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THE SCOPE OF JUDICIAL REVIEW AND THE ROLE OF COURTS

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INTRODUCTION

Judicial review is a cornerstone of constitutional democracies worldwide, providing a mechanism for courts to assess the constitutionality and legality of governmental actions, legislation, and executive decisions. The concept of judicial review and the role of courts in enforcing it are fundamental pillars of modern democratic systems. It serves as a powerful check on the exercise of government power, ensuring that such exercises align with constitutional principles and do not infringe upon individual rights, and empowers courts to review the constitutionality of laws, executive actions, and administrative decisions, ensuring they adhere to constitutional principles and do not infringe upon

individual rights. This article aims to explore the scope of judicial review, tracing its historical development, and understanding its significance in upholding democracy and preserving the rule of law. Additionally, it will analyse the role of courts in interpreting laws, adjudicating constitutional disputes, and shaping the legal landscape of nations.

Historical Evolution of Judicial Review:

The concept of judicial review traces its roots to ancient civilizations like Greece and Rome, where some form of judicial oversight over government actions existed, and, there were rudimentary mechanisms for scrutinizing government actions. However, it was the landmark case of *Marbury v. Madison* in the United States in 1803 that laid the foundation for modern judicial review. Chief Justice John Marshall's ruling established the principle of judicial review in the U.S. by declaring that the Supreme Court has the authority to review the constitutionality of legislative acts and executive actions.

The Scope of Judicial Review:

The scope of judicial review varies across jurisdictions and can be broadly categorized into the following types:

a. Review of Legislation:

Courts assess the constitutionality of laws passed by the legislature to ensure that they do not violate the fundamental principles enshrined in the constitution. When presented with a constitutional challenge, courts interpret the provisions of the constitution and evaluate whether the law in question aligns with its principles. If found unconstitutional, the law is deemed null and void. This type of review involves interpreting the constitution and applying its provisions to the law in question.

b. Review of Executive Actions:

Courts scrutinize the actions of the executive branch to determine if they comply with the law and do not exceed their legal authority. This includes executive orders, administrative

decisions, and government policies. The purpose is to ensure that the executive does not exceed its authority and that its actions are consistent with the law and the constitution.

c. **Review of Administrative Decisions:**

In addition to legislative and executive actions, judicial review extends to administrative decisions made by government agencies. Courts assess whether these decisions adhere to the established legal standards, follow due process, and are not arbitrary or capricious.

d. **Review of Constitutional Amendments:**

In some countries, courts may have the authority to review constitutional amendments to ensure they do not undermine the core principles of the constitution itself. This is particularly crucial in nations with rigid constitutions that cannot be easily amended.

Principles Governing Judicial Review:

a. **Constitutional Supremacy:**

Judicial review operates on the premise that the constitution is the supreme law of the land, and all governmental actions must comply with it. If a law or action contradicts the constitution, it is deemed unconstitutional and nullified.

b. **Separation of Powers:**

The doctrine of separation of powers plays a pivotal role in judicial review. It necessitates an independent judiciary that can impartially assess the actions of the executive and legislative branches. This ensures a system of checks and balances and prevents the concentration of power in any one branch of government.

c. **Judicial Independence:**

To ensure the effectiveness of judicial review, courts must be independent of external influences and pressures. This independence safeguards the integrity of the judiciary and its ability to render impartial decisions, free from political interference.

d. **Stare Decisis:**

The principle of stare decisis, or precedent, ensures that courts follow prior decisions when addressing similar legal issues, promoting consistency and predictability in the judicial system.

e. **Strict vs. Broad Constructionism:**

Different countries adopt varying approaches to judicial review, ranging from strict constructionism, where courts interpret the constitution narrowly and defer to the legislature, to broad constructionism, where courts actively interpret the constitution's principles and expand individual rights.

