

Judicial Supremacy Vs Parliamentary Supremacy in India

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ABSTRACT

India's political structure balances between the legislative and judicial authority and forms a dynamic constitutional framework. Parliament has been bestowed with wide powers in legislation, but the Constitution is interpreted and defended by the judiciary. This paper aims to trace the development of the paradigm of parliamentary and judicial supremacy in India, reviewing critical constitutional provisions and landmark judgments. Judicial supremacy is the concept that courts are the ultimate interpreters of the Constitution, protect fundamental rights, and check legislative excesses. Parliament's supremacy, on the other hand, is based on the notion that the legislature has the power to make laws. India has, however, over the years, developed a unique form of both doctrines, which does not entail that either institution is all-powerful. The interaction between the judiciary and Parliament is such that the former plays a role in constitutional interpretation while the latter makes laws such that there is a system of checks and balances. It is this interplay that is the hallmark of democratic governance in India and which determines much of the legal and political discourse. Based on an analysis of the historical evolution and the judgments delivered by various High Courts and the Supreme Court of India, this study seeks to understand how India can achieve a balance between these two seemingly contradictory principles.

INTRODUCTION

“The judicial branch has in its finest hours, stood firmly on the side of the individuals against those who would trample their rights.”

HERB KOHL

In the Indian constitution, the balance between the government is the fundamental issue. The principle of the separation of powers ensures that neither branch becomes too dominant, conserving the integrity of the legal system. However, within this framework, two competing doctrines emerge—judicial supremacy and legislative supremacy. “Judicial supremacy” is the idea that the Supreme Court should be viewed as the authoritative interpreter of the Constitution and that we should deem its decisions as binding on the other branches and levels of government, until and unless a constitutional amendment or subsequent decision overrules them. In contrast, legislative supremacy is a concept in the constitutional law of some parliamentary democracies. It holds that the legislative body has absolute power and is superior to all other government institutions, including executive or judicial bodies. This article explores the legal and philosophical underpinnings of both doctrines, their implications, and their application in various jurisdictions. The Indian Constitution doesn't say much about the separation of powers between the legislature and the judiciary, but it does give the judiciary the power to interpret and nullify laws passed

by the legislature if they go against the principles and goals enshrined in the Constitution. The ability of any civilized society to fulfill its responsibilities is contingent upon the existence of a firm foundation and a network of coordinating institutions. A constitutional framework is required due to the significance of the laws, rules, and regulations it contains. The legal systems of different nations are founded on varying relationships between the principles of parliamentary sovereignty and constitutional supremacy. This blog traces the genesis of constitutional and parliamentary sovereignty, their development, comparative analysis, and ongoing conflict between aspects of India's judicial and parliamentary sovereignty. There always has been debate as to who is more superior in power, is it the judiciary or parliament, and this debate has led to various tussles of power between the judiciary and the parliament through these 75 years of independence of the country. The Indian constitution provides the government with three pillars on which the effective functioning of the government rests. A balance between these three pillars is very necessary to achieve the ultimate public welfare and the smooth functioning of the constitutional machinery that is essential to its efficient operation. To reach the utmost level of public welfare the three pillars like the legislature, executive branch, and judiciary are all subject to the constitution, and no one is above or beyond it. Two fundamental ideas are regularly 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 final decision when it comes to the interpretation and enforcing the law. The difficult balance between legislative supremacy and judicial supremacy is reflected in India's constitutional framework. The Indian Constitution recognizes the role of the legislature in government and lawmaking and even is mainly concerned with drafting all principal legislation for the Central Government viz, Bills to be introduced in Parliament, Ordinances to be promulgated by the President, measures to be enacted as President's Acts for States under the President's rule and Regulations and 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 sometimes leads to conflict or uncertainty. Parliamentary sovereignty and judicial supremacy represent two different approaches to the question of who has the final say in interpreting and applying the law.

LEGISLATIVE SUPREMACY OR PARLIAMENTARY SOVEREIGNTY

Parliamentary sovereignty or Legislative supremacy means the supremacy of the legislative body, i.e. parliament over all other government institutions, including executive and judicial bodies. The sovereign legislature may amend or repeal any previous legislation and is not bound by any written law like a constitution. In India, there is no parliament sovereignty rather, there is constitutional sovereignty. Legislative 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 with excessive power. Parliamentary sovereignty holds that the legislature of a country has the final say over the creation, modification, and repeal of laws. 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.

