



LIMITS ON STATE ACTION: AN INDIAN PERSPECTIVE

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ABSTRACT

The Indian Constitution under Part III provides Fundamental Rights such as the equality before law, freedom of speech and expression, movement, association, rights to life and liberty, which are all designated to create a zone beyond which the state will not be allowed to encroach upon.

Fundamental Rights set limits for the state, and the government must function within those limits. Article 12 of the Constitution of India establishes the requirement for State Action. If a state act, legislative or executive, is in violation of a basic right, it is considered null and void. The nullity of such an act is based on the clear provision of Article 13 rather than on judicial pronouncement. The Article highlights the limits on State Action, as the governing power, regardless of where it is exercised, must adhere to the fundamental Constitutional constraints.

The Article further explores the State Action Doctrine under different Constitution and its comparison with India. It also emphasizes the constitutional safeguards and Judicial Exposition to limit state action.

KEYWORDS- State Action, Fundamental Rights, Arbitrariness, Judicial Review, Constitutional Safeguards.

I. INTRODUCTION

No authority is absolute; it is limited by the checks built into the law. As a result, whenever the government exercises any power, it must consider whether it will have a negative impact on the people, and if so, to what amount. Every claim of a violation of a basic right raises the theoretical question of whether the alleged perpetrator qualifies as a state under Article 12 of the Constitution. This Article shall also explore Article 14 of the Constitution of India which strikes at arbitrariness in State action and ensures fairness and equality of treatment. Wherever there is arbitrariness in State activity, whether by the legislative, the executive, or authority as defined in Article 12, then Article 14 instantly springs into action and overturns it. Wherever the governing power is located, it must adhere to the fundamental Constitutional constraints.

Further, in *Kesavananda Bharati*¹ case the Supreme Court (SC) by majority of 7 Judges against 6 held that Parliament did not have within its constituent power the power to destroy the “*basic structure*” of the Constitution. Parliament has the power to change the Constitution in any way it sees fit, as long as the core framework of the Constitution is not destroyed or tampered with. India's parliament is neither sovereign nor supreme. The powers of the other institutions, the integration of a code of justiciable Fundamental Rights, the distribution of legislative powers between the

¹ Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1451.



Union and the States, the general provision for judicial review, and an independent judiciary all limit Parliament's authority.

The American SC has broadened the definition of State action as far as feasible in order to provide suitable protection to individuals against all sorts of arbitrary government action. The 14th Amendment restriction has been ruled to apply to any State action, legislative, executive, or judicial, as well as any agency exercising any of these functions. The Limits on State Actions will be examined in depth in this Article. Any effort by the state to restrict a basic right, whether directly or indirectly, is unlawful unless specifically authorised by the Constitution.

II. THE CONCEPT OF STATE IN INDIA

The majority of Fundamental Rights (FRs) are asserted against the state and its agencies and instrumentalities. They are intended to protect people from the state, not from private individuals. The ordinary law of the land recognises and protects private action. The SC ruled in one of its early cases: “Article 19's language and structure, as well as its placement in Part III of the Constitution, clearly show that the Article was intended to protect those freedoms from state action other than when the government is exercising its legal authority to regulate private rights in the public interest. Individual violations of property rights are not covered by the Article”² and the CJ Patanjali Sastri said, “The entire purpose of Part III of the Constitution is to protect the

liberties and rights enumerated therein from arbitrary state invasion”.³

As a result, a definition of state was required, and “Article 12 of the Constitution states that the state refers to the Government and Parliament of India, as well as the governments and legislatures of each of the states, as well as all local and other authorities within India's territory or under the Government of India's control”⁴. The state can violate FRs both directly and indirectly; in the former, its officials or agencies violate them, in the latter, it can allow others to infringe them, either by inaction or deliberate connivance. The second offence could be just as harmful as the first. In such instances, the state cannot absolve itself of its responsibility or liability for the preservation of basic rights by claiming that the actions are those of private individuals rather than the state. As a result, in numerous situations, the courts have granted relief to the petitioner without considering whether the state was the one who had violated the petitioner's FRs. The conduct of any of the bodies that fall under the concept of a state under Article 12 might be challenged in court for infringing FRs.

