



“Judicial Supremacy Vs Parliamentary Supremacy in India”

Mr. Rushikesh Kekade 1, Mrs. Aditi Mishra madam 2

PROGRESSIVE EDUCATION SOCIETY'S MODERN LAW COLLEGE, PUNE

(Comparative Constitutional Law)

Submission of Research Article on

-: Submitted By:-

CLASS: L.L.M 1st YEAR, SEMESTER: 2nd ROLL NO: 09

-: Under the Guidance of :-

Mrs. Aditi Mishra madam

(Asst. Prof.)

SAVITRIBAI PHULE PUNE UNIVERSITY, PUNE-411007

ABSTRACT :

The political structure of India balances the seemingly incompatible ideas of legislative and judicial authority. Although the Parliament has broad legislative authority, the court plays a crucial role in protecting the Constitution. This Article examines the complex and dynamic relationship between parliamentary and judicial supremacy in the Indian constitutional framework. The study tracks the evolution of these theories throughout time, looking at key decisions, constitutional clauses, and the relationship between the legislature and the judiciary in deciding how much power to allocate.

The complex interrelationship between parliamentary and judicial supremacy under India's constitution is critically examined in this article. To offer a thorough grasp of this constitutional dilemma, an analysis is conducted of the underlying ideas of these doctrines, their historical development, and their influence on the democratic government of the nation. The notion of judicial supremacy holds that the court is the ultimate arbiter of constitutional interpretation and enforcement, ensuring the protection of basic rights and acting as a check on legislative activity. On the other hand, parliamentary supremacy places emphasis on the legislative branch as the supreme power and the legislative branch's authority to enact laws.

Keywords: Judicial Supremacy, Parliamentary Supremacy, Indian Constitution, Separation of Powers, Basic Structure Doctrine, Keshavananda Bharati, Legislative Autonomy, Judicial Review.

Introduction-

Over the course of the nation's 75 years of independence, there have been numerous power struggles between the parliament and the judiciary due to the ongoing controversy over which body has greater authority: the parliament or the court. The Indian constitution gives the government three pillars that are essential to its efficient operation. To reach the highest level of public welfare and ensure that the constitutional machinery runs smoothly, a balance between these three pillars is vital. The supreme court of India affirmed the constitutional supremacy in the *Minerva Mills* case[1] ruling that the legislature, executive branch, and judiciary are all subject to the constitution and that no one is above or beyond it.

Two fundamental ideas are frequently discussed when discussing the connection between the legislature and the judiciary: parliamentary sovereignty and judicial supremacy. These ideas reflect several methods for addressing the issue of who has the last say when it comes to interpreting and enforcing the law. The difficult balance between parliamentary sovereignty and judicial supremacy is reflected in India's constitutional framework. The Indian Constitution recognizes the role of the legislature in government and lawmaking, even as it also established a strong and independent judiciary.

Different nations have different relationships between judicial supremacy and parliamentary sovereignty. Although there have been some recent restrictions on it, parliamentary sovereignty is still seen as a basic value in the UK. Judicial supremacy is a fundamental aspect of the American legal system and is entrenched in the Constitution of the United States. It was established following the significant *Marbury v. Madison* case in 1803[2]. The Indian Constitution guarantees both judicial and parliamentary supremacy. While the Supreme Court can invalidate unconstitutional laws, Parliament can also change the Constitution and, in certain situations, overrule court rulings. This has caused some friction between the legislative and the courts, especially when it comes to disputes concerning fundamental rights. The difficult balance between parliamentary sovereignty and judicial supremacy is reflected in India's constitutional framework. The Indian Constitution recognizes the role of the legislature in government and lawmaking, even as it also established a strong and independent judiciary.

Parliamentary sovereignty and judicial supremacy represent two different approaches to the question of who has the final say in interpreting and applying the law. While both concepts have their advantages and disadvantages, the tension between them can sometimes lead to conflict or uncertainty.

[1]AIR 1980 SC 1789

[2]5 U.S. 137 (1803)

Parliamentary Sovereignty-

Parliamentary sovereignty is a doctrine that originated in the UK[3], where it is still considered a fundamental principle of the British constitution. Under this doctrine, Parliament is the supreme law-making authority and can make, unmake, or amend any law. This means that no other body, including the judiciary, can overrule or invalidate an act of Parliament.

The idea of parliamentary sovereignty has drawn praise for its clarity and capacity to guarantee that elected officials answer to the people when they make laws. But it has also drawn criticism for potentially enabling laws and providing the legislature excessive power.