A. V. Dicey, an eminent British constitutional scholar, explained the idea of designated parliamentary sovereignty as one of the defining characteristics of the British constitution. Legislative supremacy is deeply rooted in the democratic principle of popular sovereignty, where the people's will is expressed through their elected representatives. The argument for the legislative supremacy is the, Laws made by elected representatives reflect the will of the people, making legislative supremacy a more democratic approach and support by the experts committees to create the policies to address all the issues like socio-economic and as well as the political issue and can easily make changes or can amend the laws swiftly as the risk factor or the criticism for the legislative supremacy is in the absence of strong judicial oversight, legislatures may pass laws that infringe upon fundamental rights and Without an independent judiciary, there is a risk that legislative enactments may conflict with constitutional principles, leading to potential abuses of power.

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. No superior authority can declare the law passed by the parliament illegal or unconstitutional.
4. Limited amendment power: Parliament can amend most of the parts of the constitution but it cannot amend the 'basic features of the constitution'. Further, some amendments need a special majority and state' legislature resolution.
5. Supreme Legal Authority– Parliament holds the highest legal authority within the country's legal system. It has the power to create, amend, or repeal any law without constraints from other branches of government.

The status of parliamentary sovereignty in India is that the framers of the Indian Constitution have preferred a proper synthesis between the British Principle of Parliamentary Sovereignty and the American Principle of Judicial Supremacy. Thus, the Indian Parliament is not a sovereign body in the sense in which the British Parliament is a sovereign body. Unlike the British Parliament, the authority and jurisdiction of the Indian Parliament are defined, limited, and restrained by various factors, as explained in the section that follows. Factors Limiting Sovereignty of Indian Parliament The factors that limit the Sovereignty of the Indian Parliament are explained in detail as follows:

- Limited Jurisdiction – The Indian Constitution has defined the authority and jurisdiction of all three organs of the Union Government, including the Indian Parliament. The Parliament has to operate within the limits prescribed by the Constitution.
- Limitations on Legislative Power – As per the constitutional distribution of legislative powers, the law-making authority of the Parliament is confined to the subjects enumerated in the Union List and the Concurrent List and does not extend to the subjects enumerated in the State List. Accordingly, in normal circumstances, it can legislate only on subjects mentioned in the Union List and the Concurrent List, and not the State List.
- Limitations on Constituent Power – The Indian Constitution makes a legal distinction between the legislative authority and the constituent authority of the Parliament. Thus, the Indian Parliament cannot amend the Constitution by the same procedure as Ordinary Laws. Moreover, to effect certain amendments to the Constitution, the ratification of half of the states is also required.
- Fundamental Rights – The authority of the Parliament is also restricted by the incorporation of a code

of justifiable fundamental rights under Part III of the Constitution. Article 13 prohibits the State from making a law that either takes away totally or abrogates in part a fundamental right.

- System of Judicial Review – In India, the Judiciary can review laws made by the Parliament and declare them null and void if they violate the Constitution.

The case *Minerva Mills Ltd vs. Union of India*¹ is a landmark case in Indian constitutional law that addresses the parliament's legislative supremacy as its concern is the power to amend the constitution in this case the constitutionality of the provisions of the 42nd Amendment Act, 1976 which enhance parliamentary's authority over the constitution the analysis of the case is that the supreme court declared under the section 4 and 55 of 42th amendment as the court has reaffirmed the basic structure doctrine which was established in the case *Kesavananda Bharati v. State of Kerala*² that asserting that the parliament has the wide power to amend the constitution as it cannot alter the fundamental rights or framework. The implication of the legislative supremacy is the *Minerva Mills* case underscores that legislative supremacy in India is not absolute. Parliament's authority to amend the Constitution is subject to inherent limitations to preserve its basic structure. This makes sure that the essential features of the Constitution, such as the protection of Fundamental Rights and the power of judicial review, remain inviolable, free and fair elections, equality before the law, and a secular state that recognizes freedom of conscience and religion. maintaining a system of checks and balances fundamental to India's democratic governance.

In another case, *Mohd. Ahmed Khan Vs. Shah Bano Begum and Ors*³ This case is related to legislative supremacy because it led to a significant conflict between the judiciary and the legislature regarding personal laws in India in response to pressure from conservative Muslim groups, The Rajiv Gandhi government passed the Muslim Women (Protection of Rights on Divorce) Act, 1986. This law effectively nullified the Supreme Court's ruling by restricting maintenance for divorced Muslim women to the Iddat period (about three months), after which they had to seek support from their relatives or the Waqf Board.