The interpretation of the term “other authorities” in Article 12 has been fraught with difficulty, and judicial opinion has shifted over time. The first case dealing with the scope of Article 12 is *University of Madras v. Shantha Bai*⁵. “In construing the wording of Article 12, the High Court of Madras gave a restrictive meaning to the terms other authority, opining that these words must be construed ejusdem generis

² P.D. Shamdasani v. Central Bank of India, AIR 1952 SC 59

³ State of W.B v. Subodh Gopal Bose, AIR 1954SC 92

⁴ INDIA CONST. art 12

⁵ AIR 1954 Mad. 67.



*with Government or Legislature, and can only mean authorities exercising governmental powers if so construed. They would not include natural or juristic persons who could not be considered government instrumentalities”.*⁶

In the case of *Ajay Hasia v. Khalid Mujib*⁷, the SC established a six-stage test for determining whether an entity falls within the scope of Article 12. But later in the case of *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*⁸, the judicial exposition on Article 12 was decisively settled. The final test in evaluating whether a body is an instrumentality of the state is whether it is functionally, financially, and administratively under the State's deep and pervasive control, according to the 7-judge bench.⁹ The government's regulatory supervision alone will not be sufficient to meet the obligations of Article 12.

Later, In *Naresh v. State of Maharashtra*¹⁰, the SC of India considered whether or not the judiciary was included in Article 12's concept of the state. It was determined that a writ under Article 32 cannot be issued by a High Court of competent jurisdiction against its judicial orders, even if the Court is the State, because such orders cannot be claimed to infringe FRs.¹¹ In the case of *A.R. Antulay v. R.S. Nayak*¹², it was held by the court that it could not adopt an order or issue a directive that would violate people's FRs. As a result,

the term "state" in Article 12 might also refer to the judiciary.

III. STATE ACTION DOCTRINE UNDER UNITED STATES (U.S) & UNITED KINGDOM (U.K) & COMPARISON WITH INDIA

U.S and the State Action Doctrine

Individual rights and liberties are protected by the U.S Constitution from government acts. The 13th Amendment to the Constitution of U.S outlaws slavery and can be used to punish both government and private actions. With the exception of the 13th Amendment, all other assurances can only be enforced against state action. In any civil action looking justice based on Constitutional guarantees, the claimant must show that the unconstitutional behaviour was committed by the government. Because the Constitution only relates to state action, if the conduct is not that of the state, however awful it may be, it cannot be held illegal.¹³ The 14th and 15th Amendment were enacted shortly after the 13th Amendment to safeguard Negroes who were newly liberated from additional forms of tyranny by the states.¹⁴

The concept of 'State action' evolved in the US as a result of the word 'State' appearing in Section 1 of the 14th Amendment to the US Constitution, as follows: *“No state may enact or enforce legislation that restricts the*

⁶ Hina Doon, *“The Doctrine of State Action - Politics of Law Making - A Comparison of US & Indian Constitutional Law”*, Nalsar Student Law Review, 16 (2019)

⁷ AIR 1981 SC 487

⁸ *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111

⁹ *Supra* Note 6

¹⁰ *Naresh v. State of Maharashtra*, AIR 1967 SC 1

¹¹ Dr. J.N. Pandey, *Constitutional Law of India*, 75, Central Law Agency, (2019)

¹² *A.R. Antulay v. R.S. Nayak*, AIR 1988 SC 1531

¹³ Henry C. Strickland, *“The State Action Doctrine and the Rehnquist Court”*, 18 *Hastings Const.al Law Quarterly* 587, 592-593 (1991).

