
PARLIAMENTARY SOVEREIGNTY UNDER SIEGE: THE RISE OF JUDICIAL POWER?

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ABSTRACT

The conflict between parliamentary authority and judicial oversight has been a longstanding issue in India, gaining prominence during the 1970s, particularly under Indira Gandhi's administration. The Constitution of India divides power among the legislative, executive, and judicial branches, ensuring that no entity functions beyond its constitutional mandate. While Parliament holds the authority to draft, amend, and repeal laws, the judiciary plays a crucial role in reviewing these laws to ensure they align with the Constitution, particularly its basic structure.

Several landmark rulings, including *Kesavananda Bharati vs. State of Kerala* and *Minerva Mills vs. Union of India*, have solidified the judiciary's role in limiting parliamentary power when necessary. Disputes over judicial appointments, such as the establishment of the Collegium System and the annulment of the National Judicial Appointments Commission (NJAC), further reflect the ongoing struggle between these institutions. A global perspective reveals that different countries adopt distinct approaches—while the United Kingdom prioritizes parliamentary sovereignty, the United States leans towards judicial supremacy.

Striking a balance between these two powers is essential to uphold democracy, protect constitutional rights, and prevent the excessive dominance of any single branch. A cooperative framework between Parliament and the judiciary is crucial to ensuring justice, maintaining the rule of law, and fostering social progress.

1) Introduction

The debate over a decade about who is superior in power, **is it parliament or judiciary**. This creates various stances where both the powers try to prove who is superior. These tussles mainly start from the 1970's at the time of Indira Gandhi's government in power.

The constitution provides the government with 3 main pillars to achieve the public welfare and the smooth function of the constitutional machinery. In the case of **Minerva Mills vs Union of India**. The SC states that legislative, executive and judiciary are all bound by the constitution and nobody is above the constitution.

2) Parliamentary sovereignty:

The Doctrine of parliamentary sovereignty is the supreme authority to make, to amend, to modify and repeal the laws and the judiciary holds power to interpret the laws but does not hold power to amend or repeal the laws made by parliament.

There are some limitation in parliamentary sovereignty in India:

- A. Parliament should follow the certain rules and principles of the constitution before passing any laws.
- B. As Our country has a federal system of government due to which the central government can not interfere in the matters of state government, subject to some emergency.
- C. If any law is found to contradict or violate the Constitution of India, then the Supreme Court will declare that act as an unconstitutional law. It restricts and shortens the scope to make laws that could affect fundamental rights; in such cases, the law will be void. Every bill has to get assent from the president, then only the law will be passed, enacted, and implemented. Some of the constitutional provisions affect parliamentary sovereignty. Article 13, Article 14 (equality before the law), Article 368 (power to amend the Constitution), Article 49 sub-clause I (supremacy of the Constitution), and Article 124 sub-clause 1 (establishment of the Supreme Court).

3) Judicial supremacy.

The Supreme Court has the power to review Acts passed by Parliament under Article 137 to ensure they do not violate the basic structure of the Constitution or fundamental rights. If the Supreme Court finds that a law violates these principles, it will be declared unconstitutional, null, and void.

4) Parliament vs Judiciary Supremacy:

This also includes issues like the appointment and transfer of Supreme Court and High Court judges, especially before the **99th Amendment of the Constitution**.

In the case of **Kesavananda Bharati vs State of Kerala (1973)**, the decision introduced the concept of the basic structure of the Constitution, which limits parliamentary power and allows judicial review in matters of constitutional amendments. The decision was seen as a suppression of the government of India, and one of the judges, **Justice A. N. Ray**, did not assent to the majority ruling in the case.

4.1 First time frustration by Indira Gandhi:

Until 1973, the practice was to appoint the senior-most judge of the Supreme Court as the Chief Justice of India. For the first time, this convention was violated in 1973 after the Kesavananda Bharati case, as **A. N. Ray** was appointed Chief Justice of India despite being one of the dissenting judges. He superseded the three senior-most judges—**Justices Shelat,**

Hegde, and Grover—and Ray was seen as a political appointee known for delivering judgments that aligned with the government's policies. After A. N. Ray was appointed as CJI, three judges resigned

4.2 Second time frustration by Indira Gandhi:

In the case of **ADM Jabalpur vs Shivkant Shukla (1976)**, **Justice H. R. Khanna** delivered a dissenting opinion and criticized Indira Gandhi's government for imposing an emergency and for detaining and arresting people illegally, violating individuals' fundamental rights. Due to these criticisms, **Justice M. H. Beg** was appointed Chief Justice of India nine months later,

suppressing the senior-most judge, **Justice H. R. Khanna**. He has given resignation after appointing **Justice M. H. Beg** as CJI.

4.3 Landmark cases which is also known as judge transfer cases:-

4.3.1 Judge Transfer Case I

In the case of **S. P. Gupta vs Union of India (1981)**, the word "consultation" in Article 124 had always been interpreted to mean that the President was not bound to act according to such consultation. The only grounds on which the government's decision could be challenged were if it was made with malafide intent or irrelevant consideration.

4.3.2 Judge Transfer Case II:

In the case of **Supreme Court Advocates-on-Record Association vs Union of India (1993)**, a 9 judges bench overruled the judgment in the S. P. Gupta case with a 7:2 majority. The appointment of the CJI was decided to be based on seniority, and guidelines were laid out for the appointment and transfer of judges. The meaning of "consultation" was changed to "concurrence," binding the President to the CJI's recommendations. This gave rise to the **Collegium System**.