JUDICIARY SUPREMACY

Judicial supremacy is a concept that vests the most power to the judiciary of a country. In such a country, whatever directions and laws are undertaken by the judicial system, especially by that system's supreme judicial court, are paramount. The decisions taken by the judicial officers and enacted within the court of law are the ultimate decisions and are deemed worthy. Judicial supremacy usually comes in political structures where the judicial system is a separate entity and acts according to its ethics and morals. It is interesting in this discussion to look at which country's judicial supremacy prevails. All these laws and legislations are carried forward for the public welfare. Whatever decisions have been arrived at in the judicial system is of paramount importance. The judiciary has the final word over the interpretation and application of the law according to the idea of judicial supremacy. It is not the same as judicial review. Judicial Review can be an aspect of judicial supremacy, but it is not in itself an indicator of judicial supremacy. To answer which country's judicial supremacy prevails, we need not look further than the United States of America. In the U.S. legal structure, the judicial system is completely separate from the parliamentary body and facts in its conscience. It is also the supreme adjudicator, and its decisions in matters of laws and bills are supreme. Often, in understanding which country's judicial supremacy prevails, people get confused between judicial review and judicial supremacy. The answer to which country's

¹ *Minerva Mills Ltd vs. Union of India* 206 AIR 1789 (1980)

² *Kesavananda Bharati v. State of Kerala* 135 AIR 1461 (1973)

³ *Mohd. Ahmed Khan vs. Shah Bano Begum and Ors* (23.04.1985 - SC): MANU/SC/0194/1985

judicial supremacy prevails will be all those countries that share some generalized commonalities with the English system of legislation. The Indian constitution has given the judiciary superior powers of review to decide the constitutionality of legislative acts. Discharge of judicial functions should not be seen as against the will of the people, for the constitution derives its authority to give this power to the judiciary. The Concept of Judicial review has been adopted from the American Constitution. Judicial Review is a power granted to the judiciary where it can assess, check, and judge any actions or policies taken by the parliament or the government and see if they are in line with the provisions provided by the constitution. This is a part of Judicial supremacy. Actions that have been declared unconstitutional are rendered void. India has a system of judicial review. Any law passed by the parliament that is in contradiction to the constitution can be proclaimed null and void by the judiciary. The power of Judicial Review is vested in many articles, such as Article 13, 32, 131-136, 143, 145, 226, 246, 251, 254, 372 of the Indian Constitution Act ⁴.

Importance of Judicial Review

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

Features of Judicial Review

- The power of judicial review is to be exercised both by the Supreme Court and High Court for violation of any fundamental right or any legal right.
- Both center and state laws are subject to judicial review. All the acts, codes, orders, rules, by-laws, and constitutional amendments are subject to judicial review.
- The power of judicial review needs to be attracted and applied. The Supreme Court cannot itself apply for judicial review; it can be used only when a rule of law is challenged before the Court.
- Power of Judicial review is not a suo motu action as the Supreme court of High court do not use their authority to conduct a judicial review, such power is used only when there is a question of law that comes before the court or during proceedings when any such incident occurs or such a condition arises.

Functions of Judicial Review

- Judicial review has limited functions to perform, but they are very vital and have a crucial role to play to uphold the spirit of the constitution
- First of the vital functions of the judicial review is to make the actions of the government a legitimate action
- The second is to secure the constitution from any contradictions from the government

In a constitutional supremacy framework, all laws must be by the constitution, and the document itself has the ultimate authority. The Constitution of the United States is supreme over all other government laws and regulations. If a court decides that a statute is unconstitutional, it can strike it down. In this set-up, the constitution restricts parliament's authority through checks and balances such as judicial review,

⁴ The Indian Constitution Act ,1872

federalism, and the preservation of fundamental liberties, Judicial supremacy is the principle that the judiciary, particularly the highest court, has the ultimate authority in interpreting the law and constitution. This doctrine is primarily associated with constitutional democracies that uphold judicial review. 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 under the case of *Shankari Prasad v Union of India*⁵. In this case, a challenge was made to the First Amendment Act 1951 because the Right to property was restricted, and by using the power of judicial review, the Supreme Court denied such an argument and stated that this could not be executed as the fundamental rights cannot be overlapped. The case was the first to address whether Parliament could amend fundamental rights. The petitioner challenged the First Constitutional Amendment Act⁶ of 1951, arguing that it violated the Right to Property (Article 31). The Supreme Court upheld the amendment, ruling that Parliament had the power to amend fundamental rights under Article 368 and that an amendment was not a "law" under Article 13(2) of the Indian Constitution Act⁷, thus placing it beyond judicial review. This ruling weakened judicial supremacy by giving Parliament absolute power over constitutional amendments. It meant that Parliament could restrict or abolish fundamental rights without judicial interference, shifting power towards Parliamentary Supremacy. However, in *Golak Nath v. State of Punjab*⁸ (1967), the Court overruled this decision, restoring judicial supremacy by stating that fundamental rights cannot be amended.

