A DETAILED STUDY OF THE CONCEPT AND ORIGIN OF JUDICIAL REVIEW (USA AND INDIA)

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INTRODUCTION

According to the words of John Hart Ely, "The purpose of the court is to protect the process of coordinating popular government with minority protection" by this statement he meant that the concept of judicial review has highly enhanced the power of the courts and has opened new arenas to interpretation of laws.

Judicial review in its simplest meaning is a method of the court which includes a judge reviewing the legality of the state's or the governmental action. By the exercise of judicial review the court determines that whether the action is lawful or unlawful and to grant appropriate relief. In India, we also follow the concept of judicial review which is adopted from the constitution of the United States of America wherein the powers of the parliament are not unlimited and the division of power can be seen between the center and the states. The judicial review in the USA expressly elaborates the power of the court to review the constitutionality and the unconstitutionality of the acts of the congress as well as the state legislature.

The judiciary by the exercise of this power keeps the legislative and the executive organs within the purview of the constitution, we can take this as an example of – separation of powers in a modern governmental system but this system is practiced and implemented differently in different countries as they have different hierarchy of governmental norms as a result the scope and the practice of judicial review varies from country to country. For a better understanding it can be understood in terms of two different legal systems- the common law system and the civil law system and also by the means of theories on democracy such as the legislative supremacy and the separation of powers theories. For example, UK being a common law country follows the system of parliamentary supremacy and thus the judicial review of legislative acts is not permitted whereas in the USA, the constitutional supremacy is supreme

and likewise in India the basic structure doctrine and the constitutional supremacy prevails which also established the review of legislative acts as well. Judicial review also guarantees the protection of socio-economic rights of the people.

EVOLUTION OF JUDICIAL REVIEW

The constitution of the United States does not talks about the judicial review yet this power was utilized by the court before the year 1787 in many of the American states to hold many laws as unconstitutional which were in conflict with the constitutions of the respective states. The US Congress passed the Judiciary act in the year 1789, which empowered the federal courts with the power of judicial review over the governmental acts. The power of judicial review was used for the first time by the US Supreme court in the case of Hilton V/s Virginia[1]. In the case of Marbury V/s Madison[2] the landmark judge by the US Supreme Court in the year 1803, used the power of judicial review extensively under the doctrine of implied powers. Chief Justice John Marshall explained and justified the exercise of judicial review to strike down an unconstitutional act of Congress or states. The court referred to Article VI Section 2 of the US Constitution[3] which states that " this constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding". Article VI clearly meant that the judges have the power and the duty to uphold the supremacy of the constitution by not allowing any federal or state laws to violate its provisions whatsoever. In this case while giving the judgement chief justice Marshall enunciated this doctrine and said that, " A written constitution is superior to all other acts made by the government under it; and it is the duty of the federal judges to follow the constitution and to give effect to only to constitutional law and to determine which law will prevail when there is a conflict. If there is a conflict between the congressional law with the constitutional law then the court is bound to hold the constitution as the highest law of the land. The courts have to respect the supremacy of the constitution and that no other legislation is superior to the constitution. Post Marbury V/s Madison judgement the Supreme Court of the United States of America has regularly used this power of judicial review, it was used for the second time in the

[1] Hylton v. United States, (1796), 3 U.S. 3 Dall, 171 171.
[2] Marbury v. Madison, (1803), 5 U.S. (1 Cranch) 137.
[3] U.S. CONST. art. 1, § 2.

case of Dred V/s Scott[4] in the year 1857 and till date the Supreme court has held more than 100 congressional statutes as unconstitutional, yet the court has refused to apply this doctrine to political questions following the rule of separation of power. One important point to be noted here is that the power of judicial review is not automatic which means that once the bills become acts upon being passed by the congress/ parliament and become operative, it is only when any law is specifically challenged in the court of law the issue of constitutionality arises and the court exercises the power of judicial review. May of the founding father of the constitution had already assumed this exercise of power by the courts at the drafting stage of the constitution like; Alexander Hamilton. James Madison had underlined the importance of Judicial review in the Federalist papers, which urged the adoption of the constitution.

