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Judicial Review of Administrative Action: Checking the Despotism of an Oligarchy

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ABSTRACT

Administrative agencies act as quasi-judicial authorities to adjudicate upon legal issues. Informal rulemaking and adjudication by administrative agencies is often perceived as a design to ensure speedy disposal of disputes. Difference in opinions of jurists regarding the scope and existence of administrative law paved the way for judicial control over administrative actions. Judicial review of administrative actions could presumably be perceived as a watchdog scheme against arbitrary acts of administrative agencies. Arbitrary procedure in discharging administrative functions remained unaddressed for decades under the British regime since they focused more on executive rather than judicial independence. To secure 'Rule of Law' it is vital that the state or its officials are expected to carry their administrative duties in conformity with Constitutional mandates. Blurred lines of arbitrary laws must be declared unconstitutional to safeguard egalitarian social order. Administrative authorities must be held accountable to impose arbitrary laws. The written Indian constitution incorporates essential principles of governance that are prevalent in many common law countries around the globe. Public interest is upheld by judicial review since basic structure of Indian Constitution extends protection to the development of judiciary (i.e. judge made laws) in a welfare state. By introducing transparency in adjudicating disputes between the parties administrative authorities are made accountable to general public. The scrutiny of judge made laws reveals the nature of governance established in a state. Therefore, judge made laws are nothing but a counter measure available against absolute power exercised by small group of people having majority in a state. In this paper, delegated legislation and examination of judicial review of administrative actions will be evaluated for uniformity.

I. INTRODUCTION

In India, administrative procedures are hosted by complex legal rules. Administrative laws are perceived as enforcing statutory obligations on government bodies. Administrative law is derived from judge made laws and statutes designed to facilitate working of commissions, institutions, and departments.² The most importance reason of implementing administrative

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² Public administration integrally roots itself in States running on some or the other form of mechanism installed

procedures include (a) dedicated response mechanism; (b) preparedness to address complex issues; and (c) comprehensive solution to legal issues by administrative departments. Response mechanism plays a significant role in identifying liabilities of administrative authorities. To address complex issues administrative authorities are empowered to make rules and regulations. Administrative agencies act as quasi-judicial authorities to adjudicate upon legal issues faced by citizens. Hence, administrative law is a tool that ensures welfare of public. Over the years, administrative law has successfully defined the subject matter of core legal principles that affects relationship of citizens with government.³ Difference in opinions of jurists regarding the scope and existence of administrative law paved the way for judicial control over administrative actions. In essence, administrative law is the result of judicial review of administrative actions. Judicial interpretation of constitutional law led the foundation of tribunals to legislate upon disputes. In India, delegation of power to administrative agencies has opened a flood gate of differences between legislative, executive and judiciary. Informal rulemaking and adjudication by administrative agencies is often perceived as a design to ensure speedy disposal of disputes. Due to the lack of uniformity in administrative procedures administrative laws are criticized at large by many jurists and scholars. Administrative agencies failure to perform the task of adjudicating, reviewing and rule-making has become a threat to transparency, consistency and predictability.⁴ In any event, delegations approved by Union and State could easily be stipulated through correct understanding of administrative process. In reality, the legality of such process could only be controlled and checked through judicial review of administrative actions. In this paper, delegated legislation and examination of judicial review of administrative actions will be evaluated for uniformity.

A person who encounters routine issues in his respective occupations and professions seeks answers in administrative machinery. Imagine citizen's emblazonment in case he frequently encounters evil of administrative agencies without judicial review of agency's actions. In contrast, powers delegated to this branch by statutes helps thousands to gain benefit from

by Government Systems. Since law is applied by the Executive branch of the Government, public laws acquired individual attention and created separate areas of rights enjoyed by Citizens of State.

³ Vast powers enjoyed by Administrative agencies under The National Security Act, 1980, put citizens in an unsecure position. Recent Covid-19 instances have articulated philosophy of 'self-help'. Restricting 'freedom of movement' by imposing Penal provisions frustrated thousands of workers, who ended up blaming Administrative agencies for their failure to benefit from Essential Commodities Act, 1955.

