of power, Volume 8(2) International Journal of Public Administration Management and Economic Development.

of clashes have a significant impact on the separation of powers as the powers are distributed among the three organs for the proper functioning of the powers and when there is a clash it results in various complications like undermining the authority of the judiciary, reducing clarity and certainty in the law and hinder effective governance.

Major Implications of such clashes:

It has been observed from time to time that the Supreme court has assumed the powers of legislature and in the guise of giving guidelines and creating principles they assume the powers of the legislature. For instance, in the case of Kesavananda Bharati vs State of Kerala²², the Supreme court laid down the basic structure doctrine, which put out limitations on the legislature's power to make and amend the basic structure of the Indian Constitution. The history of conflict between legislature and judiciary in India has been marked by pivotal moments, with the major reason being the tool of judicial review which ensures that governmental actions align with the constitution. The role of the Supreme Court in upholding the constitutional principles and the precedence of fundamental rights over legislative actions remains a cornerstone in India's constitutional framework²³. According to Encyclopaedia

Britannica, "Judicial review is the power of court to examine the actions of Legislative, Executive and Administrative arms of the government and to determine whether such actions are consistent with the constitution." Therefore, it can be said as the power of courts to examine the actions of the Government. This power of the Supreme Court can often lead to conflicts between the judicial precedents and the legislative enactments. One such instance is, during the period of national emergency in India (1975-1977) 42nd amendment act (1976) was enacted, and it brought several changes to the constitution. The Supreme Court held that the 42nd Amendment Act was unconstitutional and void in the case of Minerva Mills vs Union of India. The court reaffirmed the doctrine of basic structure and ruled that the Parliament could not amend the Constitution in a manner that destroyed its basic structure or undermined its essential features.

There are several impacts of the conflicts that arise between the Legislature and the Judiciary. Some of them are: -

²² Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461

²³ 8 Kumarappan M, History of Conflict Between the Legislature and the Judiciary, Volume 5, International Journal for Multidisciplinary Research

1. It undermines the authority of the judiciary: If there is a law passed by the legislature which is contradicting with the judicial precedent, it may undermine the authority of the judiciary and weaken its credibility. It will raise questions on the ability of the judiciary to interpret the constitutional and uphold the rule of law.
2. It can reduce the clarity and certainty in the law: Such conflicts between legislation and judicial precedents can create uncertainty in the application of law. Such disputes can generate confusion about how specific laws should be applied. Different interpretations of the same statute by different courts will be the result and this can lead to reduction in predictability and stability of the legal system.
3. Hinders effective governance: Such disputes between the Judiciary and the Legislature can be prolonged and can become a hindrance in effective governance and can also delay implementation of several policies. It can also distract the policy makers from addressing ongoing social and economic challenges by diverting their attention to the conflicts.
4. Public Trust: Such frequent clashes between the Judiciary and the Legislature can cause mistrust in public. It can cause disillusionment which can lead to the public raising questions on the whole system and its reliability and effectiveness of the entire system. Over time it can lead to loss of public trust and it would weaken the separation of powers as public opinion may shift towards consolidation of power in one branch rather than different branches.

Although such clashes between legislative enactments and judicial precedents can have some negative implications, they can also have a positive impact. One such impact can be:

Since the separation of powers relies on the system of checks and balances between the different organs of government, such clashes will ensure that the equilibrium between the two organs is maintained ensuring proper checks and balances within system. It will also ensure proper decision making between the branches essential for a free democratic governance.

In conclusion, the most important thing for successful coexistence between the legislature and judiciary is mutual understanding and proper collaboration. It is crucial for both branches of the Government to respect each other's roles and responsibilities and engage in regular communication to avoid further conflicts. In order to maintain the separation of powers, complete commitment is required from all the organs of the government which will lead to effective governance and eliminate all mistrust and confusion.

Chapter IV- A Common Ground between Legislative Enactments and Judicial Precedents

Introduction:

In a democratic society like India, the relationship between the legislature and the judiciary is crucial for upholding the rule of law, ensuring the separation of powers, and maintaining the integrity of the legal system.²⁴ However, conflicts can arise when laws passed by the legislature challenge or undermine decisions made by the judiciary. Resolving these clashes requires a comprehensive approach that involves judicial review, legislative scrutiny process, dialogue and cooperation, and legislative response and amendment.

Strengthening Judicial Review Mechanisms:

One of the primary means to resolve the conflicts between legislative enactments and judicial precedents is through the strengthening of judicial review mechanisms. Judicial review acts as a fundamental mechanism for resolving conflicts between legislative enactments, and judicial precedents.²⁵ Through judicial review the judiciary interprets laws and ensures their adherence with constitutional principles. *Marbury v. Madison*²⁶ is a landmark case in the United States that established the principle of judicial review, empowering courts to repeal legislative acts that are unconstitutional in nature. In India, the case of *Kesavananda Bharati v. State of Kerala*²⁷ has confirmed the supremacy of the Constitution and the judiciary's authority to review legislative actions.

Enhancing Legislative Scrutiny Processes:

Another approach to resolving conflicts is by enhancing legislative scrutiny processes. Legislative scrutiny processes involves ensuring that lawmakers thoroughly review proposed legislation to assess its compatibility with existing legal frameworks and judicial precedents.²⁸In

²⁴ V. Sudhish Pai, Separation of Powers and the Judiciary, National Judicial Academy (Feb. 27, 2024, 10:25 PM), https://nja.gov.in/Concluded_Programmes/2018-19/P-1110_PPTs/12.Separation%20of%20the%20powers%20and%20the%20judiciary.pdf.

