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JUDICIAL REVIEW

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ABSTRACT:

The notion of Judicial review refers to the power of the court to examine the constitutional validity of the laws made by the legislature and the orders issued by the executive ,after which if it finds them contrary to the provisions of the constitution ,may declare them as null and void. Thus, designed in the frame of facilitating the court to act as the guardian and protector of the constitution ,the concept of judicial review has become the hallmark of the federal potential systems where the written constitution lays in black and white the powers of the different departments of the government so that neither any organ of government usurps the powers of others nor the spirit of the political philosophy behind the polity is violated.

KEYWORDS: Judicial review , federal potential systems , political system .

INTRODUCTION

In the era of constitutional government bestowed with only limited powers in view of the constitution acting as the supreme law of the land ,the notion of judicial review has been invented by the courts in various parts of the world to test the constitutionality of the laws made by the legislature and the orders issued by the executive ,so that the supremacy of the constitution may be kept intact. To put it differently ,the written constitution as fundamental law of the land ,lays down the basic rules of governance by delineating the functional domain of all the organs of the government under the broad philosophy of political system of a country. Hence in order to see the constitutional scheme of things does not get disturbed and no organ of the government acts in constitution ,the provisions for a supreme court with the powers of judicial review have been made in almost all the federal political systems including India.

If any impropriety amounting to the violation of the constitution occurs, the court can step in to set the things in order by declaring such violations as unconstitutional and void.

The power of judicial review of the courts has never been explicitly mentioned in the constitution either in the United States or in India. It is by way of implication in either discharging certain functions or interpreting certain provisions of the constitution that the power of judicial review has been acquired by the courts .For instance ,in the United States ,it was in the famous case of Marbury Vs Madison that the chief Justice Marshall declared that the Supreme Court determined the constitutionality or otherwise of laws, federal or state and this power with the court was a necessary consequence of the constitution ,otherwise, declaration of the supremacy of the constitution had no meaning .Similarly in the case of Indian constitution also ,the fathers avoided the mention of the power of the judicial review of the court but designed certain provisions of the constitution in such a way that their implementation would necessarily dovetail on the courts the power of judicial review to

ward of the violations of such provisions.

The scope of the power of judicial review is not as extensive as it is in United states, ostensibly due to the position of the Parliament as the body expressing the will of the people whose excessive negation would not bear well for the health of the Parliamentary system in the country. Hence, instead of following the American pattern of rooting the doctrine of judicial review in the notion of due process of law, the framers of Indian constitution chose to root it in the lenient doctrine of procedure established by law. Consequently putting fetters or control on the overreach of the courts, the Indian constitution wished the Parliament to define the limits within which the power of judicial review of the courts would be exercised.

The fathers of the Indian constitution manifestly circumscribed the areas where the courts would be well within their rights to exercise the powers of Judicial review .So the provisions of the constitution like the laws inconsistent with or in derogation of the fundamental rights(Article 13 of Constitution of India) remedies for enforcement of the Fundamental rights(Article 32 of Constitution of India),jurisdiction of the Supreme Court (Article 131-136 of Constitution of India),powers of High Courts to issue certain writs(Article 226 of Constitution of India) , extent and the subject matter of laws made by the parliament and the legislature of the states(Article 245-246 of Constitution of India) retain the scope for the exercise of the powers of Judicial review by the courts. The question of the constitutional soundness of the law and executive orders arises when they are challenged in the competent courts on the grounds of incompetence of the legislature to pass such a law, repugnancy to the provisions of the constitution and the infringement of the fundamental rights. The first case in the context of Judicial review happened Shankar Prasad Vs Union of India in 1951 in which the petitioner challenged the first amendment of the Constitution on the ground that it infringed the fundamental right to property , which remained unamendable under Article 13(2) of the Constitution of India. The court gave the decision that the wisdom of the Parliament must be respected because it represents the will of the people and the Parliament is competent to amend any part of the constitution including that of the Fundamental rights.

The Supreme Court of India maintained the same position in the case of Sajjan Singh Vs State of Rajasthan in which the validity of the seventeenth amendment was challenged on the plea that it violated Fundamental Rights under Article 31A of Constitution of India.

Taking a highly conservative position on the amending power of the Parliament ,in the case of Golaknath Vs State of Punjab, the Supreme Court with a majority of six to five held that the Parliament did not have any power to amend any of the provisions of Part III of the constitution so as to take away or abridge the fundamental rights enshrined therein. Smt. Indira Gandhi, the late Prime Minister after her outstanding victory in 1971 got the 24th and 25th amendments passed, restoring the amending powers of the Parliament in respect of all the provisions of the constitution.

In the Keshavanand Bharti Vs state of Kerala ,the constitutional validity of these amendments were challenged but the supreme court came out with innovative doctrine of 'Basic structure' of the Constitution but the court did not define as to what constitutes the basic structure. The 42nd amendment to the constitution again enhanced the powers of the parliament but it was challenged in the case of Minerva Mills Limited Vs Union of India in 1980. Finally the Supreme Court reiterated that the Parliament has only limited power to amend the constitution and in no case the basic structure of the Constitution can be destroyed by way of constitutional amendment enacted by the Parliament.

The powers of judicial review was finally cleared in 2005 when the constitutional validity of the ninth schedule of the constitution was questioned on the ground that it violates the basic structure of the Constitution. It endowed the Supreme Court with the power of judicial review to an unprecedented height in the constitutional jurisprudence of the country.

The legislative and executive organs of the government must stand with the expectations of the people because extensive use of judicial powers in the administrative domain may well in the long run, blunt the judicial powers themselves, and it would be the saddest day for the health of the democratic and constitutional policy in the country.

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