¹⁴ Robert L. Hale, *“Rights Under the Fourteenth and Fifteenth Amendments Against Injuries Inflicted by Private Individuals”*, 6 *Law. Guild Rev.* 627 (1946).



privileges or immunities of US citizens; no state may deprive any person of life, liberty, or property without due process of law; and no state may deny equal protection of the laws to any person within its jurisdiction".¹⁵ The exclusion in the 14th Amendment encompasses to any State action, executive, legislative or judicial and against any agency exercising any of these controls of the State. The U.S SC accepted the doctrine of state action in dicta in *US v Cruikshank*¹⁶, stating that the 14th Amendment only bars state action, not the private citizen activity. The provision, according to the court, contains nothing regarding a person's right to sue another citizen. In the U.S., the SC increasingly broadened the state action scope by bringing many private actions under its purview. In *Shelley v Kraemer*¹⁷, the SC further broadened the reach of the state action theory. The legality and enforceability of private agreements excluding people of the "Negro or Asian" races from occupying real estate were questioned in this case. The SC ruled that it was a governmental action of enforcing racially discriminatory restraining covenants and hence illegal.

In *Burton v Wilmington Parking Authority*¹⁸ case, a restaurant that was under the physical and financial jurisdiction of the government rejected to offer food or drink to a person as he was stated to be a "Negro". The Court

determined that it was a state-sanctioned discrimination. In certain other decisions, however, the Court's perspective was still limited. A racially deterring private club declined to accommodate an Afro-American guest in the case of the *Moose Lodge v Irvis*.¹⁹ The court determined that the action was solely a private citizen's action. Even if the authority had awarded the private club a liquor licence, the court held that the private club's discriminating behaviour did not qualify as a state action under the 14th Amendment. Thus, the "state action" doctrine is a legal response to the idea that most constitutionally given individual liberties are only safeguarded against government encroachment.²⁰

U.K and the State Action Doctrine

The state action doctrine's intricacy is a result of the specific duty that the courts have given it: defining the limits between governmental accountability and private initiative.²¹ The U.K- Human Rights Act of 1998 was passed in order to hold government officials more accountable and to provide effective remedies for human rights violations in U.K courts. Section 6 of the Act prohibits public authorities from acting in violation of the FRs and freedoms guaranteed by the European Convention on Human Rights. ²² Individuals in the UK could use Section 7 to seek judicial

¹⁵ U.S. Constitutional, Amendment XIV, S. 1.

¹⁶ *US v Cruikshank*, 92 U.S. 542 (1876)., *University of Madras v Shantha Bai and Anr* (AIR 1954 Mad 67).

¹⁷ *Shelley v Kraemer*, 334 U.S. 1 (1948).

¹⁸ *Burton v Wilmington Parking Authority*, 365 U.S. 715 (1961).

¹⁹ *Moose Lodge v Irvis*, 407 U.S. 163 (1972).

²⁰ David M. Skover, "The Washington Constitutional "State Action" Doctrine: A Fundamental Right to State

Action", *University of Puget Sound Law Review*, 225 (1985)

²¹ Christopher W. Schmidt, "On Doctrinal Confusion: The Case of the State Action Doctrine", 598, *Brigham Young University Law Review*, (2016). <https://digitalcommons.law.byu.edu/lawreview/vol2016/iss2/7/>

²² UK -Public Authority under the Human Rights Act, 1998, <https://publications.parliament.uk/pa/jt200304/jtselect/jtrights/39/3904.htm> (last visited Dec 10th 2021)



redress for violations of their FRs and freedoms. “Section 6 defined two types of public authorities that must comply with Convention rights: pure public authorities (such as government departments, local governments, or the police) and functional or hybrid public authorities that carry out public functions”.²³

The state cannot abdicate its responsibility to defend one's human rights in the U.K by outsourcing key public tasks to private entities or persons. Furthermore, the expanded definition of “public power” has imposed an affirmative duty on the government to preserve citizens' FRs by adopting proactive measures. And it should be done without regard for race or ethnicity.

Comparative Analysis

To compare, in India, if a law is incompatible with a FRs, the law is void. Not so in Britain. The “Human Rights Act” does not give judges the authority to overturn legislation that violates the rights guaranteed by the Convention. The statute is not rendered void by a judicial declaration of incompatibility. In fact, such a declaration has no bearing on the law's legitimacy. The incompatibility may be removed by the Minister with the approval of Parliament. If the Minister does not seek to remove the incompatibility, the law in question continues to exist. This means that Parliament is free, if it so chooses, to enact and maintain in force legislation that is incompatible with the convention rights.

