

Judicial Review of Legislative Actions

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Abstract

The article primarily analyzes the most controversial topic of judicial review under the Indian Constitution, i.e., judicial review of legislative actions. In democratic states, the Constitution of that state is called the supreme and superior law. The rights of the people have been mentioned in the Constitution to protect them. The law of judicial review derives its authority from the law of land. Law plays an important role in society. Therefore, the concept of law keeps changing from time to time. Laws are enacted and implemented by the legislature and executive respectively, and they are being checked by the judiciary using its power of judicial review. The validity of law must be checked according to the Constitution. That is why today various countries have proudly accepted judicial review in the Constitution of their states.

Keywords: Grounds, judicial review, legislative action, needs, procedure of judicial review

INTRODUCTION

An impartial, independent, and strong judiciary are prerequisites of any democratic system. By way of judicial review, the Hon'ble Supreme Court or high court may determine the validity of any legislative act suo moto, or in a case established by any aggrieved person. The court has the power to declare a legislative act to be ultra vires on the ground of unconstitutionality.

In every country, the judiciary plays a vital role in enforcing and interpreting the legislation and adjudicating disputes between the parties. Where the constitution is written, the judiciary, in addition to interpreting the legislation, must protect the supremacy of the law of land by interpreting and enforcing the provisions and keeping all authorities within the sphere of the law of land. Judicial review is a great tool and the ultimate pillar of the democratic system for maintaining check and balance among its organs. Judicial review is basically a facet of judicial power whereby courts determine the validity of a rule of law or the action of any organ of the state. In modern democracies, the legal system has a very wide range of scope for maintaining a democratic system. The judiciary has a very vital role as the custodian of the constitutional values given to us by the makers of the Constitution. The judiciary tries to alleviate the damages being done by the legislature and executives, and then and there they try to harmoniously provide what is promised by the Constitution to every citizen. This is all possible because of the powers conferred on the honourable courts regarding judicial review under the Constitution.

We are fortunate to have a Constitution that instils fundamental rights and has an independent judiciary, which is the guardian of our Constitution and protector of rights and liberties provided to “we the people” against the powers of authoritarianism. In a real democracy, the rule of a fearless, strong,

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impartial, and independent judiciary is inevitable and cannot be overemphasized. The law of judicial review is the outcome of two of the most basic features of the Constitution of India. For any legislation to be valid, there is a two-tier system: first, the Constitution as it is the Supreme law, must be in conformity with the legislation; otherwise, it will be ultra vires. Second is the separation/division of the powers amongst the legislative, executive, and judiciary empowered under the law of the land. In India, the legislature derives its power from the Constitution for the creation of legislation. There are two ways to check whether the law is valid or not. Firstly, legislatures should have the power to formulate the law. Secondly, the enacted legislation should not conflict with or contradict the Constitution. The enacted legislation would be invalid to that extent, which is a violation of the Constitution.

SIGNIFICANCE OF RESEARCH

1. To get basic knowledge about the judicial review of legislative action
2. To analyze the development of judicial review of legislative action in India
3. To know the process of judicial review of legislative action
4. To analyze the scope and grounds of review of legislative action by the judiciary

RESEARCH METHODOLOGY

1. In the current article, an attempt has been made to do theoretical or doctrinal research.
2. A secondary source has been used in this article.
3. Reference books and e-sources such as websites, e-journals, e-books, etc. are considered for the research purpose of this article.

REVIEW LITERATURE

1. After reading various books of law from the Constitution and Holy Book of India, i.e., The Constitution of India, we got to know about the judicial review of legislative action, which motivated me to write this article. Law is growing rapidly day-by-day, and “judicial review of legislative action” is one of the key judicial functions which is derived from the Constitution and various judicial decisions, i.e., precedents and laws enacted by the legislature in this regard.
2. The legal concept of judicial review of legislative action has been derived from the Constitution of India. Various articles of the Constitution have enshrined the power in the hands of the judiciary, such as Articles 13, 32, 136, 226, 227, etc. These articles laid the groundwork for the healthy running of the principle of “judicial review of legislative action” in society [1].
3. This book helped me understand the basics of judicial review of legislative actions and its concept. The book consists of more than 5,000 cases and is organized into about 2000 pages. This book is a very helpful and useful guide for readers. The learned author has enriched the subject through his work and study of historical and sociological aspects of the subject matter, by tracing its evolution, developments, and continuity in the field of law. This book is priceless because of the way the learned author compiled his work with references and because of its wealth of information by simplifying the bare provisions and its exploration of the same by the Hon’ble Court [2].
4. This book helped me learn about the origin and scope of judicial review. The intellectual work provides inclusive attention and detailed analysis of the topic as well as the subject, enlightening the various facets of the law of judicial review. It was written in simple, easy-to-understand language. It consists of a significant quantity of case law references that are explained and discussed herein in relation to the subject matter of this write-up [3].
5. This book is excellent for those who want to understand judicial review. It is a useful textbook for law students as well as a quick reference guide for practicing lawyers. With the help of this book, I understood the basic and general concept of judicial review, and its nature in reviewing legislative action [4].
6. This is the standard book for studying the Constitution of India, and the readers of this book and its popularity at large across the country are keen to obtain authentic information. Through this book, I came to know that “An independent judiciary, having the power of judicial review, is another prominent feature of our Constitution [5].