While judicial review of administrative decisions may be exercised in specific circumstances, including those involving jurisdictional mistake, irrationality, procedural irregularity, proportionality, and legitimate expression. Although stating these reasons in Council of Civil Service Union v. Minister of Civil Service[5], Lord Diplock noted that they are not all-inclusive but might serve as a starting point for evaluating whether or not administrative actions are effective, equitable, and accountable. Judicial assessment of legislative action to determine its constitutionality does not take into account its wisdom, experience, or policy, but rather looks at compatibility with the fundamental structure of the constitution. "It neither favours nor opposes any legislative policy," Chief Justice Marshall said. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provision of the Constitution; and having done that its duty ends."

The judiciary has the authority to judicially assess both federal and state activities in order to rebuild public confidence because it is the protector of socioeconomic rights and the arbiter of constitutional disputes about the allocation of powers between the Union and States. The constitutions of the US and India both allow for judicial review of legislative and administrative decisions as well as the exercise of constitutionally mandated power by quasi-judicial and governmental entities at both the federal and state levels. Yet, because the US adheres to the standard of due process of law rather than a set legal system, the reach is larger there. Along

[4] Dred V/s Scott, (1856), 60 U.S. 393.
[5] COUNCIL OF CIVIL SERVICE UNIONS AND OTHERS V/S MINISTER FOR THE CIVIL SERVICE [1984] 3 ALL ER 935, [1985] AC 374.

with restoring public confidence, judicial review also helps to legitimise government action and safeguard constitutional rights from excessive government intrusion.

In the US, judicial review was implemented through the Marbury v. Madison case, in which Chief Justice John Marshall stated that "The subject power requires that the courts declare when they believe that acts of the congress violate the constitution, in addition to the oaths of allegiance to the constitution that judges take. The supreme court of the United States is using its judicial review authority when it strikes down a law passed by Congress or a state legislature on the grounds that it violates constitutional rights and provisions."

THE EMERGENCE OF JUDICIAL REVIEW IN INDIA

The Indian constitution is a hybrid of many constitutions around the world and the aspect of judicial review has been adopted from the American Constitution. It is because of this that our theological framework "brilliantly embraces them through media between the American arrangement of legal incomparability and the English standards of matchless legislative quality." The right to judicial review is the most significant provision of the Indian Constitution. India has established and regulated a vote-based system that limits the use of force by the government and, for the most part, enables it to avoid tyranny and intervention. The Preamble of the Indian Constitution guarantees that all Indian citizens will be treated fairly and equitably and that the laws of the nation will be subject to judicial review. The majority does indeed dominate, but it is believed that the most powerful rule is based on tyranny. For a majority rule system to be effective for this reason, the presence of an impartial body is essential. All other laws in India are based on the Constitution, which is the unrivalled standard that everyone must adhere to. No clause in the Indian Constitution states that the Constitution is the only law that applies to everyone, despite the fact that it is the source of authority for all administrative and State branches of government and that it can only be altered in the ways that are expressly stated in the Constitution. The Constitution's drafters were well aware of the problems with judicial review from the beginning. They therefore made an effort to curtail its growth and adopted a few ploys to stop courts from abusing their power and serving as long-term "third loads" or "super assemblies." The Judicial Review provisions were thoughtfully incorporated into the actual Constitution by the framers of the Indian Constitution in order to preserve the balance of federalism, safeguard people' important rights, and offer a practical tool for uniformity, freedom, and opportunity. Justice Khanna, a former judge on the Supreme Court