⁴ Provisions form The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 specifically addressed issues with black marketing of essential drugs including shortage of oxygen containers used in treatment of patients. The situations exposed concerns over welfare of the people. Threatening the internal health care system of India the pandemic posted problems without legitimate solutions. In any event, Ministry of Health and Family Welfare, (MoHFW) Government of India by resolving problems regarding Covid-19 including dispensing Covid-19 vaccination to registered and unregistered citizens successfully ingrained one of the most difficult tasks of posed by the pandemic.

various social-welfare schemes. Conscious efforts were made by Indian Constituent Assembly to incorporate essential principles from Irish Constitution in the Directive Principles of State Policy. According to Indian Constituent Assembly economic democracy would be rendered useless, unless political democracy is achieved. For instance, State⁵ role is no longer limited to provide defense from external aggressions. States' municipal laws have evolved from a *laissez faire* era to achieve socio-economic stability that could secure welfare of the people through the concept of 'The Welfare State'.⁶ Concept of 'The Welfare State' is strengthened by dedicated articles in Constitution's Directive Principles securing well-being of citizens in India.⁷ The Directive Principles thrusts duty on State to achieve the goal of welfare of its people by restraining governance powers of those who fails to secure concepts of justice, liberty, equality and fraternity. To remain in power Government is expected to be socially, economically and politically righteous. It is now settled law that there exists a difference between Fundamental Rights and The Directive Principles.⁸

The ideology behind introducing concept of 'Social Welfare State' through Directive Principle was explained by the head of Constituent Assembly, *namely*, Dr. B. R. Ambedkar. He was of the opinion that the following terms and conditions must be complied to safeguard public interest:

- a) Securing social-order;
- b) Adequate means of livelihood;
- c) Regulating ownership and control of material resources;
- d) Avoid concentration of wealth;
- e) Securing means of production;
- f) Equal pay for equal work;
- g) Free and compulsory education to children
- h) Restraints on those who come in power;
- i) Accountability of officials in power

⁵ The term 'State' is defined in Article 12 of the Constitution of India in the following terms:

Article 12 elucidate that 'State' includes:

- i. The Government and Parliament of India;
- ii. The Government and the Legislature of a State;
- iii. All local authorities; and
- iv. Other authorities within the territorial jurisdiction of India, or under the control of the Central Government.

⁶ *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, AIR 1996 SC 2426 : (1996) 4 SCC 37 : 1996 (4) SCALE 282.

⁷ Article 36 to 51, the Constitution of India.

⁸ According to Article 13(2), the State 'shall not make any law' contradictory to Fundamental Rights conferred by Part III of the Indian Constitution.

The Constituent Assembly impressed on the State to include in policy making its primary duty of securing welfare of citizens.⁹ Article 37 created restraints on arbitrary use of power by State authorities since a 'check and balance' system was installed by making them accountable before the electorate. The educational purpose implemented by this arrangement is to respect principles of welfare state that is fundamental in the governance of a nation.

Historical Concepts

India's journey to establish principles of federalism and constitutionalism transformed government policies to ensure egalitarian order in society. Indian Constitution in its preamble secures social, economic and political justice. Article 38 of the Indian Constitution successfully promoted social, political and economic justice through institutions of national life. In effect, Article 30 of The Draft Constitution of India, 1948 was given due respect when it was accepted in its entirety by the framers of Indian Constitution.¹⁰ It is a known fact that for a long duration of approximately 200 years India remained a British Constituency. It was on January 26, 1950 that the Constitution of India formally installed the principle of sovereignty in the territorial jurisdiction of India. Before the Indian Constitution came into existence, the Government of India Act, 1935 empowered 'Governor' with limited executive authority to manage ministerial affairs. British Parliamentary system that prevailed in India still has an impact on substantive law making. Arbitrary procedure in discharging administrative functions remained unaddressed for decades under the British regime since they focused more on executive rather than judicial independence. In any event, The Government of India Act, 1935 made successful attempts to amend Government from unitary system into federal system of Government.¹¹ A Constituent Assembly was set-up to draft Indian Constitution. A political deadlock between the Indian National Congress and the Muslim League exposed people to various atrocities. Lack of understanding between the two parties resulted into the Indian Independence Act. The Constituent Assembly faced challenges of partition and adopted the Constitution of India on November 26, 1949. Since then the State is obligated to provide adequate means of livelihood

⁹ Article 37: Application of the principles contained in this Part:

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

¹⁰ Article 30 of the The Draft Constitution of India, 1948 states the following:

"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life." Thus, Article 38 promoted The Constitution of India, 1950 to implement Directive Principles of State Policy (DPSPs) explicitly. The Constituent Assembly imposed on State the concept of 'socialist democracy'.