The Role of Courts in Upholding Democracy and Justice:

a. **Protecting Individual Rights:**

Courts act as guardians of individual rights, safeguarding them from potential infringements by the government or other entities. Through judicial review, courts can strike down laws and actions that violate constitutional rights such as freedom of speech, equality, privacy, and due process.

b. **Safeguarding the Rule of Law:**

Judicial review reinforces the principle that all government actions must adhere to established laws and constitutional principles. This ensures that public officials are held accountable for their actions and prevents abuses of power.

c. **Resolving Constitutional Conflicts:**

Courts play a vital role in resolving conflicts between different branches of government or conflicts arising from constitutional ambiguities. Their decisions help establish legal precedents that guide future interpretations of the law.

d. **Balancing Public Interest and Individual Rights:**

Courts face the delicate task of striking a balance between public interest and individual rights. They must ensure that the majority's interests are not allowed to trample upon the rights of minorities.

e. **Judicial Activism vs. Restraint:**

The extent to which courts engage in judicial review can vary between judicial activism and judicial restraint. Judicial activism involves the active interpretation and enforcement of constitutional principles, even if it means overruling legislative decisions. Judicial restraint, on the other hand, involves a more cautious approach, where courts defer to the legislature unless there is a clear constitutional violation.

Models of Judicial Review:

a. **American Model:**

The United States follows a strong form of judicial review, where courts can declare laws unconstitutional and strike them down, thereby nullifying their effect.

b. **European Model:**

Many European countries, like Germany and France, follow a more restrained form of judicial review, where courts can issue judgments on the constitutionality of laws but cannot invalidate them.

c. **Indian Model:**

India's judiciary has been an active participant in judicial review, with the power to declare laws unconstitutional. The Indian Supreme Court's interpretations of the constitution have significantly shaped the country's legal landscape.

d. **Diffused Model:**

Some countries adopt a diffused model of judicial review, where multiple courts have the authority to review laws' constitutionality, leading to a more decentralized approach.

Criticisms and Challenges:

a. **Democratic Legitimacy:**

Critics argue that unelected judges, who lack a direct democratic mandate, should not have the authority to overturn laws passed by elected representatives.

b. **Judicial Overreach:**

Some fear that an overly active judiciary may infringe upon the legislative and executive branches' domains, leading to an imbalance of powers.

c. **Political Polarization:**

Judicial decisions can sometimes become subject to political polarization, with different political factions viewing court rulings as biased and partisan.

d. **Lack of Enforcement:**

While courts may declare laws unconstitutional, their decisions are only effective if they are respected and enforced by other branches of government.

e. Delay and Backlog:

Judicial review can lead to delays in the resolution of legal disputes, especially in countries with significant court backlogs.

Significant Case Laws:

Here are some notable Indian case laws that have significantly contributed to the scope of judicial review and the role of courts in upholding justice and democracy:

1. *Kesavananda Bharati v. State of Kerala* (1973)¹:

As mentioned earlier, this landmark case in the Indian Supreme Court led to the formulation of the "Basic Structure Doctrine." The court held that while Parliament had the power to amend the constitution, it could not alter its basic structure, which includes features such as the supremacy of the constitution, the federal character of the state, and the separation of powers. This decision established a strong foundation for judicial review in India and protected the essential elements of the constitution from arbitrary amendments.

2. *Maneka Gandhi v. Union of India* (1978)²:

In this pivotal case, the Indian Supreme Court broadened the scope of Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The court held that the right to life includes the right to live with dignity, and any law that deprives a person of personal liberty must be just, fair, and reasonable. This decision expanded the protection of individual rights and emphasized the court's role as the guardian of fundamental rights.

3. *ADM Jabalpur v. Shivkant Shukla* (1976)³:

¹ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225; AIR 1973 SC 1461.

² *Maneka Gandhi v. Union of India*, 1978 AIR 597, 1978 SCR (2) 621.

³ *ADM Jabalpur vs Shivkant Shukla* [AIR 1976 SC 1207].