of India, noted in *State of Madras v. V.G. Rao*[6] that "Judicial Review has protected framework, and an authority has in fact been vested in the High Court and the Apex Court to choose about the sacred legitimacy of the arrangement of the rules" in his book "Judicial Review or Conflict." The teaching of judicial review is expressly expressed in a few provisions of the Indian Constitution, including 13, 32, 131, 136, 143, 226 and 244. According to Article 13(2), "The State will not make any law that removes or compresses the right granted by this section, and any law made in the incompatibility of this condition will be void to the degree of the breach." The main case in which the Judicial Review of India was distributed was *Sovereign v. Burah*[7]. The Privy Council and the Calcutta High Court both agreed that Indian courts had the authority to conduct judicial reviews, but only in certain circumstances. This viewpoint was reinforced in a few different situations prior to the Government of India Act of 1935 having an impact. *The Indian Government Act of 1935*[8] created league, and the Judicial Review Test changed in the Constitution of 1950. Currently, Law Review plays a crucial role in India's majority rule system. Its activities fall under the purview of the existing Indian Constitution, which really defends the rights and opportunities of people. Because the Union Parliament has residual power in India, there is a greater danger of association inclusion. The Indian legal executive should keep this in mind as it evaluates the validity of a law that violates the Constitution's demands with regard to driving circulation. A detailed translation of the safe development of India, England, the United States of America, Canada, and Australia is necessary to understand the development, operation, and practical activity of the Judicial Review. The legal survey framework appeared out of nowhere, but overall, it developed slowly through time, largely based on religious viewpoints and ideas throughout successive stages of its established development. The sacred development of the United States of America demonstrates how, throughout each stage of the nation's development, authoritative authorities were reliant on safe restraints and limitations. The *Government of India Act*[9] was passed in 1858, and since then, the English Parliament has been a source of dependence for the Indian council. Any administrative Acts passed in India that disobey parliamentary directives and restrictions have been declared void. The Indian Government Act of 1935, which introduced federalism, stimulated India's rising interest in judicial review. Beginning with the founding of the Indian National Congress in 1885 and continuing through the inception of the Indian Republic, there

[6] State of Madras v. V.G. Rao, 1952 AIR 196, 1952 SCR 597.
[7] Sovereign v. Burah, 1878, ILR 3 Cal 64.
[8] Government of India Act, 1935, 26 Geo.5, Ch.2, (India).
[9] Government of India Act, 1858, 21 & 22 Vict. c. 106, (I ndia).

were determined and significant riots against the growth of federalism and state affirmation of central privileges. India, which has a long history of maintaining law and order dating back to ancient India, has worked to strengthen legal control over administrative power. Legal agreements were then incorporated into the Constitution itself.

JUDICIAL REVIEW CASES IN INDIA

SHANKARI PRASAD CASE[10]

In *Shankari Prasad vs. Union of India (1951),* The First Amendment Act of 1951 was contested on the grounds that the "Right to Property" was constrained. The Supreme Court rejected this argument and said that it could not be put into practise since Article 13's fundamental rights cannot be restricted.

SAJJAN SINGH CASE[11]

In *Sajjan Singh vs. State of Rajasthan (1965)*, The 17th Amendment Act of 1964 called into question whether the Constitution still existed. The Court declared that the constitutional revisions adopted in accordance with Article 368 are not subject to judicial scrutiny by the courts, eradicating the position in the Shankar Prasad case (described above).

GOLAKH NATH CASE[12]

In *I. C. Golaknath & Ors vs. State Of Punjab & Anrs. (1967)*, Three constitutional amendments—the first (1951), fourth (1955), and seventeenth (1976)—were challenged (1964). According to the Honorable Supreme Court, Parliament lacks the power to amend the Constitution or limit or revoke basic rights under Article 368.