²³

<https://publications.parliament.uk/pa/jt200304/jtselect/jtrights/39/3904.htm> (last visited Dec 10th 2021)

²⁴ MP Jain, Indian Constitutional Law, 877, LexisNexis (2018)

Not so in India where a void law is regarded as non-est.²⁴

Further, The American Congress, like the Indian Parliament, cannot pass legislation that violates the Bill of Rights, the power distribution scheme, or other Constitutional provisions. Because the written Constitution is supreme, any law passed by Congress must be in accordance with its provisions in order to be valid. If this is not the case, the courts will step in and declare the law unconstitutional and void. In practise, however, courts in India or the US would only rarely declare a statutory provision unconstitutional. Thus, to conclude, Constitution only relates to state action, if the conduct is not that of the state, however awful it may be, it cannot be held illegal.

IV. LIMITS ON STATE ACTION IN INDIA

State power objectively and indisputably requires constraints; otherwise, it risks devolving into an uncontrollable phenomenon that loses sight of its primary goal which is to serve the interests of individuals and society.²⁵ The powers and functions of various government agencies have been sufficiently delineated in the Indian Constitutional structure. Articles 245 and 246 of the Indian Constitution provide legislative powers on the Union Legislature (Parliament) and state legislatures. No organ of government has the authority to exercise any power or jurisdiction that the Constitution does not provide it.

²⁵ Galina S. Belyaeva, et.al, “Basic Ideas of State Power Limitation in Political and Legal Doctrine”, 10, Journal of Politics and Law, 197 (2017)



Article 245(1) expressly states that Parliament's legislative power is "*subject to the provisions of the Constitution*" The fundamental law contains numerous norms and regulations that Parliament must follow when conducting its business. For example, there are limitations on the issues on which Parliament can legislate, and any law passed outside of those bounds is unconstitutional; similarly, the people of India are given FRs, and any law passed in violation of those rights is illegal. Delegation of legislative power by Parliament is only legal up to a certain point; Constitutional laws ensuring freedom of trade and commerce also impose some limitations on parliamentary legislative power.

The Indian Constitution is the supreme law of the land. It guarantees India's people justice, liberty, and equality. For this, the Constitution embodies the fundamental concept of "*limited government*" and establishes the structure, procedures, powers, and responsibilities of government institutions, as well as FRs, directive principles, and citizen responsibilities. The entire Constitutional framework forbids the three branches of government, namely the legislative, executive, and judiciary, from acting against the spirit of the Indian Constitution. The Indian Constitution forbids the government from interfering with people's FRs. The government cannot behave unreasonably, arbitrarily, or unfairly. The government cannot put unjustifiable limits on a person's FRs. The State must follow a just, fair, and reasonable procedure in order to restrict someone's right to life and liberty.²⁶

²⁶ Maneka Gandhi v Union of India AIR 1978 SC 597

²⁷ MP Jain, Indian Constitutional Law, 878, LexisNexis (2018)

V. CONSTITUTIONAL SAFEGUARDS AGAINST STATE ACTION

Fundamental Rights (FRs): A guarantee against State Action

The "*American model*" was followed by the framers of the Indian Constitution in recognising and providing essential rights for the Indian people. Not only does the Constitution protect FRs, but it also offers a quick and effective means of enforcing them. The Supremacy of FRs implies that a negative duty on the state has been imposed to refrain from infringing or violating those rights. For the people of India, a Bill of Rights is stated to be contained in "*Part III of the Constitution*". In the Indian Bill of Rights, the remedy for the enforcement of basic rights is itself designated as a FRs, and it is incorporated in the very chapter on FRs.²⁷ If a state act, legislative or executive, is in violation of a basic right, it is considered null and void. The nullity of such an act is based on the clear provision of Art. 13 rather than on judicial pronouncement.

The Constitution's provisions restrict not only the Legislature, but also the Executive and all administrative powers, and any executive or administrative action that violates the Constitution's provisions shall be deemed void. In fact, if there is a mechanism for its enforcement, such as judicial review, a written Constitution acts as a constraint on all Constitutional powers.²⁸ The Constitution established FRs and stated that any law passed in violation of them would be void to the degree of the discrepancy. This is nothing

²⁸

https://rajyasabha.nic.in/rsnew/practice_procedure/naccount.asp (last visited Dec 10th 2021).



more than a limitation on the Legislature from enacting legislation that violates a fundamental law, much like Art. 246 prevents a State Legislature from enacting legislation on a subject listed in List I of the Legislative Lists.