4.3.3 Judge Transfer Case III:

In the **Presidential Reference Case (1993)**, the Supreme Court held that the CJI should consult a Collegium of four senior-most judges of the Supreme Court, and if two judges give an unfavorable opinion, the CJI shall not send the recommendation to the government.

4.4 Collegium System:

The Collegium consists of the senior-most judges of the Supreme Court, and it recommends names to the CJI, who forwards these to the central government. The process lacks a fixed timeline and has faced criticism for its **lack of transparency and accountability**. This led to the **99th Amendment** and the establishment of the **National Judicial Appointments Commission (NJAC)** to replace the Collegium System.

4.5 National Judicial Appointments Commission (NJAC):

The NJAC was responsible for recommending names for the appointment of Supreme Court judges and for the appointment and transfer of High Court judges. Its composition included the CJI, two senior-most judges of the Supreme Court, the Law Minister, and two prestigious members chosen by a selection committee. However, in 2015, the Supreme Court declared the NJAC unconstitutional, citing that it compromised the independence of the judiciary by involving the political executive in the appointment of judges.

5) Judiciary's Restrictions on Parliament's Power:

Whenever Parliament enacts new laws, it must ensure that they align with the Constitution. If any law violates constitutional rights, the judiciary has the power to:

- Under **Article 32**, the Supreme Court can issue directions such as writs like **habeas corpus**, **mandamus**, **prohibition**, **quo warranto**, and **certiorari**. Similarly, High Courts can issue these orders under **Article 226**.
- **Special Leave Petition (Article 136)**: The Supreme Court can give special leave to appeal from any judgment or order of any court.
- **Review Power**: The Supreme Court can review laws through petitions under Article 32 or special leave petitions.
- **Amending the Constitution**: The Supreme Court restricts the power of Parliament to amend the Constitution if it violates the basic structure (as in *Kesavananda Bharati*).

Judgement given by Supreme court to be binding on all-

Under **Article 141**, Supreme Court decisions are binding on all courts across India. law declared by the Supreme Court to be binding on all courts under article 141 its binding on all over India the decision given by the Supreme Court itself a precedent which applies to whole India.

Supreme Court as a last resort :- As Supreme Court of India is the Apex Court in India so unveil the justice and protect the interest of public the Supreme Court Act as last resort can appeal to Supreme Court under article 132,133 and 134 subject to such condition that High

Court has given certificate to appeal under article 134 A if High Court not allowing to appeal then can avail the right under article 136 special leave petition supreme Court grants special leave to appeal last option is curative petition under article 137 its inherent power and Supreme Court has power to entertain the case or not.

6) Key Cases:

- **Minerva Mills Ltd. vs Union of India** (1980 AIR 1789, 1981 SCR (1) 206) In this case, The supreme court of India states that -doctrine of basic structure puts a limitation on parliamentary power, restricts amending power and invalidate the 42nd Amendment's provisions that violate the basic structure.
- **Golaknath vs State of Punjab** (1967 AIR 1643, 1967 SCR (2) 762): Supreme Court states that the parliament does not have authority to amend the fundamental rights. As per Article 13(2) it prohibits laws which violating Fundamental Rights
- **Keshavananda Bharati vs State of Kerala** (AIR 1973 SUPREME COURT 1461, 1973 4 SCC 225): Supreme Court introduce the concept of basic structure any law rules regulations that violates these basic structure would consider null and void. And parliament can not amend the basic structure under article 368.

These are some cases which show the supremacy of courts in India, mainly the Supreme court.

7) Comparison of Parliamentary Sovereignty and Judicial Supremacy in the World:

7.1 Common law countries like the UK, Australia, New Zealand, and Canada follow the doctrine of parliamentary sovereignty.

- **United Kingdom:** The doctrine of parliamentary sovereignty is followed as the supreme authority to make laws. The power to amend and repeal lies with Parliament; the judiciary does not have the power to strike down laws as unconstitutional.
- **Australia:** Australia's Constitution provides for a federal system of government, and the Australian court has the power to interpret the Constitution and determine the validity of laws, but it cannot strike down laws as unconstitutional.

7.2 Civil law countries such as France, Germany, and Japan follow the principle of judicial supremacy, where the judiciary is the ultimate arbiter of the constitutionality of laws and has the power to strike down laws.

- **France:** Judicial review has been carried out by the Constitutional Council. The Council can strike down laws that are deemed unconstitutional, and its decisions are final and binding.
- **Germany:** The Federal Constitutional Court is responsible for carrying out judicial review. The court has the power to declare laws unconstitutional and order the government to change them; its decisions are final and binding on all other courts.
- **Japan:** The Supreme Court has the power to interpret the Constitution and declare laws unconstitutional; its decisions are final and binding. No provisions of Parliament can override it.

United States of America: It follows the doctrine of judicial supremacy, where the Supreme Court has the power to strike down any law or action that violates the U.S. Constitution.

Around the world, different countries have tried different ways to maintain a balance between parliamentary sovereignty and judicial supremacy. USA follows the doctrine of judicial supremacy, while Germany and Canada have created original systems that combine aspects of the two ideas.

8) Conclusion:

In the end, the tension between parliamentary sovereignty and judicial supremacy aims to ensure that different branches of government work together and that no one branch should become too dominant. Both Parliament and the judiciary should not exceed their limits as defined by the Constitution of India, so that harmony can be maintained between the Legislature and the judiciary. Fundamental rights should not be devalued, nor should the concept of judicial review be undermined. The primary focus should be on protecting individual rights, promoting social justice, and contributing to the betterment of society.