This infamous case, also known as the "Habeas Corpus Case," tested the limits of judicial review during the period of the emergency declared in India in 1975. The court, in a controversial decision, held that during the emergency, the right to life and liberty under Article 21 could be suspended and that individuals could not approach the courts for habeas corpus petitions. This case remains a stark reminder of the importance of an independent judiciary in safeguarding civil liberties and constitutional rights.

4. Vishaka v. State of Rajasthan (1997)⁴:

In this landmark case, the Indian Supreme Court addressed the issue of sexual harassment at the workplace and laid down guidelines to protect women's rights. The court recognized the right to a safe working environment as a fundamental right under Articles 14, 19, and 21 of the Indian Constitution. This decision played a crucial role in shaping the legal framework for preventing and addressing workplace harassment.

5. Navtej Singh Johar v. Union of India (2018)⁵:

In a historic judgment, the Indian Supreme Court struck down Section 377 of the Indian Penal Code, which criminalized consensual same-sex relationships. The court recognized the right to equality, privacy, and dignity for LGBTQ+ individuals, upholding their fundamental rights. This decision marked a significant step forward in protecting the rights of the LGBTQ+ community and promoting inclusivity and non-discrimination.

6. Indira Gandhi v. Raj Narain (1975)⁶:

In this case, the Indian Supreme Court asserted its authority to review and invalidate a prime minister's election in the event of corrupt practices. The court declared Indira Gandhi's election to be null and void due to electoral malpractices, setting a precedent for judicial review of electoral matters and emphasizing the importance of holding public officials accountable.

⁴ **Vishaka & Ors. v State of Rajasthan & Ors. (1997) 6 SCC 241.**

⁵ **Navtej Singh Johar & Ors v. Union of India thr, AIR 2018 SC 4321.**

⁶ **Indira Nehru Gandhi (Smt.) vs Raj Narain & Anr 1975 SCC (2) 159.**

7. *S.R. Bommai v. Union of India* (1994)⁷:

In this case, the Indian Supreme Court addressed the issue of the misuse of Article 356 of the Indian Constitution, which allows the President to impose President's Rule in a state. The court laid down guidelines for the exercise of this power, ensuring that it is used sparingly and only in exceptional circumstances. This decision reinforced the principle of federalism and the autonomy of state governments.

Conclusion:

In conclusion, the scope of judicial review is an indispensable component of modern democracies, ensuring that governmental actions conform to constitutional principles and protect individual rights. Courts play a pivotal role in upholding democracy, safeguarding the rule of law, and promoting justice. By serving as the guardians of individual rights, courts protect citizens from potential abuses of government power, thereby preserving the core principles of democracy.

Moreover, through the power of judicial review, courts act as mediators in resolving conflicts between different branches of government and clarifying ambiguities in the constitution. This judicial function strengthens the system of checks and balances, which is vital in preventing any one branch from becoming too dominant.

The principles governing judicial review, such as constitutional supremacy, separation of powers, judicial independence, and stare decisis, reinforce the integrity and credibility of the judiciary. By adhering to these principles, courts ensure consistency, predictability, and fairness in their decisions, which fosters public trust in the judicial system.

⁷ *S. R. Bommai v. Union of India* (1994) 2 SCR 644.

The scope of judicial review is vast and essential in modern democratic systems. Courts play a vital role in upholding justice, preserving the rule of law, and protecting individual rights. The principle of constitutional supremacy ensures that no government action goes unchecked, and the doctrine of separation of powers prevents the concentration of authority in any single branch of government.

To strike a balance between public interest and individual rights, courts must exercise judicial review judiciously, taking into account the broader implications of their decisions on society as a whole. By adhering to the principles of judicial independence, stare decisis, and due process, courts can instill public confidence and maintain the credibility of the judiciary.

While criticisms and challenges exist, judicial review remains a cornerstone of democracy, promoting fairness, equality, and justice for all citizens. By upholding the principles of judicial review and fulfilling their vital role, courts continue to contribute to the progress and prosperity of nations worldwide. The scope of judicial review and the role of courts are likely to evolve as societies face new challenges and advancements, but the foundational principles of justice and democracy will remain at the core of their function.

Thank you