

## Abstract

In India's complex institutional structure the judiciary occupies a special place. It is the upholder of the constitution and the final arbiter of justice. It evokes faith due to its rigor and independence. It protects from the excesses of the State, ensures the political system cannot use an electoral mandate to change or subvert the basic structure of constitution, settles disputes between Union and States, between States, between State and citizens and among citizens.

The Supreme Court of India is the apex court on the pyramid of unified and integrated judicial system. The Supreme Court and high courts have been given power of judicial review to perform effectively their duties, as the protector and guardian of constitution by article 13, 32, 136, 226 respectively.

In USA power of the judicial review is inherent and not expressly given to the court. The scope of the judicial review in India is not as wide as it is in USA not as narrow as in England where there is Parliamentary sovereignty and courts have no authority to examine the laws of Parliament on the basis of written constitution as in USA and in India.

In A.K. Gopalan case chief justice Kania pointed that it was only by way of abundant caution that framers of constitution inserted the specific provision in article 13 and observed that "in India it is the constitution that is supreme and that a statute law to be valid, must be in all conformity with the constitutional requirements and it is for the judiciary to decide whether any enactment is constitutional or not." The congress i.e. Ruling party committed to abolish zamindari and a number of laws enacted by different States. Some high courts invalidated land reforms laws on the ground of fundamental rights so the

g Singh

Abida Parveen

Parliament amended the constitution by first, fourth, and seventeenth amendments and ninth schedule was included in the constitution to save these laws from scrutiny by the court. When these constitutional amendments were challenged before Supreme Court, Supreme Court upheld the constitutional amendments and power of Parliament to amend the constitution. In Golaknath case supreme court reversed its earlier decision in Shankari Prasad and Sajjan Singh case and held that Parliament has no power to amend the constitution so as to abridge fundamental right but Supreme Court declared the decision would have prospective effect only and these amendments shall remain constitutional to overrule the effect of Golaknath case constitution was amended by 24<sup>th</sup> 25<sup>th</sup> 26<sup>th</sup> & 29<sup>th</sup> constitutional amendments which were challenged in Keshavanand Bharti case supreme court upheld the validity of 24<sup>th</sup> constitutional amendment substitution of word 'amount' for the word compensation was also upheld and it partially upheld the validity of Art. 31(c). Although Supreme Court declared that Parliament can amend any part of constitution but it also held that Parliament cannot use the power of amendment to destroy the basic structure of the constitution.

During internal emergency 42<sup>nd</sup> constitutional amendment was passed to give priority to all directive principles over fundamental right by amending article 31(c). Power of judiciary to invalidate a law was restricted to some extent. 44<sup>th</sup> constitutional amendment provides that article. 21 i.e., <sup>RIGHT</sup> to life and personal liberty shall not be suspended even during emergency.

In Minerva mill case by 4:1 majority the court held sec.4 and 55 of 42<sup>nd</sup> constitutional amendment as unconstitutional on the ground of violation of

g.singh

Abida Parveen

the basic structure doctrine and held that part III and IV of constitution are part of basic structure. In this case Supreme Court also invalidated sec 55 of 42<sup>nd</sup> amendment as violative of basic structure because Parliament has no right to convert its limited power to unlimited.

Waman Rao case 1981 was regarded as one of the benchmarks in the constitutional jurisprudence of India as it re-clarifies the doubts arose in Kesavanand Bharti case. It set clear line of demarcation to avoid all kinds of future doubts and recognized the need of land reform in order to further the need of achieving an egalitarian pattern of society. Court also says that it is entirely for the legislature to decide what policy to be adopted for the purpose of restructuring the agrarian system and the court should not assume the role of an economic adviser for pronouncing upon the wisdom of such policy. Therefore it is expected that Parliament while making law to give effect to achieve goals must exercise the power with due care and consideration to make sure that the purpose is not diluted. Similarly in Bharat coke company case Supreme Court upheld article 31(c) as amended by 42<sup>nd</sup> constitutional amendment reversing the decision of Minerva mill case regarding article 31(c) on the ground that the court can consider a question only when the litigant parties have contested it properly. Court also gives wide meaning to "material resource owned and controlled by private individuals as well.

At present in view of the above judgments it is settled law that fundamental rights are justiciable, Parliament, State legislature and all State agencies including judiciary are to implement a law enforcing directive principles and try

g Singh

Abida Parveen

to reconcile it with fundamental rights as far as possible. There seems no controversy between judiciary and Parliament as was apprehended in 1967.

Supreme Court to a large extent has worked as an instrument of social change for providing implementation of Directive Principles and it also protected the fundamental rights from beginning to till date supreme court has performed its duties effectively not only to protect fundamental right and constitution but also has helped for social progress and development of constitution. It had worked an instrument of social change while upholding laws of agrarian reform, nationalization of big industries, mines, LIC, bank nationalization etc and Supreme Court has extended the scope of right to life and personal liberty. Since Maneka Gandhi case and included in it the right to dignified life, right to sleep, right to education, right to legal aid and even right to dignified death. Similarly basic structure theory is a child of judicial wisdom and includes in it democratic government, secular character, rule of law, balance between Center and States, limited government, republican character & judicial review as integral part of basic structure. In India judiciary has worked as an independent institution and citadel of public faith and protector of fundamental rights and constitution.

9 Singh

Abida Parveen