¹¹ KEITH, Constitutional History of India 331-357 (1937)) available at

to the citizen.¹²

The Tools in particular appointed to most specialized agencies includes adjudication, investigation, budgets, management procedure, legally binding rules and regulation. Judicial Review of administrative actions thus becomes contemporary subject matter. The jurisprudential aspect to administrative law attracts interest of many philosophers, jurists, historians, socialists and economists for research. The Supreme Court has also reiterated interactions between of 'rule of law' and ambit of judicial review of administrative actions. The Apex Court in *State of Bihar v. Subhash Singh*,¹³ a case that posed non-compliance of High Court's order by executive authorities elaborated the scope of judicial review of administrative action. The High Court instructed an executive officer to adjudicate petitioner's writ petition within two months. A reasoned decision is what was expected under the circumstances from executive officers by the High Court.¹⁴ Nonetheless, the concerned officer ignored the directions issued by the High Court. The High Court imposed personal cost on concerned officer for non-compliance of its order. The Apex Court was referred to give correct interpretation on judicial review of administrative actions. Accordingly, the Apex Court held that administrative actions by Head of the Department or designated officers are accountable to court of law. The Court also emphasized on objectiveness and truthfulness of agencies actions for adjudicating matters expeditiously. The Court stated that to secure 'Rule of Law' it is vital that the state or its officials are expected to carry their administrative duties in conformity with Constitutional mandates. Failure of administration to explain unavoidable delay of 17 months in complying with High Court's order amounted to violation of (procedural) due process. The Apex Court established that High Courts must be cautious in imposing personal costs on administrative officials without giving them an opportunity to explain the alleged contempt of court. Hence, issuing show-cause notices is what is required under such circumstance. Through this case, it was not just the administrative authorities but High Court too was refrained from acting in an arbitrary manner regarding personal costs without taking into account the facts and circumstances of the case.¹⁵

¹² Article 39, Constitution of India 1950.

¹³ AIR 1997 SC 2763 : (2001) 7 SCC 549.

¹⁴ Under Article 227 of the Constitution of India every High Court enjoys superintendence power within its territorial jurisdiction. In *Waryam Singh v. Amarnath*, AIR 1954 SC 215 the above mentioned superintendence power of High Court within their territorial jurisdiction was traced back to Section 107 of the Government of India Act, 1917. Section 107 of the Government of India Act, 1917 instead was reiterated in Section 244 of the Government of India Act, 1935. Thereafter, including certain modification Article 227 was introduced in the Constitution of India including High Court's 'administrative superintendence.'

¹⁵ See also, *L.P. Misra v. State of Uttar Pradesh*, AIR 1998 SC 3337 : (1998) 7 SCC 379.

II. SOCIAL ORDER: COURT OF LAW AND ITS ROLE IN SAFEGUARDING ADMINISTRATIVE LAW FOR ESTABLISHING A MODERN WELFARE SOCIETY

In common law countries (including India), most essential aspect of reviewing administrative actions are performed by judicial law making. Judge-made laws take a greater role in asserting arbitrariness in administrative actions. Indian Constitution mandated the legitimacy of ‘judicial review’ with the help of Article 13, 226, 227, 32, and 131 to 136 to the courts.¹⁶ The Supreme Court of India holds the responsibility to interpret the legitimacy of administrative action through the lens of Constitution. Since the inherent power of judicial review runs independent to Article 13 of the Constitution, the Supreme Court has jurisdiction to declare any administrative action violative of constitutional provisions.

The Apex Court in particular holds the responsibility to interpret the legitimacy of Parliamentary as well as executive actions. In my opinion, laws in force, in territorial jurisdiction of India must comply with the most essential pre-requisite of establishing a ‘welfare’ society. Since the inherent power of judicial review runs independent to Article 13 of the Indian Constitution, the Apex Court has responsibility to declare *ultra-virus* acts of administrative authorities violative of constitutional provisions that guarantees democratic rights.¹⁷ Indian constitution is applauded for being the bulkiest constitution in the world. The most vital aspect of the constitution is that it successfully establishes a model framework to scrutinize arbitrary powers entrusted to small group of elected representatives in our parliamentary form of government.¹⁸ Hence, the Judiciary advocates separation of power by declaring legal provisions void especially if it is found inconsistent with provisions under Part III of the constitution.¹⁹