KESHAVANANDA BHARATI CASE[13]

In *Keshavananda Bharti vs. State of Kerala (1973)*, The 24th (1971) and 25th (1971) Constitutional Amendments were contested. The case was assigned to a 13-judge panel, and

[10] Sri Sankari Prasad Singh Deo vs. Union Of India And State Of Bihar, 1951 AIR 458, 1952 SCR 89.
[11] Sajjan Singh vs State Of Rajasthan, 1965 AIR 845, 1965 SCR (1) 933.
[12] I. C. Golaknath & Ors vs. State Of Punjab & Anrs. , 1967 AIR 1643, 1967 SCR (2) 762.
[13] Keshavananda Bharti vs. State of Kerala, (1973) 4 SCC 225;,AIR 1973 SC 1461.

based on a 7:6 ratio, the court concluded that:

1. Article 368 of the Constitution gives the President the authority to amend the Constitution.

2. Constitutional amendments are not the same as regular laws.

3. The Parliament cannot change or overturn the Constitution's fundamental principles.

INDIRA GANDHI CASE[14]

In *Indira Nehru Gandhi vs. Shri Raj Narain & Anr (1975)*, the then Prime Minister of India- Indira Gandhi was held guilty of electoral malpractices by the Supreme Court.

MINERVA MILLS CASE[15]

In *Minerva Mills Ltd. vs. Union of India (1980)*, The Apex Court invalidated provisions (4) and (5) of Article 368, which were added by the 42nd Amendment (1976), on the grounds that they undermined the Constitution's fundamental design.

BANK NATIONALISATION CASE[16]

In *Rustom Cavasjee Cooper vs. Union of India (1970)*, The Supreme Court declared that the Constitution guarantees the right to compensation, i.e., to an identical amount of money for property that was obtained by force, in the case that is commonly referred to as the Bank Nationalisation Case.

L. CHANDRA KUMAR VS. UNION OF INDIA AND OTHERS (1997)[17]

The question of whether the doctrine of judicial review, which was essentially a core aspect of the Indian Constitution, was in conflict with the exclusion of the high court's jurisdiction under Article 323 A (2)(d) and 323 (b) was questioned. The Administrative Tribunals Act, the Sampat Kumar Judgment, and the discussions of the Constitutional Assembly were all cited by the

[14] Indira Nehru Gandhi (Smt.) vs. Raj Narain & Anr, 1975 AIR 1590, 1975 SCC (2) 159.
[15] Minerva Mills Ltd. vs. Union of India, 1980 AIR 1789, 1981 SCR (1) 206.
[16] Rustom Cavasjee Cooper vs. Union of India, 1970 AIR 564, 1970 SCR (3) 530.
[17] L. Chandra Kumar vs. The Union Of India & Ors, 1995 AIR 1151, 1995 SCC (1) 400.

Court in reaching its judgement. After carefully examining each and every occurrence, the Court concluded that judicial review is in fact a fundamental aspect of the Indian Constitution.

In addition, the Court took into account Dr. B. R. Ambedkar's views on Article 25 (now Article 32), the Chairman of the Constitution-drafting Committee, who said that this Article represents the very spirit of the Indian Constitution. According to the seven-judge Constitutional Bench, "the power of judicial review over legislative action vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure."

JUDICIAL REVIEW IN USA

The Rule of Law serves as the foundation for the American Constitution, which is written and federal democratic in nature. Its core and essence is the division of powers with checks and balances. Judicial Review is one of the main procedures used in America to decide if a statute is legal. In the USA, the judiciary has the power to review Congress and President activities and declare them invalid if they are in violation of the Constitution.

Although Judicial Review is not expressly mentioned in the US Constitution, it is implied in Articles III and IV. The judgement about the validity of a legislative Act, in *Bernard Schwartz's words, "is the essence of the judicial power under the Constitution of America." "Judicial review is a limitation on popular authority and is an element of the Constitutional framework of America," Judge Frankfurter stated in the Gobitiz case.* The theory that the Constitution is the Highest Law is the basis for the idea of judicial review.

The following are the primary goals of judicial review in the USA:

• To declare legislation that are against the Constitution unconstitutional.

• To uphold the constitutionality of legislation that are under dispute.

To defend and sustain the Constitution's supremacy by interpreting its provisions.

• To prevent other government departments from encroaching on Congress' legislative authority.

• To monitor Congress's and the State Legislatures' actions to ensure that neither is handing off crucial legislative duties to the executive branch or prohibiting Congress from doing so.