7. This book helped me learn the origin, ground, and scope of judicial review. The topic as well as the subject, enlightens various facets of the law of judicial review. It was written in simple, easy-to-understand language. It consists of a significant quantity of case law references that are explained and discussed herein in relation to the subject matter of this article [6].

Meaning and Definition of Judicial Review

The term 'review' means to inspect or examine something with a view to correcting or improving it. This meaning suggests that there is something that has already been done by someone whose correctness or improvement is being checked in the process of 'review'. In the expression 'judicial review' the term 'review' refers to something i.e., carried out by a court of inquiry with the purpose of checking the legality of the action of the other agency. Thus, the power conferred by the Constitution to the Hon'ble courts to review determines the validity of any legislation or order; this power of judiciary is described as the power of "Judicial review" of the courts. Thus, the Apex law of the land, i.e., Constitution and any law which is in derogation of it is void or to be declared ultra vires.

'Judicial review' of legislative or executive action can be elaborated as "It is the indispensable power of any constitutional court to check any legislation or order's validity and to declare it unconstitutional and therefore unenforceable as:

- a. Any law enacted by the legislature,
- b. Any action of the executive based on a law and
- c. Any other act of public authority which it considers to be against the Constitution.

Smith and Zurcher defined "the examination or review by the courts, of the matters actually before them, of legislative statutes and executive or administrative acts to determine whether they are restricted by a written Constitution or exceed the powers conferred by it, and if so, to declare them to be null and void."

Edward S Corwin stated that in "Judicial review, courts have the power and duty to set aside all legislative or executive acts of the central or state governments, which in the opinion of the court, violate the Constitution."

In *L. Chandra Kumar Vs. Union of India* [7], the Hon'ble Supreme Court of India quoted the definition of judicial review in Henry J Abraham's and the US Constitution is subject to certain modifications, which apply equally to the concept as understood in Indian Constitutional law."

Scope of Judicial Review

In world countries like India and the USA, whose Constitutions are based on a federal system of government, there is a division of power and functions among the central and state governments. This division of functions is an important feature of any federal system, and the process of judicial review makes the Hon'ble courts to enforce and apply the provisions as mentioned in the Constitution of India and other legislation of the federal system. This power necessarily includes the right to declare any state law or any other action of the state instrument to be ultra vires, an act which violates the constitutional authority of the union or state government in the country. The Hon'ble Apex Court of India and the USA have a power to declare the legislations made by parliament and Congress respectively unconstitutional if they are contradictory with the Constitution. It is called as Hon'ble courts power of judicial review of the actions of the legislatives and executive branches of the state. The Hon'ble courts have the power to declare act/actions of the other wings of democracy as invalid on the ground that it is contrary to the law of the land, i.e., the Constitution; this is called as 'Judicial supremacy'. The power of judicial review is enjoyed by the judiciary of India and the USA, but no such power has been residing in the hands of Supreme Courts of England, France, Russia, and Switzerland. The concept of judicial review became one of the important features of the Constitutions of various nations.

The United States' constitutional thinkers said that it is judicial implementation alone that makes the provisions of the US Constitution greater than just a maxim of political morality. In USA, with regards to judicial review, it is said that "the power to review is based on the notion that the Constitution empowers the government with limited powers." In such a condition under the Indian Constitution, it is also the same.