²⁵ Judicial Review- Scope, Ambit and Dimensions, National Judicial Academy (Feb. 28, 2024, 12:05 AM), [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).

²⁶ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)

²⁷ *Kesavananda Bharati v. State of Kerala*, MANU/SC/0445/1973

²⁸ Lok Sabha Secretariat Intranet,

https://loksabhadocs.nic.in/Refinput/Research_notes/English/04122019_174605_102120495.pdf (last visited Mar. 3, 2024).

the *Factortame case*²⁹, the House of Lords ruled that national courts have the authority to set aside national legislation that conflicts with European Union law. This decision underscored the importance of legislative scrutiny in ensuring compliance with international legal obligations. By incorporating mechanisms for legal analysis and consultation with legal experts, legislators can identify potential conflicts early on and address them through amendments or revisions to the proposed laws.

Promoting Dialogue and Collaboration between Branches:

Dialogue and collaboration between the legislature and the judiciary are essential for resolving conflicts and finding common ground. A collaborative approach between the legislature and the judiciary can help mitigate conflicts and foster mutual understanding.³⁰ In Canada, the Supreme Court's decision in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*³¹ demonstrated how dialogue between branches of government can lead to constructive outcomes. The legislature and the judiciary can clarify legal interpretations, address differences, and uphold the rule of law by engaging in meaningful dialogue and cooperation. It can promote an environment of understanding and mutual trust, both organs, Legislature and Judiciary, can work together to address issues and prevent conflicts from arising in the first place.

Legislative Response and Amendment:

Legislative bodies can respond to judicial precedents through amendments to existing laws or the enactment of new legislation. In some cases, conflicts between legislative enactments and judicial precedents may require constitutional amendments to resolve. By amending the constitution, lawmakers can clarify vagueness, manage inconsistencies, and reaffirm the balance of powers between the branches of government. Such amendments must adhere to constitutional principles and respect the judiciary's interpretation of the law.³² In the United Kingdom, the Parliament's response to judicial decisions, such as in the case of *R (Jackson) v. Attorney General*³³, highlights the importance of legislatures adherence to constitutional norms. Legislatures can enact laws that address judicial concerns while upholding democratic principles by engaging in thorough debate and consultation. constitutional amendments must be approached with careful consideration and

²⁹ R (Factortame Ltd) v Secretary of State for Transport, UKHL 7

³⁰ Law Live, <https://www.livelaw.in/top-stories/spirit-of-collaboration-between-institutions-necessary-to-deliver-justice-cji-dy-chandrachud-238508> (last visited Mar. 5, 2024).

³¹ Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 SCR 3

³² BYJU'S, <https://byjus.com/free-ias-prep/separation-power-indian-constitution/> (last visited Mar. 7, 2024).

³³ R (Jackson) v. Attorney General, [2005] UKHL 56

caution of the long-term implications for democratic governance.

In conclusion, to resolve the conflicts between legislative enactments and judicial precedents, i.e., Legislature and Judiciary, a holistic approach that involves strengthening judicial review mechanisms, enhancing legislative scrutiny processes, promoting dialogue and collaboration between branches, and employing legislative response and amendment when necessary. Judicial review is a pillar that ensures that statutes or legislative amendments are in accordance with the constitutional principle, as can be seen in the landmark cases like *Marbury v. Madison* in the United States and *Kesavananda Bharati v. State of Kerala* in India. Similarly, legislative scrutiny processes play an important role in ensuring the compliance with legal frameworks and international obligations, as evidenced by landmark cases like *Factortame* in the United Kingdom. Dialogue and collaboration between the organs can help in resolving the conflicts, as can be seen in cases such as *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* in Canada, these can be essential in fostering mutual understanding and resolving conflicts constructively. Finally, legislative response and amendment provide a means for lawmakers to address conflicts and uphold democratic principles, as demonstrated by the Parliament's response in cases like *R (Jackson) v. Attorney General* in the United Kingdom. By employing these approaches in collaboration, India can navigate conflicts between legislative enactments and judicial precedents while upholding the rule of law and democratic governance.

Conclusion:

This research paper delves into the dynamics between the Legislature and the Judiciary in parliamentary democratic governance, highlighting the challenges and implications of clashes between legislative enactments and judicial precedents. Through a comprehensive analysis of historical comparisons, judicial review mechanisms, and the role of the judiciary in upholding constitutional principles, the researchers try to shed light on the evolving relationship between these two vital organs of government.

The findings highlight the critical importance of maintaining a delicate balance of power between the Legislature and the Judiciary to uphold the rule of law, ensure the separation of powers, and foster democratic governance. By examining case studies and legal principles from various countries, the research emphasizes the need for an approach that allows for judicial oversight without intruding on the legislative domain.

Moreover, the study highlights the role of the Supreme Court as the final court of appeal of reason, responsible for upholding the Constitution and ensuring the smooth functioning of the legal system. It highlights the original right of the people to establish principles for their government and the enduring nature of the Constitution as a reflection of the collective will of the people.

Ultimately, the research paper advocates for finding common ground between legislative enactments and judicial precedents to resolve clashes effectively. By addressing these conflicts and promoting a harmonious relationship between the Legislature and the Judiciary, the research aims to enhance governance, eliminate distrust, and uphold the principles of democracy and the rule of law.

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