The *Dr. Bonham case*[18] is regarded as a significant contribution to the American judicial review system. The idea stated in Coke's dictum "*found fertile soil in the United States and bloomed into such a vigorous growth that it was utilised by the US Supreme Court in the decisions of cases coming before it,"* according to Willis. But, Dr. Bonham's argument was quickly rejected in England. But, the US Supreme Court ruled in *Todd v. United States*[19] that an Act of Congress was invalid.

Chief Justice Chase stated the same thing in *Hylton v. United States*[20] in 1796: *"It is necessary for me to determine whether the court constitutionally possesses the power to declare an Act of the Congress void on the ground that it is contrary to and in violation of the Constitution, but if the courts has such powers, I am free to declare it but in a clear case."* In the famous case of *Marbury v. Madison*[21] from 1803, the power of judicial review was once more employed with judicial authority to find the Act of the Congress illegal. In this instance, President John Adams made a significant number of political deals during the final days of his office even though he did not win a second term in the 1801 presidential election. When Thomas Jefferson became president, he instructed his Secretary of State, James Madison, not to give the officials Adams had named to the government the official printed papers. The administration officials, including William Marbury, were thus prevented from obtaining new jobs. To compel Madison to surrender the commission, William Marbury petitioned the U.S. Supreme Court for a writ of mandamus.

The questions were as follows: - Is the Supreme Court authorised to issue writs of mandamus? - Is Congress able to go beyond what Article III of the Constitution specifies in order to broaden the original jurisdiction of the Supreme Court? - Can the Supreme Court review legislation passed by Congress?

Chief Justice Marshal ruled that the court lacks the authority to issue writs of mandamus since such writs should only be issued by courts with appellate jurisdiction. The court further ruled that Congress cannot go beyond the purview of Article III of the Constitution in extending the

[18] Thomas Bonham v College of Physicians, 8 Co. Rep. 107, 77 Eng. Rep. 638.
[19] Todd v. United States, (1895), 158 U.S. 278.
[20] Hylton v. United States, (1796), 3 U.S. 3 Dall. 171 171.
[21] *See, Supra note 2.*

original jurisdiction of the Supreme Court. The Supreme Court has the power to evaluate congressional acts and decide whether or not they are legal. The Supreme Court has the inherent authority to decide whether a statute is lawful. Madison was denied the commission because the Supreme Court rejected the writ petition and ruled that Section 13 of the Judiciary Act of 1789 was unconstitutional. The US Supreme Court developed the idea of judicial review in this fashion.

Prior to this ruling, the Supreme Court of the USA never exercised its complete legal authority to declare any action by Congress to be unconstitutional. This decision establishes the Supreme Court's judicial review authority, giving it the ability to judge the legality of any legislative action taken by Congress. After the Marbury decision, judicial review significantly increased. It improved the protection of individual freedoms and civil liberties. The following are a few examples of crucial decisions:

The conflict between federal and state legal authority was at issue in *McCulloch v. Maryland*[22]. Federal legislation created the Bank of America in the State of Maryland. Following that, the State of Maryland approved a tax law that charges banks for related transactions. This was contested on the grounds that a bank founded by federal law cannot be taxed under state law. The Court ruled that the Union authority cannot be taxed by the State. A court granted the national government immunity. This ruling states that the US Supreme Court created the notion of Instrumentalities Immunity.

In *Youngstown Sheet Tube Co. v. Sawyer*[23], President Truman ordered the seizure of the steel to prevent the then-current national adversity. The President passed a legislation requiring the seizure of all citizens' steel in this manner. According to Justice Black's ruling, the Court determined that this was a case in which the Executive's legislative overreach was found to be unconstitutional. The Court also noted that the Constitution does not give the President or the military the authority to supervise or control the enactment of laws.