III. LEGITIMATELY LIMITING: ADMINISTRATIVE ARBITRARINESS

The basic structure doctrine explains that amendments that interfere with the foundation of Constitution will be declared void. Consequently, acts transgressing the mandate of constitutional or other statutory provisions must be scrutinized through judicial review of administrative actions especially to secure foundations of “Advocating Social Justice”. The

¹⁶ Shruti Bedi, “*The Power of Judicial Review: Judicial Chutzpah or Judicial Desideratum*”, *Judicial Review Process, Power, and Problems, Essays in Honour of Upendra Baxi*, Cambridge University Press (2020) ”

¹⁷ Dr. Justice Durga Das Basu in his Tagore Law Lectures as reproduced by P. Ishwara Bhat in his edited volume *Tagore Law Lectures: Durga Das Basu – Limited Government and Judicial Review* (New Delhi: Lexis Nexis, 2016), delves into the process of judicial review and analysis comprehensively its scope and dimensions of its applicability under the confines of the Constitution.

¹⁸ Bruce Ackerman, “*The New Separation of Power*”, *Harvard Law Review* 113 (2000): 633, 644-687.

¹⁹ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

jurisprudence behind the above proposition is perceived as adjudication of legal issues by judges to safeguard the basic structure of the constitution. Hence, constitutionalism is required to install peace and harmony in society. Advocating the norms of 'Social Justice' for helping poor, needy and under-privileged people reflects the real foundation of (a) equality before law; and (b) democratic republic. Judicial law making in a welfare society upholds social, economic and political justice for all. The term 'Social Justice Advocacy' requires high standards of morality to uplift democracy and public interest in the State.²⁰ The Indian judicial process constantly encounters the exigencies of higher political clashes. These exigencies are a threat to the system of judicial mechanism. Judicial mechanism thus is synonymous to the phrase 'judges of the people' rather than 'judges of the state'. Hence, advocating social justice becomes vital to save the nation from such emergencies that follows arbitrary decisions granting operational freedom to unrestricted political power.

Unlike the opinion expressed by many philosophers, the Indian democratic structure justifies the scope of judicial review of administrative actions.²¹ Judicial supremacy plays a vital role in defining the basic structure of Indian Constitution. The written Indian constitution incorporates essential principles of governance that are prevalent in many common law countries around the globe. The scrutiny of judge made laws reveals the nature of governance established in a state. Therefore, judge made laws are nothing but a counter measure available against absolute power exercised by small group of people having majority in a state. Influence and control over government systems by small group of people surely weakens the democratic structure required in a welfare state. It goes without saying that practice of displacing democratic choices by depositories of administrative authorities could be remedied by adopting the system of 'check and balance'. Traditionally the above task is entrusted to democratically accountable judiciary. It is often seen that laws enacted by legislature creates gap in constitutional procedure and sovereignty. What is required to smoothly run a democracy under such circumstances is 'a legal framework against arbitrary use of power by influential people'. Methods that safeguards equal political participation of citizens is considered to be the most appropriate choice as far as despotism of oligarchy is concerned. For example, political legitimacy is guaranteed when citizens democratically participate in law-making procedure of parliament.²²

²⁰ Upendra Baxi, 'Who Bothers about the Supreme Court? The Problem of Impact of Judicial Decisions', *Journal of the Indian Law Institute* 24, no. 4 (1982): 848-862.

²¹ Jeremy Waldron, "The Core of the Case against Judicial Review", *Yale Law Journal* 115 (2006): 1346-1406; Jeremy Waldron is a longstanding opponent of judicial review. The view expressed by him in the above paper argues against the procedure of 'Judicial Review'.

²² Jeremy Waldron, "A Rights-Based Critique of Constitutional Rights", *Oxford Journal of Legal Studies* 13 (1993): 18-51, 44-45; James Allan, "Bills of Rights and Judicial Power-A Liberal's Quandary", *Oxford Journal*