As was observed by Shastri J. in *Gopalan v. State of Madras*²⁹ “...the inclusion of a declaration of FRs at the top of the Constitution, along with an express prohibition against legislative interference with these rights (Article 13) and a Constitutional sanction for enforcing such prohibition through judicial review (Article 32), sends a clear and emphatic message that these rights are to take precedence over ordinary state-made laws.”

A unique feature of the Indian Constitutions FRs is that not only the rights themselves, but also the Constitutional remedy of petitioning the SC for their enforcement is guaranteed as a FRs (Article 32), as a result of which this remedy and the judicial review power conferred upon the SC in this regard cannot be taken away by legislation or anything other than a Constitutional Amendment. It is a substantive right to the aggrieved individual, hence any law that makes the use of the SC's powers under Article 32 illusory is unlawful, unless the Constitution expressly shields a statute from appeal on the basis of FRs violations, such as Art. 31(5), 31A-31C. The SC is obligated to preserve basic rights

because the remedy under Art. 32 is guaranteed by the Const. to perform the role of a sentinel on the qui vive.³⁰

Article 14 and Arbitrariness vis-à-vis Legislative Action

Article 14 is reflected in the Preamble to our Constitution, which includes the phrase "Equality of Status and Opportunity" in the relevant section. It is a cross between two separate species of equality, namely:

“(a) Equality before law – (concept borrowed from the UK Const.).

(b) Equal protection of law – (concept borrowed from 14th Amend. to the US Const.)”.

In the well-known case of *Maneka Gandhi v. Union of India*³¹, the SC concluded that the trinity of three Articles, namely Articles 14, 19, and 21, mutually cultivate each other. The Court linked Article 19's idea of reasonableness to Article 14's principle of non-arbitrariness and Article 21's substantive due process.³²

J. Bhagwati originally proposed the concept of arbitrary action as a violation of Article 14 in the case of *E.P. Royappa v State of Tamil Nadu*³³, where he claimed that “equality is antithetic to arbitrariness”. As a result, everything that is arbitrary, illogical, or in violation of natural justice principles is void

²⁹ *Gopalan v. State of Madras*, 1950, S.C.R. 76 (204-5).

³⁰ Where is the sentinel guarding our rights? The Hindu, <https://www.thehindu.com/opinion/oped/where-is-the-sentinel-guarding-our-rights/article32709603.ece> (last visited Dec 10th 2021).

³¹ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

³² Siddharth R. Gupta and Kerti Sharma, “Article 14 and Arbitrariness vis-à-vis Legislative Action”, [scconline.com](https://www.scconline.com), <https://www.scconline.com/blog/post/2021/10/11/article-14-and-arbitrariness-vis-a-vis-legislative-action/> (last visited Dec 12th 2021)

³³ *E.P. Royappa v State of Tamil Nadu*, 1974 SCR (2) 348



under Article 14 read with Article 13(2) of the Constitution.³⁴

Following that, in *Ajay Hasia v. Khalid Mujib Sehravardi*³⁵, the SC's Const.al Bench declared that the principle of reasonableness and non-arbitrariness applied even to legislative activities. The Court, ruling through *Bhagwati, J.*, stated in para 16: “Wherever there is arbitrariness in State action, whether by the legislature, the executive, or an authority under Article 12, Article 14 comes in and overturns it. The principle of reasonableness and non-arbitrariness, in fact, pervades the entire Constitutional framework and is a golden thread that runs through the Const. fabric”.³⁶

Thus, Articles 14 and 16 of India's Constitution provide that state action must be founded on valid relevant principles that apply equally to all similarly situated people, and that it must not be influenced by extraneous or irrelevant reasons, since this would be a violation of equality. It would constitute to mala fide exercise of authority if the functional reason for State action, as opposed to motivation eliciting, is not valid and significant but “*extraneous and outside*” the field of authorised considerations, as defined by Articles 14 and 16 of the Const.