The principles of determining the constitutionality of a statute have been stated in *Gujarat Ambuja Cements Ltd. v. Union of India*, [8] thus:

"28. Having determined the parameters of the two legislative entries, the principles for determining the constitutionality of a statute come into play. These principles may be briefly summarised thus:

- a. The substance of the impugned Act must be looked at to determine whether it is in pith and substance within a particular entry whatever its ancillary effect may be (*Prafulla Kumar Mukherjee v. Bank of Commerce Ltd.*, AIR at p. 65, *A.S. Krishna v. State of Madras*, *State of Rajasthan v. G. Chawla*, *Katra Educational Society v. State of U.P.*, *D.C. Johar & Sons (P) Ltd. v. STO* and *Kannan Devan Hills Produce v. State of Kerala*).
- b. Where the encroachment is ostensibly ancillary but in truth beyond the competence of the enacting authority, the statute will be a colourable piece of legislation and constitutionally invalid. (*A.S. Krishna v. State of Madras*, *A.B. Abdul Kadir v. State of Kerala*, SCC at p. 232 and *Federation of Hotel & Restaurant Assn. of India v. Union of India*, SCC at p. 651). If the statute is legislatively competent, the enquiry into the motive which persuaded parliament or the state legislature into passing the Act is irrelevant (*Dharam Dutt v. Union of India*).
- c. Apart from passing the test of legislative competency, the Act must be otherwise legally valid and would also have to pass the test of constitutionality in the sense that it cannot be in violation of the provisions of the Constitution nor can it operate extraterritorially (*Poppatlal Shah v. State of Madras*).

Judicial Procedure for Judicial Review

The framers of the Constitution specifically inserted the provision under Article 32ⁱ. The Constitution of India, 1949, empowered any person to directly approach the Hon'ble Supreme Court in contravention of the Part III (Fundamental Rights) as provided in the Constitution. Art. 32 is the fundamental right that provides remedy for violation of Part III and as per Dr. Babasaheb Bhim Rao Ambedkar "Art. 32 of The Constitution of India is the Heart and Soul of it, as without it there would be no meaning of providing the other fundamental rights to the persons under the Constitution". But there is not any specific provision that has been made in the Constitution to approach the Hon'ble Supreme Court directly on the ground of unconstitutionality arising out of the infringement of constitutional mandate relating to separation of powers, distribution of powers, or other constitutional restrictions as provided expressly or impliedly are equally important. If the case does not involve infringement of any fundamental rights as guaranteed by the Indian Constitution under Part III, the aggrieved party has remedy under Article 226ⁱⁱ. Firstly, utilize this remedy by approaching the Hon'ble High Court and only then the right to appeal to the aggrieved party before the Hon'ble Apex Court, if the aggrieved party feels that the relief is not adequately awarded by the Hon'ble High Court. Such drawbacks deserve to be rectified by inserting an appropriate provision in the law to enable an injured person to approach before the Hon'ble Apex Court directly in respect of matters of unconstitutionality relating to the distribution of powers or delegated legislation or on any other constitutional restriction. This prompt measure will awaken the conscience of the citizen in a more fruitful manner in protection of their rights. Thus, the power of judicial review in regards to the high courts is enshrined in Art. 226 and Art. 227ⁱⁱⁱ of the Constitution of India, 1949, and to the Hon'ble Supreme Court under Art. 32 and Art. 136^{iv} of the Constitution of India, 1949.

Courts that exercise the power of judicial review in respect of state action extend jurisdiction to grant remedies to aggrieved ones, and do so in the exercise of their jurisdiction along with the common law

(statutory law) as well as exercises extraordinary jurisdiction under the substantive law (i.e., the Constitution of the country). The traditional principle prevailing of remedy for the aggrieved ones against the illegal/ultra vires legislation has been to grant writs to the aggrieved persons. It was the common law which initiated the process of providing remedies to the aggrieved persons. The system that is introduced for providing general remedies was supplemented by prerogative writs; the system was further developed by principles of equity which provided equitable remedies of a very effective and efficient nature, and then legislation finalized the system of remedies. This has also been the case in India where courts following English practice and procedure in exercising ordinary jurisdiction under the general laws and exercising extraordinary jurisdiction under constitutional law also grant writs to aggrieved persons.