Representatives of the elected majority that frame legal rules contrary to public interest must be the utmost priority of judiciary in a welfare state. Otherwise the structure of political justice would break into pieces. Constitution expounds that the principle of equality (Article 14 which explains equality before law and equal protection of law) must be omnipresent in legislations passed by parliament. Judicial review of administrative actions could presumably be perceived as a watchdog scheme against arbitrary acts of administrative agencies. Blurred lines of arbitrary laws must be declared unconstitutional to safeguard egalitarian social order. Administrative authorities must be held accountable to impose arbitrary laws. Unaccountable laws and adjudication made by administrative authorities acting in arbitrary manner must be brushed aside. Political justice is to be maintained through legitimate interpretation of constitutional mandates. The 'due process clause' incorporated in the Indian Constitution under Article 21 must be liberally interpreted to meet the ends of justice. In India, as a result, 'procedure established by law' has proved fruitful to cease debates against judicial review of administrative authorities. Utilitarianism desires judicial review to uphold democratic principle of justice. Constituent Assembly was successful in proposing a written constitution equipped with advance theories on 'democratic republic' and a unique process of 'judicial review'. Restricting exercise of illegitimate power of elected majority could be put to surveillance only through judicial review of administrative action. Subsequently, judicial review institutionalizes the debate of judicial supremacy over legislative supremacy.²³

The *raison d'être* of judicial review is to irreconcilably fulfill the obligation of striking down arbitrary statutes that are 'will of the superior representatives', in other words, *ultra-vires*. Structure of democratic government obligates on itself the process of judicial review to entail considerable risks involve in upholding 'will of the elected representatives' against 'will of people'. Judge-made legislation comes from a delegated function derived from written Indian constitution.²⁴ The essence of written constitution is empowered when arbitrary legislative acts are declared unconstitutional through judicial review upholding the basic structure doctrine.²⁵

Public interest is upheld by judicial review since basic structure of Indian Constitution extends protection to the development of judiciary (i.e. judge made laws) in a welfare state. By

of Legal Studies 16 (1996): 337, 349-350.

²³ Mark V. Tushnet, "New Forms of Judicial Review and the Persistence of Rights-And Democracy-Based Worries", Wake Forest Law Review 38 (2003): 813-838.

²⁴ Judicial review is not explicitly mentioned in the U.S. Constitution, the US Supreme Court established the legitimacy of the concept when it struck down an Act of Congress in the 1803 case *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60. The Courts had embraced judicial review by the twentieth century, leading some critics to maintain that the overly active use of judicial review had given the courts too much power. As opposed to this, the Indian Constitution explicitly confers the power of judicial review on the Supreme Court and the High Courts.

²⁵ *Keshavnanda Bharati v. State of Kerala*, AIR 1973 SC 1461.

introducing transparency in adjudicating disputes between the parties administrative authorities are made accountable to general public. In my opinion, the arrangement could be seen as superiority of judiciary over the other two organs of the state. Dicey principle of 'Rule of Law' entails concentration of power and arbitrary use of power in a democratic state. Therefore, in most of the common law states around the globe 'judge made laws' are practically gaining support and popularity in amicably adjudicating disputes. It is worthy to note that vulnerabilities of arbitrary laws once exposed in courtrooms through the wisdom of eminent judges create confidence of people in democratic structure of government.

Overlapping of functions performed by legislative, executive and judiciary is common in democratic states. Egoistic clashes between these three pillars needs dedicated rules and regulations to maintain law and order situation in the state. From its very outset, judiciary has proved efficient in safeguarding the interest of public at large. It has become the voice of people against arbitrary actions of government, administrative authorities or other government appointed officials. In reality, judiciary is busy in defending itself from the other two overpowered branches entrusted with the task of governance. Modern times demands judges to enforce Directive Principles of State Policy to engulf the role of safeguarding structure of welfare society. Disputes involving transgressions of constitutionally protected principles by any organ of the state could be a threat to a well-defined territory of Indian constitutionalism. Hence, control over administrative actions is employed by judiciary through judge made rules that eliminates arbitrary use of powers against people.²⁶

IV. CONCLUSION

Absurd distribution of power between the three organs (i.e. legislative, executive and judiciary) resulting into arbitrary procedures and legislations are thus balanced by judicial law making. Judicial discretion in interpretation of legal provisions has proved beneficial in maintaining the basic structure of Indian Constitution. The principle of judicial review has gained popularity in the territorial jurisdiction of India since interpretation and adjudication of following matters/tasks has uplifted and guaranteed Constitutionalism:

- a) Intention of Legislation²⁷ to uphold supremacy of "Rule of Law";²⁸

²⁶ D. D. Basu, "Lecture I – The Correct Approach," in Tagore Law Lectures Durga Das Basu – Limited Government and Judicial Review, ed. P. Ishwara Bhat (New Delhi: Lexis Nexis, 2016), 78-79.