Parliamentary sovereignty holds that the legislature of a country has the final say over the creation, modification, and repeal of laws. This essay will define parliamentary sovereignty, go over a few countries that support it, and analyze the advantages and disadvantages of this tactic. The legislative body, which is typically the Parliament, is regarded as the highest legal authority in a nation under the concept of parliamentary sovereignty. This implies that no other branch of government, not even the judiciary, can override Parliament's authority to enact or amend laws. This method is sometimes referred to as "the will of the people," since elected officials in Parliament answer to the people they are supposed to represent.

Basic Features of Parliamentary Supremacy-

1. Parliament can change or modify any law,
2. There is no distinction between constitutional law and ordinary law, and
3. There is no superior authority which can declare the law passed by the parliament illegal or unconstitutional.

Elements of Parliamentary Supremacy -

Parliament has been full of power since it came into existence there are various powers under the parliamentary functions which are listed below-

1. Power of Enactment -

Parliament can enact laws on any topic by using a procedure known as enactment. The primary responsibility of the parliament is to enact laws that govern the nation; this is the only body with these powers. Legislation, or enactment, is the process of creating rules and regulations to ensure the efficient operation of the entire nation. The Indian Constitution's Articles 107^[4] and 108^[5] both reference this function of legislation.

^[3]The doctrine of Parliamentary Sovereignty in UK Administrative Law,

^[4]Legislative Procedure – Provisions as to introduction and passing of Bills.

^[5] If after a Bill has been passed by one House and transmitted to the other House

2. Power of Removal of Judges by Impeachment-

Article 124 of the Indian constitution provides guidelines for the removal of a sitting Supreme Court judge. The Judges (Inquiry) Act, 1968 is an act enacted which further supplements the process of impeachment of judges, and Article 218 of the Indian constitution lays down the process for impeachment of Judges of the High Court. The power of Parliament to remove judges of the highest court of the nation is evidence of the supremacy of the parliament over the judiciary.

- Advantages of parliamentary sovereignty include:
 1. The power of Parliament to enact laws that express popular opinion
 2. The adaptability to act fast in response to societal developments
 3. The ease of establishing a hierarchy of laws with Parliament at the top
- Disadvantages of parliamentary sovereign include:
 1. The potential for abuse of power by the legislature
 2. The absence of judicial scrutiny to make sure laws abide by human rights norms or the Constitution
 3. Because there is no overall legal framework, there is a chance that laws in different sections of the nation will be inconsistent.

Judicial Supremacy -

The judiciary has the final word over the interpretation and application of the law according to the idea of judicial supremacy. This implies that a court has the authority to overturn or declare a statute illegal if it determines that it is unconstitutional. Constitutional democracies all around the world, including the US, are characterized by judicial supremacy. One benefit of judicial supremacy is that it can guard against legislative abuses of power and safeguard individual rights.

The idea of judicial supremacy holds that the judiciary has the authority to interpret a country's laws and Constitution, and that all other arms of government must submit to its interpretations. This suggests that a court has the authority to declare a legislation or action unlawful, even if it was passed by the legislative or executive branches. Since the concept of judicial supremacy was developed in the United States, it is the main nation associated with it. The US Supreme Court is often recognized as the most powerful and important court in the world due to the extensive jurisdiction granted to it by the US Constitution. Other countries that employ this tactic include India, Canada, and South Africa.

A primary justification for judicial supremacy is its ability to safeguard individual liberties and guarantee that the government is answerable to the Constitution. The judiciary's ultimate say over legal issues serves as a check on the authority of the other arms of government and guarantees that laws are enacted in accordance with the Constitution. However, some contend that judicial supremacy may cause unelected judges to become political actors and tamper with the democratic process. Additionally, they contend that an imbalance in the separation of powers could result from the court overreaching its bounds and growing too powerful.

Power of Judicial Review-

The Concept of Judicial review has been adopted from the American Constitution. Judicial Review is the power where the Judiciary may set aside any law, act etc. passed by the parliament if it is in conflict with the provisions of the Constitution of India. Any law passed by the parliament which is in contradiction to the constitution can be proclaimed null and void by the judiciary. Power of Judicial Review is vested in many articles such as Article 13, 32, 131-136, 143, 145, 226, 246, 251, 254, 372.^[6]

Importance of Judicial Review

1. Judicial review is important for various reasons which are mentioned below
2. Executives have a less chance to be a tyranny
3. Fundamental rights of the citizens are safeguarded
4. Independence of judiciary is shielded by the power of judicial review
5. It upholds and maintains the supremacy of the constitution
6. It degrades the misuse of power by the legislature and the executive

Constitutional provisions of “Judicial Review” in India

The “Government of India Act, of 1935” did not include a provision specifically for judicial review, and the constitutional issues that were brought before the court forced them to embrace judicial review in a broader context.