When State can abridge FRs?

Though FRs are vital to every individual's survival as a human being, they are not unqualified rights; Certain limitations are imposed in their application. As a result, the Indian Constitution allows for the restriction of these rights in certain situations.

According to Article 358 of the Indian Constitution, when the President declares a state of emergency under Article 352 (National emergency due to war, external attack, or armed rebellion), all of the freedoms guaranteed in Art. 19 are automatically suspended, and the suspension lasts for the duration of the emergency. Within that time period, any executive action or law taken by the government may not be challenged in court on the basis that it violates Article 19 of the Constitution. To the extent permissible in Part III, Parliament can abridge or restrict FRs by law of Amendment or ordinary law.

The freedoms of speech and expression, as well as the right to protest, have Constitutional limits that must not be exceeded. The FRs to free speech and expression is guaranteed by Article 19 (1) of the Indian Constitution, as well as the right to assemble and form associations. As a result, Article 19(1) is limited by Article 19(2) of the Const., which permits the state to place reasonable limitations on all of Article 19(1)'s freedoms, including the right to protest. The grounds for imposing such limitations are primarily to ensure that such individual liberties do not hurt others. India's sovereignty and integrity, the state's security, friendly ties with other countries, public order, decency or morality, or, in circumstances of contempt of court, defamation are among these grounds. These

³⁴ https://www.cusb.ac.in/images/cusb-files/2020/el/law/w2/Doctrine%20of%20Proportionality_VI%20Sem.pdf

³⁵ *Ajay Hasia v. Khalid Mujib Sehravardi*, AIR 1981 SC 487

³⁶ *Id.* Para 16



limitations are just representations of preventing injury to others in some way.³⁷

VI. JUDICIAL EXPOSITION

In reality, no right can be called basic if it can be overridden by the Legislature, and if there is no jurisdiction under the Constitution to declare a statute illegal if it directly or indirectly contravenes or breaches that right. The judiciary is in charge in both the US and India.

When the government is deemed to be abdicating its Constitutional commitments, the courts in India have broadened the scope of the State Action concept.

In the words of *Bhagwati J.*:

*“Because establishing socio-economic justice is a deliberate goal of State policy, the regularity with which ordinary persons come into direct touch with State power-holders has increased dramatically and inexorably. As a result, it is vital to structure and limit the executive government's power so that it is not applied or exercised arbitrarily.”*³⁸ In *I.R. Coelho v. State of Tamil Nadu*³⁹, SC 9-judge bench ruled that the rights were not limited, but rather served as a complete check on the government's abuses and excesses. The Apex Court has enlarged the scope of FRs in the case of *Menka Gandhi v. Union of India*.⁴⁰

Judicial Doctrines & Limits on State Action

In India, the “*doctrine of proportionality*” is a theory with significant practical and societal implications. The court will use this principle to ensure that the legislature and administrative authority strike a proper balance between the negative effects that legislation or administrative orders may have on people’s rights, liberties, and interests, while keeping in mind the purpose for which they were created.⁴¹

Further, the “*doctrine of legitimate expectation*” is a judicial innovation that grants locus standi to someone who, while lacking a legal right, has a reasonable expectation that the authority in question will act in a certain way. This idea is part of the ‘*Principle of Natural Justice*,’ and no one may be denied their right to anticipate something if the principle of natural justice is followed. Thus, this doctrine is used to prevent administrative authority from breaching people’s legitimate expectations and, on the other hand, to push administrative bodies to meet those expectations.⁴²

The “*doctrine of Basic Structure*” holds that any Amendment which alters the fundamental structure of the Constitution is unconstitutional. The theory was established in the famous case of “*Kesavananda Bharati*

³⁷ Raghav Pandey, Firstpost, <https://www.firstpost.com/india/freedoms-of-speech-and-expression-right-to-protest-have-Const.al-limits-that-mustnt-be-crossed-9292861.html> (last visited Dec 11th 2021).