GROUND OF CHALLENGE

While the concept of judicial review of legislative action has been derived from the common law doctrines, the Hon'ble Supreme Court of India and the high courts in India were given the power to protect and enforce the fundamental rights guaranteed in Part III of the Constitution and examine the action on the basis of the constitutionality of legislative as well as administrative actions. The Hon'ble Apex Court also has the power to decide the question of whether the legislature is competent to enact law, particularly Article 246 read with the 7th Schedule under the Constitution of India, 1949, deals with centre-state relations. There are some grounds stated for judicial review of legislative actions as follows:

- *Excess of jurisdiction:* This is the situation in which the legislative authority has exceeded its jurisdiction and hence action becomes unlawful. It can occur in two circumstances: first, if one continues to exercise his jurisdiction notwithstanding the happening of an event exceeding his jurisdiction and second, if the matter concerned is outside his jurisdiction.
- *Irrationality:* The Hon'ble High Court of Delhi in *Neha Jain vs. University of Delhi* [9], said that the basic requirement of Art. 14 is fairness in state action, and non-arbitrariness in essence and substance is the heart of fair play; judicial interference in policy decisions is permissible if:
 - The decision is shown to be patently arbitrary, discriminatory, or mala fide
 - It is found to be unreasonable or violative of any provision of the Constitution or any other statute.
 - It can be said to suffer from any legal infirmity in the sense of it being wholly beyond the scope of the regulation-making power.
 - If it is demonstrably capricious or arbitrary and not informed by any reason.

Irrationality applies to a decision that is so outrageous in defiance of reason that no sane person who applied his mind to the issues in the matter to be decided would have arrived at it. The Supreme Court of India in *P.U.C.L. v. Union of India* [10] examined the issue that the court shall not interfere in a political question or matter of policy, unless it is necessary for judicial review. However, the court can intervene only on selective grounds. The court further said that the government has to be bound by all available possibilities to avoid violence within the setting of the Indian Constitution. The legislature should apply its mind and lay down the criteria based on information which should be disclosed. In the absence of such a law, the court laid down some broad indications for disclosure to give effect to the right under Article 19(1) (a).

Procedural Impropriety

Failure to follow procedures prescribed by law can invalidate a decision. Procedural impropriety covers two areas: failure to observe rules prescribed in statute; and failure to comply with the basic common law rule of natural justice. In *Supreme Court Advocates on Record Association vs. Union of India* [11], the National Judicial Appointments Commission Act was challenged on the ground that the NJAC violates judicial independence by creating a system in which the Chief Justice would no longer have primacy in judicial appointments and in which the judiciary would not have majority control over the NJAC in a system where the political influence of the executive and parliament would be dominant.

Also, it gives the parliament power to change and modify the judicial selection criteria and procedures, which violates judicial independence, the separation of powers, and the rule of law. The Supreme Court found the impugned amendment unconstitutional and struck down the act. The pre-existing policy of appointment of judges has been revived. However, the matter should be listed for consideration of the remaining issue of complaints as to the functioning of the policy already in existence.

Rule against Bias

The principles of natural justice laid down by the courts include two elements, namely, *Audi alteram partem* (hear both parties) and *Nemo iudex in causa sua* (no person can be a judge in their own cause), which show that actual bias existed; mere presence or likelihood of bias will be sufficient. Doubtless, the essence of justice lies in a fair trial.

The Rule against Bias is Strict

It is not necessary that the person always performs his function/duty in a fair and just manner and be very liberal in inspecting vehicles belonging to his own department.

Legitimate Expectation

It amounts to the hope of getting some benefit or privilege to which he has no right. This doctrine has evolved to provide relief to the claimant, when the beneficiaries are unable to justify their claims strictly as per the words stated in the law, had to face consequences of civil nature because of a violation of their legitimate expectations. There are two considerations that are applied for legitimate expectations. First, where a person or group of persons has reason to believe that certain procedures have to be followed and second, where the individual or group of people relies upon the policy or guidelines of executive action that previously governed the area.

A three-judge bench headed by chief justice of India held that “the MPs or MLAs are barred from re-contesting in election in the same tenure of the government if disqualified under Article 191 (2) of the Constitution of India r/w Tenth Schedule, and are liable to be disqualified as members of the legislative assembly”.

In *Shrimath Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly* [12], the Hon'ble Supreme Court stated that the object of anti-defection law is to stop the lure of political offices or similar considerations, and only limited power for judicial review is available against the Speaker of Lok Sabha/state legislature. The decision is taken on the grounds of violation of constitutional mandate, mala fide intention, non-compliance with the rules of natural justice and perversity.