Art. 13[7] and Power of Judicial Review

According to Article 13 of the Indian Constitution, all laws are defined as rules, regulations, ordinances, bylaws, notifications, customs, and usages. The Supreme Court and High

^[6]The Indian Constitution (Bare Act)

^[7]The Indian Constitution

Courts have the authority to declare any of these laws to be ultra vires if they conflict with or are in opposition to the constitution. Article 13 establishes the foundation for judicial review and justifies fundamental rights. It is an important part of the Constitution because it provides legal authority to the notion that the state cannot violate an individual's fundamental rights by means of legislation or an executive order.

- Types for Judicial Review

There are various types of judicial review which are described below-

Review of Legislative Actions-

Legislative activity, such as laws passed by the legislature, is examined to determine whether or not they are consistent with the constitutional framework. Several instances decided by the Supreme Court have established this kind of judicial review in their rulings, including:

Shankari Prasad v Union of India (1951)[8]

In this case, a challenge was made to the first amendment act 1951 on grounds that the Right to property was restricted and by using the power of judicial review the Supreme court denied such argument and stated that this could not be executed as the fundamental rights cannot be overlapped.

Sajjan singh v State of Rajasthan (1965)[9]

In this case, 17th amendment act of 1964 was impugned and the court eradicated the position in the shankari prasad case and held that the constitutional

amendments made under article 368 are not within the ambit of judicial review by the courts.

The Golaknath Case (1967)[10]

This case overruled its previous verdicts delivered in the Shankari Prasad v Union of India case (1951) and the Sajjan Singh v State of Rajasthan case (1965). It held that the amending power under article 368 cannot be used to abridge or take away the fundamental rights guaranteed in part III of the constitution. Further, it said that a constitutional amendment act is a law within the meaning of Article 13(2).

^[8]1951 AIR 458, 1952 SCR 89

^[9]AIR 1965 SC 845

^[10]AIR 1643, 1967 SCR (2) 762

1. Review of Administrative Actions-

This is one more way that the administrative agencies might exercise their jurisdiction while maintaining constitutional discipline. The definition of state includes the union of India's administrative acts as well as those of state governments and their representatives.

2. Review of Judicial Decisions-

The judiciary itself makes corrections to earlier conclusions through the review of its decisions. This kind of review has been addressed in some rulings.

Judicial Supremacy v Parliamentary Supremacy: Indian Perspective

The first Prime Minister of India, Pt. Jawaharlal Nehru gave a great deal of thought to the primacy of the legislature when the Indian Constitution came to force. Since it drafted the Constitution, Nehru acknowledged Parliament's power to influence the course of society. Since 1951, when the first constitutional amendment was enacted to safeguard the government's reform agenda from judicial interference, there have been disputes between the administration and the court. Indira Gandhi altered the constitution and substituted a number of senior justices in an effort to assert her authority over the court during this time of turmoil.[11]

Nevertheless, as opposed to its British counterpart, India's parliament does not have unfettered authority. While the Indian Parliament is constrained by the Constitution, the British Parliament has a great deal of freedom to alter or even abolish it. The Supreme Court of India has said many times that the Constitution applies to the Judicial Branch just as it does to the Executive Branch and the Legislative Branch. Constitutional sovereignty in India was upheld in the *Minerva Mills* decision, 1980. In this case, the court ruled that Parliament's power to amend the Constitution is limited by the Constitution itself.

Article 368[12] grants the power to modify the constitution to the Indian Parliament. The President must sign a measure into law after it has been introduced in one of the two houses of

Parliament and passed by a majority vote. Some policies, such as the allocation of parliamentary members, may require the approval of at least half of the states before being implemented.

^[11]<https://www.lloydlawcollege.edu.in/blog/judicial-supremacy-v-parliamentary-supremacy.html> last visit on 19/03/2024

^[12]The Constitution of India

Comparison of Parliamentary Sovereignty and Judicial Supremacy in India :

In constitutional law around the world, there has long been discussion over the interplay between judicial supremacy and parliamentary sovereignty. India's constitutional system endeavors to maintain a balance between these two ideas, with the judiciary assuming a more significant role in the interpretation and implementation of the Constitution. In this section, we will explore the functions of the legislature and judiciary in Indian governance, as well as a few seminal examples that illustrate the conflict between judicial supremacy and legislative sovereignty.