JUDICIAL REVIEW IN INDIA AND USA COMPARISON

The scope of judicial review in India is comparatively narrow than that in the United States, although the American constitution does not explicitly mentions the concept of judicial review

[22] McCulloch v. Maryland, (1819), 17 U.S. 4 Wheat. 316 316.
[23] Youngstown Sheet & Tube Co. v. Sawyer, (1952), 343 U.S. 579.

it has evolved through time and various significant judgements. The peculiar thing about the US judiciary is that, in order to challenge the unconstitutionality of a law the burden to prove the constitutionality is primarily on the congress where as in India the burden to prove the unconstitutionality primarily is on the petitioner along with supporting facts and data. In India a law can only be rejected on the basis of unconstitutionality. Moreover in the US, if any law is held as unconstitutional the court will make a new law in its place, although law making does not comes under the domain of judiciary but such practice is common in US, such laws are known as judge-made laws whereas in India the responsibility and the power to make laws is only vested with the parliament or the state legislature whatever the case may be this has also been described as judicial activism by some constitutional researchers.

The American constitution provides for the 'due process' instead of 'procedure established by law' which is provided in the Indian Constitution. The notable difference between the two is that due process of law gives wider scope to the US Supreme Court to protect the rights of its citizens, it can declare the laws to be unconstitutional on procedural as well as substantive grounds. Whereas in India the Supreme court, while determining the constitutionality of a law only examines it on the substantive grounds, that whether the law is well within the powers of the authority concerned or not. It does not devolves in the question of reasonableness, policy or suitability and its implications. Hence, the American principle of judicial supremacy is recognized in our constitutional system to a limited extent.

Yet to a lesser extent, our constitutional structure likewise recognises the American principle of judicial supremacy. We also don't adhere to the British Concept of parliamentary supremacy in its entirety. The codified nature of the Constitution, the federalism with a separation of powers, the Fundamental Rights, and the Judicial Review are only a few of the many constraints on the power of the Parliament in our nation. India effectively combines both the British principle of parliamentary supremacy and the American principle of judicial supremacy. Compared to the USA, the scope of judicial review is rather limited in India. The constraints on fundamental rights in India are declared in the constitution itself and are not left to the discretion of the judges, unlike in the USA where they are not as thoroughly codified. The authors of the constitution chose this course of action because they believed that it could be challenging for the courts to determine how to limit fundamental rights, and that it would be better to do so in the constitution itself. Notwithstanding the justification for the technique used by the Constitution's drafters, the unavoidable outcome of this has been to limit the scope

of judicial review in India. The constitution's drafters also considered that the judiciary should not be elevated to the status of "Super Legislature."

Nonetheless, it must be acknowledged that the American Supreme Court has used its authority to interpret the constitution broadly and has utilized the due process of law clause so extensively that it has beyond the role of a simple law interpreter. It has actually taken on the role of a lawmaker and is appropriately referred to as a "third chamber of the legislature," even a "super legislature." ' Obviously, the US Supreme Court has taken on this role despite the constitution not explicitly bestowing it upon it.

The due process of law clause was purposely left out of the Indian Constitution by its drafters. The Indian Constitution, on the other hand, refers to it as "process established by law." Laws can be declared unconstitutional if they go against the constitution, but not if they are terrible laws. In other words, the Indian judiciary, including the Supreme Court, does not possess the authority to act as a Third Chamber and render judgment on the legislatively enacted legislation's stated policy. In many political systems, the judicial review power is used in a different way. The courts can find an act of parliament to be incompatible with the constitution but they cannot declare a statute invalid for being incompatible with the constitution in nations like the United Kingdom where the constitution is mostly unwritten and unitary in nature and parliament is sovereign. The judiciary can only interpret the constitution, in other words. Whereas if we take the example of Germany, the Constitutional Court has the authority to strike down constitutional amendments as well as ordinary laws if they conflict with the fundamental principles of the constitution. In nations whose parliamentary authority is restrained by a written, federal constitution, the situation is different. For instance, in the USA, the Supreme Court has the authority to overturn congressionally passed law if it deems it to be unconstitutional.