Unreasonableness

The Hon'ble Supreme Court of India in the case of *R.P. Singh vs. State of Bihar* [13] illuminated that the phrase “established practice” referred to those practices of the authority which are regular, consistent, predictable, and definite in the decision-making process, conduct, or activity. The courts presume it to be valid and in accordance with law. The principle of legitimate expectation applies in the matters where decision of the authority is unreasonable, arbitrary, and against public interest. However, a change in policy may defeat legitimate expectations. In such a case, the court will not interfere in the decision even if the policy had been changed.

In *Anuradha Bhasin vs. Union of India* [14], the UT of Jammu and Kashmir was directed by Hon'ble Apex Court to review all orders regarding suspension of the internet services immediately; all orders which are not in accordance with law should be cancelled. The Supreme Court stated that the freedom of speech and expression, and freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Art. 19(1)(a) and Art. 19(1)(g). Restriction on such fundamental rights must be in consonance to the mandate under Art. 19(2) and Art. 19(6) of the Constitution including the test of proportionality. Although the doctrine of judicial

review is the part of basic structure of the Indian Constitution, unreasonableness is not justifiable in matters of policy. However, it is justified only when the policy is arbitrary, unreasonable, or violative of fundamental rights.

The Hon'ble Supreme Court observed in the case of *Kerala Bar Hotels Association vs. State of Kerala* [15] that the court should be reluctant to endeavour into assessing the state's policy, if the policy is made with mala-fide intention and ex-facie extraneous to its object and hence, turns out to be unwise, oppressive, or ill-advised. Voters are quick to inform the government of its folly.

The concept of judicial review is the positive interference by the judiciary in the functioning of the government in its executive, legislative, and judicial branches by restraining their power on the ground of unreasonableness. It has assumed a position of permanence through judicial decisions laid down since 1973. Thus, as stated here, judicial review is the basic structure of our Constitution, and any attempt by the state to damage or destroy the basic structure of the law of the land is unconstitutional and void.

Fundamental Rights

They are a part of the basic structure and comprise Part III of the Constitution of India, 1949; the rights provided under Part III are absolutely essential to the people. If any person's fundamental right gets infringed, he may at any time approach the judiciary for judicial review as a means of safeguarding and ensuring their fundamental rights as guaranteed by the Constitution. The state is not obligated to follow a socialist policy at the costs of the taxpayers, and judges are there to decide the validity of laws; it may be said that it is their duty. If the hon'ble courts are fully deprived of the power of judicial review, then there is no meaning to the fundamental rights given to the people, and they will become only an adornment, as rights without adequate remedies are like writs in water. A controlled, rigid, and flexible constitution will then become uncontrolled.

In *Shayara Bano vs. Union of India* [16], the Hon'ble Apex Court of India stated that the practice of triple talaq is a unilateral power of the Muslim husband to divorce his wife, and it appears to be arbitrary, and hence this practice is unconstitutional and violates fundamental rights. In this case, Hon'ble Mr. Nariman J. propounded the *Doctrine of Manifest Arbitration* and bench held that the practice of triple talaq was violative of Art. 14 of the Constitution of India.

The mentioned judgments of the Hon'ble Supreme Court are of utmost importance, and where the basic structure doctrine of the Constitution is used and fundamental rights are reviewed under Art. 13 of the Constitution, they have been linked.

In *M. Nagaraj v. Union of India* [17], four constitutional amendments, viz., the 77th Constitutional Amendment Act, 1995, the 81st Constitutional Amendment Act, 2000, the 82nd Constitutional Amendment Act, 2000, and the 85th Constitutional Amendment Act, 2001, were challenged before the court.

The said amendments extended the scope of reservation in the state. It was argued that the referred amendments were made by the parliament to non-est the effects of the prior decisions of the Hon'ble Supreme Court.

The court held that the concept of consequential seniority or catch-up rule was not identical with the concepts of secularism or federalism under the Constitution of India.

The Hon'ble Court also holds that the removal or addition of such ideas does not alter the concept of the principle of equity under Articles 14, 15, and 16 of the Constitution. It was further stated by the Hon'ble Court that by said amendments, the basic structure of the Constitution is not affected.

The Hon'ble Court reaffirmed the doctrine of basic structure in his landmark judgement in the case of *I. R. Coelho vs. State of Tamil Nadu* [18], Hon'ble Apex Court held that any legislation placed in the 9th schedule of the Constitution of India, 1949, after the judgement of Kesavananda Bharati dated April 24th, 1974, would be open to challenge before the court of law. The court further holds and explains that even if any legislation has been placed in the 9th Schedule of the Constitution of India, 1949, by a constitutional amendment, it would be open to challenge its provisions before the court of law on the ground that the legislation is destroying or damaging the basic feature of the Constitution of India, 1949.