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 several senior justices to assert her authority over the court during this time of turmoil⁹. 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 in 1980. In this case, the court ruled that the Constitution itself limits Parliament's power to amend the Constitution. Article 368¹⁰ grants the Indian Parliament the authority to modify the constitution. The President must sign a measure into law after it has been introduced in either house, Rajya Sabha or Lok Sabha, 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 implementation. The main conflict between the parliamentary supremacy and legislative supremacy is the increasing divide between India's judiciary and executive branches, which has numerous underlying causes. If the Supreme Court rules that a statute is

⁵ *Shankari Prasad v Union of India* 458 AIR (1951)

⁶ The First Constitutional Amendment Act, 1951

⁷ The Indian Constitution Act, 1872

⁸ *Golaknath v. State of Punjab* 762 AIR 1643 (1967)

⁹ <https://www.lloydlawcollege.edu.in/blog/judicial-supremacy-v-parliamentary-supremacy.html>

¹⁰ The Indian Constitution Act, 1872

unconstitutional, Parliament needs to amend the prior law. The *Golak Nath vs State of Punjab* (1967)¹¹ and *Kesavanda Bharti vs State of Kerala*¹² (1973) cases are examples of conflict between the judicial and parliamentary sovereignty. One of the major bone of contention in this tussle is the collegium system. The collegium system is a system under which appointments and transfers of judges are decided by a forum of the Chief Justice of India and the four senior-most judges of the Supreme Court. Articles 124(2) and 217¹³ of the Indian Constitution deal with the appointment of judges to the Supreme Court and High Courts. It has been argued that the collegium system lacks transparency and openness because the rationale for promotion recommendations and promotions is not made public. In this respect, the NJAC (National Judicial Appointment Commission) ruling (2015) was also a landmark moment. The Supreme Court ruled that the NJAC was unconstitutional due to concerns about political involvement and government control over judicial nominations. This verdict deepened the strongest disagreement between the court and the executive branch. One more reason for the conflict between the courts and the parliament is the concept of judicial review. The courts use judicial review to ensure that laws do not violate the idea of the Constitution. As per this provision, the Indian Parliament is subordinate to the Constitution of India. 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.

It was decided that -

1. Article 368¹⁵ 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.

*Mohd. Ahmed Khan Vs. Shah Bano Begum and Ors*¹⁶

The decision in the *Shah Bano* case (1985) turned into one of the fiercest contestations between judicial supremacy and legislative supremacy in India. The Supreme Court solidified *Shah Bano's* right to maintenance under Section 125 of the Criminal Procedure Code (CrPC) and stressed that secular law upholds fundamental rights and prevails over personal religious laws. The interpretation of the court was viewed as a historic step toward gender justice, ensuring that divorced Muslim women wouldn't have to suffer deprivation. The decision nonsensically symbolized the declaration of judicial supremacy, wherein the judiciary executed the power to interpret laws in line with the constitutional principles of equality and justice.

Conservative Muslim groups were nonetheless vociferous in opposing the judgment, claiming interference with Muslim personal law, which only provides maintenance during the *iddat* period (about three months from the date of divorce). The political leadership seized the occasion; the Rajiv Gandhi government, succumbing to extremist pressure, approved the promulgation of the Muslim Women (Protection of Rights

¹¹ *The Golaknath vs state of Punjab* 762 AIR 1643, (1967)

¹² *kesavananda Bharati v. State of Kerala* 135 AIR 1461 (1973)

¹³ The Indian Constitution Act, 1872

¹⁴ *kesavananda Bharati v. State of Kerala* 135 AIR 1461 (1973)

¹⁵ The Indian Constitution Act, 1872

¹⁶ *Mohd. Ahmed Khan vs. Shah Bano Begum and Ors* (23.04.1985 - SC): MANU/SC/0194/1985

on Divorce) Act, 1986. The Act set aside the Supreme Court ruling, confined maintenance beyond the iddat period to the husband's property, and shifted financial responsibility onto the woman's family or the Waqf Board. This was clearly legislative supremacy's assertion whereby Parliament concretely wielded its law-making power to save face and efface a judicial interpretation.

A great debate has, therefore been opened regarding the limits of judicial activism and the laws determining the extent to which the legislature should intervene in judicial matters. This is evidenced by the dilemmas over fundamental freedoms and religious freedoms, with the order of priority being given by a legislature to religious personal laws over the insistence of the judiciary on uniform secular justice. For this cause, the case is marked as one of the most quintessential examples of the clash in the democracy of India involving judicial authority versus legislative power.

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. The judiciary can scrutinize legislative actions as a watchdog over the Constitution, individual rights, and freedoms. 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. Both parliament and the judiciary should not exceed their limits as defined by the constitution of India so that harmony can be maintained between the legislature and judiciary. The judiciary and Legislature must be strengthened in terms of judicial review to check and contain the excesses of the other two pillars of the constitution. In my opinion, a provision may be introduced in the constitution keeping in mind the American constitution giving supremacy to the Constitution and the laws made there under.

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