³⁸ *RD Shetty v. International Airports Authority*, AIR 1979 SC 1628

³⁹ *I.R. Coelho v. State of Tamil Nadu*, AIR 2007 SC 861

⁴⁰ *Menka Gandhi v. Union of India*, AIR 1978 SC 597

⁴¹ https://www.cusb.ac.in/images/cusb-files/2020/el/law/w2/Doctrine%20of%20Proportionality_VI%20Sem.pdf (last visited Dec 10th 2021)

⁴² Vijay Kumar, *Doctrine of Legitimate Expectation: Critical Analysis*, Dehradun Law Review. <http://www.dehradunlawreview.com/wp-content/uploads/2020/06/10-Doctrine-of-legitimate-expectation-Critical-Analysis.pdf>



*v. Union of India*⁴³, in which the SC declared that the authority to alter the Constitution entrenched in it did not include the ability to amend the Constitutions most fundamental and important aspects. According to the majority opinion, the Constitution's basic framework includes rule of law, separation of powers, secularism, democracy, and supremacy of the Constitution, among other things. Furthermore, the Constitution's core principles of free and fair elections, judicial scrutiny, and restricted power of Amendment were recognised.⁴⁴ Thus, this doctrine limits the State Action.

Judicial Review: A constraints on state power

Judicial Review is a judicial power that allows the court to review legislative and executive acts and declare them ultra-vires the Constitution if they violate Constitutional provisions. Articles 13, 32, 226, 141, 142, and 144 of the Indian Constitution expressly allow for the authority of judicial review. "Article 13 (2) enables the high courts and the SC to declare any state law unconstitutional if it abridges the rights conferred by Part III of the Constitution", i.e. the FRs.⁴⁵ The right to petition the SC for the implementation of a FRs is guaranteed by Article 32⁴⁶, titled Right to Constitutional Remedy. Similarly, under Article 226 of the Constitution the high courts have been given the authority to issue remedies for the implementation of FRs.

Further, providing strength to Article 32 jurisprudence, the Court remarked in *Vineet Narain v. Union of India*⁴⁷ that because the executive's field overlaps with the legislatures, it is the executives responsibility to fill the void with executive orders. If the executive fails to act, for whatever reason, the judiciary must step in to fill the void, in accordance with its Constitutional obligations under the aforementioned provisions, to provide a solution until the legislature acts to fulfil its role by enacting appropriate legislation to cover the field. As a result, to ensure fairness in legislative and executive activities, Judicial Review has evolved, to defend people's Constitutionally granted FRs, and to decide on matters of legislative competence between the States and the Centre.

VII. CONCLUSION

The Constitution gives and takes away power from government actors, who must each work within their own decision-making framework. None of them may exceed the authority granted by the Constitution to his institution, and they are all subject to the unique accountability procedures that define the branch of government they serve. Further, basic rights can only be enforced against the government. An individual's FRs cannot be enforced against a private individual. Whereas, in today's world, privatisation and globalisation are unavoidable, and have resulted in an unlimited number of private organisations or corporations performing important public functions. The necessity to subject power centres to constitutional

⁴³ *Supra* Note 1

⁴⁴ Mahendra Pal Singh, VN Shukla's Const. of India, 1084, EBC Reader, (13th ed. 2017).

⁴⁵ INDIA CONST. art. 13 (2)

⁴⁶ INDIA CONST. art. 32

⁴⁷ *Vineet Narain v. Union of India*, (1998) 1 SCC 226 at 266-267 para 53.



control necessitates a broadening of the definition of state action.

The judiciary has a responsibility to ensure that the Constitutional provisions are not infringed by any government body. Because of this role, the judiciary is referred to as the guardian of the Constitution, and it has the authority to declare an act of the legislature or an administrative action that is in violation of the Constitution to be illegal. The SC has been tasked with acting as a "*sentinel on the qui vive*". The right to seek redress from the Court is a basic right in and of itself, and the Court cannot abdicate its responsibility in this regard.

Thus, to conclude, State authority, without a doubt, necessitates restrictions; otherwise, it risks devolving into an uncontrollable phenomenon that loses sight of its basic aim, namely, serving the interests of individuals and society. If FRs do not exist, the government may revert to dictatorship or tyranny, affecting public policy and rendering democracy's fundamental foundation null and void. As a result, FRs create restrictions for the state, which the government must adhere to.