In so many cases, Indian courts have settled these questions, often while adjudicating matters filed against the state, looking for strict enforcement, and compliance of policies and contracts of the government as a matter of authority and deeming them to be guidelines or executive instructions. These are not legally enforceable in nature or under any provision of the Constitution other than the member of contract, and these policies are not 'law' and are also not judicially enforceable. This is because such guidelines, by virtue of their very nature do not fall under the category of direct, subordinate, or subsidiary legislation. The Supreme Court of India has only an advisory jurisdiction to perform and non-fulfilment or deviation from it is absolutely and implicitly permissible when the circumstances of a particular fact or state of law are justified. Judicial review occurs only when the deviation is arbitrary, discriminatory, or is so fundamental as to undermine the primary public objective or purpose for which the guidelines, policies, and laws are issued.

The Hon'ble Supreme Court of India has ruled that torture in any form is inhumane, degrading, and pejorative to human dignity and is an infringement on the right to life and personal liberty that is prohibited by the Constitution, as no law authorizes or permits such an act until some exceptional condition is involved.

In the recent landmark case of *Joseph Shine vs. Union of India* [19], the Hon'ble Supreme Court of India believed that Sec. 497 of Indian Penal Code is inconsistent with the provisions of the Constitution of India, and hence unconstitutional. Similarly, in *Navjot Singh Johar vs. Union of India* [20], the constitutional validity of Sec. 377 was brought before the Supreme Court of India on the ground that it is violative of Part III of the Constitution of India, i.e., fundamental right. Justice Chandrachud said that "I am not bound by societal morality, I am bound by constitutional morality and if the constitution protects the interests of a single citizen of India, I am bound to protect it". Hence, Sec. 377 of IPC was decriminalized as well as held to be unconstitutional.

Sub-delegated Legislation

Delegated legislation is forbidden by law and can be used as the basis to challenge any law enacted that has been sub-delegated or the delegation was made more than once. In the case of *State of Tamil Nadu v. P. Krishnamoorthy* [21], the court after reviewing the relevant case law on the subject, basically laid down the parameters of judicial review of subordinate legislation as follows.

There is a presumption in favour of constitutionality or validity of a subordinate law and the burden is upon the one who attacks it, to show it invalid. It is also well recognised that a subordinate legislation can be challenged on any of the following grounds:

- a. Lack of legislative capacity to make the subordinate law;
- b. Violation of fundamental rights guaranteed under the Indian Constitution;
- c. Contravention of any provision of the Indian Constitution;
- d. Failure to conform to the statute under which it is made in exceeding the limits of authority conferred by the enabling act;
- e. Conflict with the laws of the land, i.e., any law or enactment;
- f. Manifesting arbitrariness/improperness (to the extent that the court may well say that the legislature never intended to give it the authority to make such rules).

A court considering the validity of subordinate legislation will have to consider the nature, object, and scheme of the enabling act, as well as the area over which power has been delegated under the act, and then decide whether the original act is the object and scheme of the parent act. The court must proceed with caution before declaring it invalid. In challenging the subordinate legislation, the party has to prove to the court that there has been an abuse of power.

Mala-fide

The court may interfere only if it is found that the order has been taken without considering relevant factors or is based on extraneous or irrelevant considerations or is mala fide due to malfeasance or arbitrariness of the patent.

In *Nabam Rebia vs. Deputy Speaker* [22], the Supreme Court reinstated the government headed by Nabam Tuki in Arunachal Pradesh, and declared the governor's decisions illegitimate, which led to the imposition of the president's rule in the state and then the formation of a new government. Different factions of the ruling party welcomed the order. The timely involvement of the judiciary made the application of Article 356, i.e., the president's rule, based on a constitutional failure, subject to judicial review. The landmark judgment will put a stop to the centre's propensity to misuse the powers of the governor and president's rule to remove rival state governments. Restoring the previous government, the Supreme Court held that the assembly was not suspended immediately, but only kept under suspended animation till both presidents' rules were permitted by both houses of parliament. It also demanded a floor test to confirm government's majority. Thus, the court restored the sanctity of the floor test. The Supreme Court ordered the governor of Arunachal Pradesh to explain why he recommended the president's rule in the state. But later, the Apex Court recalled the order saying that the governor had absolute power and was not responsible to courts for anything done in his official capacity, not on assumption.