The Supreme Court and Parliament in India have been at odds for a long time over the parameters of judicial review. The constitution's twenty-fourth amendment, which was approved in 1971, gave parliament the power to change any article. The Supreme Court ruled later, however, that while parliament was authorised to change any article of the constitution, such amendments had to adhere to the fundamental principles of the document.

This prompted the Indira Gandhi administration to introduce the 42nd amendment to the constitution under the declaration of emergency, robbing the supreme court of its authority to

consider an amendment to the constitution. The clauses of the forty-second amendment governing the Supreme Court's authority to determine the constitutionality of amendments, on the other hand, were repealed by the forty-third and forty-fourth amendments.

As a result, we can observe that, in comparison to the United States, the breadth of judicial review in India is somewhat limited. The fundamental rights are not codified as broadly in India as they are in the United States, and there are restrictions on them that are specified in the constitution itself rather than being up to the courts to decide. The authors of the constitution chose this course of action because they believed that it could be challenging for the courts to enact restrictions on fundamental rights, and that it would be wiser to do so in the constitution itself.

Notwithstanding the justification for the procedures logy selected by the constitution architects, the unavoidable outcome of this has been to restrict the scope of judicial review in India. The constitution makers also considered that the judiciary should not be pushed to the status of "Super legislator." Nonetheless, it must be acknowledged that the American Supreme Court has used its authority to interpret the constitution broadly and has utilised the due process of law clause so extensively that it has beyond the role of mere law interpretation.

It has actually taken on the role of a lawmaker and is appropriately referred to as a "third chamber of the legislature," even a "super legislature." Naturally, despite the fact that the constitution does not expressly grant it this authority, the U.S. Supreme Court already holds this stance. The Indian Supreme Court has the same judicial review authority as the American Supreme Court, and the constitution expressly recognises this authority. Yet, it has less latitude than the American Supreme Court when it comes to "judicial review of legislation."

The due process of law clause was carefully avoided by the framers of the Indian constitution, who instead refer to "procedure established by law." As a result, there is no room for the development that "Alexandrowicz is not conceived as an additional constitution maker but as a body to apply express law." Laws can be declared unconstitutional if they go against the constitution, but not if they are terrible laws. In other words, the Indian judiciary, including the Supreme Court, does not possess the authority to act as a Third Chamber and render judgement on the legislatively enacted legislation's stated policy.

CONCLUSION

The Indian Supreme Court has the same judicial review authority as the American Supreme Court, and the constitution expressly recognises this authority. Yet, it is clear that its 'judicial review' of legislation authority is less expansive than the US Supreme Court's.

Although the courts have the authority to conduct judicial reviews, this power cannot be arbitrarily used. If the legislature's ability to enact laws is restricted, so too is the judiciary's ability to evaluate such laws. The judiciary, like other state organs, receives its authority from the constitution, and judges are just as subject to its provisions as anybody else. They have the authority to interpret and invalidate laws, but they are not permitted to make laws themselves or delegate such authority to any entity or person other than the federal or provincial legislatures. The courts also cannot declare something constitutional that is obviously unconstitutional. Parliament and the court are not where sovereignty is found; rather, it is in the constitution itself.

Despite a number of flaws, judicial review has been crucial in maintaining the country's constitutional governance by keeping the federal government and the states within their respective purviews. By giving the Constitution new meaning, it has also made it possible for it to alter in response to evolving circumstances. The Supreme Court has used its authority to defend citizens' freedom and Fundamental Rights against interference from the legislative and executive branches of government.

Nothing in the world is harmful or good in and of itself; instead, it is how anything is used that determines whether it is. The problem is the same with this review method. If the Supreme Court utilises it exclusively for nation, it is excellent; however, if the Supreme Court uses it while also considering their own interests, that is terrible for both country and countrymen. But, we are aware that the Supreme Court has never violated the norm of judicial care, and judges always prioritize the safety, progress, and dignity of the nation over their own interests or conflicts. We may therefore conclude that it is very helpful and advantageous for both India and the USA.

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