In India, the judiciary and legislature both have important roles in governance. The legislature, which consists of the Lok Sabha (House of the People) and Rajya Sabha (Council of States), is responsible for making laws and overseeing the government. The judiciary, which is independent of the other branches of government, is responsible for interpreting the Constitution and laws and ensuring that they are enforced.[13]

But the legislative and the judiciary's power in India have become tense. There have been other instances where the court has overturned laws passed by the legislature, raising concerns about the distribution of power between the two arms of government. This conflict stems from a basic difference of opinion regarding the judiciary's function in a democracy. In a democratic society, the legislature ought to be the highest authority, according to proponents of parliamentary sovereignty. This point of view holds that the legislature has the power to enact and alter laws that are in the best interests of the nation and is answerable to the people.

One Of The Most Significant Cases Of The Tension Between Parliamentary Sovereignty And Judicial Supremacy In India -

Kesavananda Bharati v State of Kerala (1973)^[14]

This is a landmark judgment which was decided by the largest 13 judge bench of the Supreme Court in the history of Independent India and with a 7:6 ratio the court reached a verdict. The 24th Amendment Act (1971) and 25th Amendment Act (1971) of the Constitution were challenged in this case.

^[13]<https://www.legalbites.in/topics/articles/parliamentary-sovereignty-v-judicial-supremacy-world-and-india-895546> last visit on 20/03/2024

^[14]AIR 1973 SC 1461

It was decided that -

1. Article 368 of the constitution states that the president has power to bring changes in the constitution.
2. Constitutional amendments and ordinary laws are two different things
3. The core or basic structure of the constitution cannot be amended by the parliament.

Indira Gandhi v. Raj Narain, (1975)[15]

In this case, the Supreme Court invalidated the election of then Prime Minister Indira Gandhi to the Lok Sabha, the lower house of the Indian Parliament, due to electoral malpractices. This decision was a major blow to the authority of Prime Minister and the legislature and reaffirmed the power of the judiciary to uphold the rule of law.

Supreme Court Advocates-on-record Association & Anr. v. Union of India, (2016)^[16]

National Judicial Appointments Commission (NJAC) case of 2015 in which the Supreme Court struck down a law passed by the legislature that sought to change the way judges were appointed to the higher judiciary. The court held that the law was unconstitutional and violated the principle of judicial independence.

Conclusion:

The supremacy of the constitution takes precedence over the supremacy of the parliament. Parliamentary sovereignty in India is governed by the Indian Constitution, which incorporates judicial scrutiny. Any law that conflicts with the fundamental values of the constitution cannot be passed by Parliament or amended. As a watchdog over the constitution, individual rights, and freedoms, the judiciary is given the authority to scrutinize legislative actions. Every state entity is required to operate within the bounds of the constitution's provisions and tenets, which serve as the ultimate law of the land.

To ensure peace between the legislative and the judiciary, neither the parliament nor the judiciary should go beyond the bounds set by the Indian constitution. To restrain and monitor the excesses of the other two pillars of the constitution, the judicial review powers of the legislature and the judiciary must be reinforced. Neither the idea of judicial review nor fundamental rights should be compromised.

^[15] AIR 1975 SC 2299

^[16] 2 SCC (LS) 253

BIBLIOGRAPHY:-

Books :-

1. Jain MP, Indian Constitutional Law (6th ed., Wadhwa 2010).
2. Jha, Chakradhar, "Judicial Review of Administrative Acts," ed.1974, B.M. Tripathi Private Limited, Bombay

Articles:-

1. Siegel J, 'Institutional case for Judicial Review' 97(4) Iowa Law Review 1147-1200 (2012 May).
2. Singh DP, 'Sovereignty, Judicial Review and Separation of Power', 7(5) Supreme Court Cases 1-13 (2012 September).

Website :-

1. <https://www.legalbites.in/topics/articles/parliamentary-sovereignty-v-judicial-supremacy-world-and-india-895546>
2. <https://www.lloydlawcollege.edu.in/blog/judicial-supremacy-v-parliamentary-supremacy.html>
3. <https://ijarl.in/volume-3/issue-2/judicial-review-a-comparative-analysis-of-india-the-united-states-and-the-united-kingdom-vartika-lal/>