CONCLUSION

Judicial review is essential for maintaining the supremacy of the Indian Constitution. It also helps in safeguarding or preventing the abuse of power by the government and its machinery. Judicial review helps maintain balance between the union and the state. Hence, federalism is ensured in the country. The provisions under the Indian Constitution for judicial review also provide protection to citizens against violations of their fundamental rights.

The system of judicial review acts as the conscience keeper of the Indian Constitution. It keeps faith in the judiciary alive. It reiterates the fact that even governments are not perfect and may be subject to review. As the former Chief Justice of India, N.V. Ramana has rightly said, "If the judiciary does not have the power of judicial review, then the functioning of democracy in this country would be unimaginable".

The doctrine of judicial review guarantees the principle of judicial independence. Thus, the concept of the doctrine is of utmost importance, and hence, it forms part of the basic structure of the Indian Constitution, as per the Hon'ble Supreme Court's holding in the case of *Minerva Mills Ltd. v. Indian Union and Others* [23]. Therefore, I conclude that it is true to state that judicial review has risen to protect individuals' rights to prevent arbitrary use of power and false accusations.

REFERENCES

1. Singh MP, Shukla VN. Constitution of India. 11th edition. Lucknow: Eastern Book Company; 2008.
2. Jain MP. Indian Constitutional Law. 5th edition. New Delhi: Wadhwa and Company Law Publishers; 2008.
3. Jha CD. Judicial Review of Legislative Acts. 2nd edition. Nagpur: Lexis Nexis Butterworths Wadhwa; 2009.

4. Pandey JN. Constitutional Law of India. 43rd edition. Allahabad: Central Law Agency; 2006.
5. Basu Durga Das. Introduction to the Constitution of India. 20th edition. Nagpur: Lexis Nexis Butterworths Wadhwa; 2012.
6. Kumar Narendra. Constitutional Law of India. 5th edition. Faridabad: Allahabad Law Agency; 2005.
7. AIR 1997 SC 1125.
8. (2005) 4 SCC 214.
9. AIR 2002 DELHI 403.
10. (2003) 4 SCC 399.
11. AIR 2015 SC 5457
12. 2019 SCC Online SC 1454
13. Appeal (civil) 4191 of 2004
14. 2020 SCC Online SC 25
15. AIR 1990 SC 913
16. (2017) 9 SCC 1
17. (2006) 8 SCC 212
18. (1999) 7 SCC 580
19. (2019) 3 SCC 39
20. AIR 2018 SC 4321
21. Appeal (civil) 5572-5644 of 2005
22. Appeal (civil) 6203- 6204 of 2016
23. AIR 1980 SC 1789

End notes

- i. 32. *Remedies for enforcement of rights conferred by this Part*
 1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
 2. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part
 3. Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), parliament may by law empower any other court to exercise within the local limits of its all jurisdiction or any of the powers exercisable by the Supreme Court under clause (2)
 4. The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution
- ii. 226. *Power of high courts to issue certain writs*
 1. Notwithstanding anything in Article 32 every high court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any government, within those territories directions, orders or writs, including 1 [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
 2. The power conferred by clause (1) to issue directions, orders or writs to any government, authority, or person may also be exercised by any high court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such government or authority or the residence of such person is not within those territories.
 3. Where any party against whom an interim order, whether by way of injunction, or stay, or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—
 - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

- (b) giving such party an opportunity of being heard, makes an application to the high court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the high court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the high court is closed on the last day of that period, before the expiry of the next day afterwards on which the high court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.
4. The power conferred on a high court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.
- iii. *227. Power of superintendence over all courts by the high courts*
1. Every high court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction
 2. Without prejudice to the generality of the foregoing provisions, the high court may
 - (a) call for returns from such courts;
 - (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
 - (c) prescribe forms in which books, entries, and accounts shall be kept by the officers of any such courts
 3. The high court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates, and pleaders practising therein: provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the governor
 4. Nothing in this article shall be deemed to confer on a high court powers of superintendence over any court or tribunal constituted by or under any law relating to the armed forces
- iv. *136 Special leave to appeal by the Supreme Court*
1. Notwithstanding anything in this article, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence, or order in any cause or matter passed or made by any court or tribunal in the territory of India
 2. Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the armed forces