²⁷ Luc B. Trembley, "The Legitimacy of Judicial Review: The Limits of Dialogue between Courts and Legislatures", International Journal of Constitutional Law 3 (October 2005): 617-648.

²⁸ S. R. Bommai v. Union of India, AIR 1994 SC 1918; (1994) 3 SCC 1.

- b) Redress mechanism (such as, Right to Constitutional remedies under Article 32 and Article 226);²⁹
- c) Fundamentally limiting government to adopt welfare structure propounded in constitution (i.e. Directive Principles of State Policies);³⁰
- d) Facilitating and voicing principles of natural justice to solve grievances;³¹
- e) Adjudication of cases especially in ‘conflict of interest’ scenario;³²
- f) Safeguarding ‘public interest’ in events organs exercise any kind of absolutism;³³
- g) Limiting unchecked and arbitrary powers of popular government;³⁴
- h) Imposing ‘check and balance’ system on oligarchy;³⁵
- i) Humanization on the thirst of power by selected majority;³⁶
- j) Scouring the surface of Part III of Constitution to establish reasonable, fair and just grounds to secure personal liberty for people;³⁷
- k) Analysis on constitutional amendments to counter harmful effects on (i) rights guaranteed under Part III of the Constitution and (ii) basic structure of the Constitution.³⁸

One of the most resourceful ability of judiciary i.e. transparency is deployed through the system of ‘judicial review’. Judicial review mechanism that is followed in India, which counters *mala fide* action of despotism, has gained immense support and appreciation from eminent jurists, philosophers and writers from around the globe. The strategic ability of judicial review has

²⁹ *Daryao v. State of Uttar Pradesh*, AIR 1961 SC 1457; (1962) 1 SCR 574; *Romesh Thappar v. State of Madras*, AIR 1950 SC 124; 1950 SCR 594; *Chiranjit Lal v. Union of India*, AIR 1951 SC 41; *Kochunni v. State of Madras*, AIR 1959 SC 725, 733; 1959 Supp (2) SCR 316.

³⁰ *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37; AIR 1996 SC 2426.

³¹ *A. K. Gopalan v. State of Madras*, AIR 1950 SC 27; 1950 SCR 88; Fazl Ali J., in dissenting opinion explained that ‘no one shall be condemned unheard’ is a part of Article 21, hence, must be given effect.

³² *Shayaro Bano v. Union of India*, (2017) 9 SCC 1 the Supreme Court held that religious beliefs could not attach secular structure of Indian Constitution. Triple Talaq is thus not a religious practice within the scope of Article 25-28 of the Constitution. Therefore, the form of divorce was set aside by this landmark decision of Supreme Court.

³³ *State of Madras v. V. G. Row*, AIR 1952 SC 196.

³⁴ *State of Karnataka v. Ranganatha Reddy*, AIR 1978 SC 215; (1977) 4 SCC 471; *Sanjeev Coke Mfg. Co. v. Bharat Coal Ltd.*, AIR 1983 SC 239; (1983) 1 SCC 147.

³⁵ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1 at 515; (2008) 5 JT 1; *C.E.S.C. Ltd. v. S.C. Bose*, AIR 1992 SC 1811, 1818; (1995) 5 SCC 482.

³⁶ *R. C. Cooper v. Union of India*, AIR 1970 SC 564; (1970) 1 SCC 248; *Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 106; (1972) 2 SCC 788.

³⁷ *K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 the apex court held that right to privacy is an incorporated right under Article 21 and guarantees personal liberty as part of freedom clearing the robust system of judicial review in India. The case overturned the decision laid down in *M. P. Sharma* case and *Kharak Singh* case since right to privacy was protected by the Constitutionalism.

³⁸ *Indira Gandhi Nehru v. Raj Narain*, AIR 1975 SC 2299; 1975 Supp SCC 1; *Keshavnanda Bharati v. State of Kerala*, AIR 1973 SC 1461.

time and again proved oppressive towards arbitrary political systems prevalent in Indian democracy. The judiciary plays a sensitive role to balance situations in which discretionary powers are exercised by the organs or officials of the state.

Judge made rules in India provides blanket protection against the damage or destruction that could be caused by arbitrary use of power to the basic structure of Constitution. If unchecked, the arbitrariness could result into chaos and breach of peace. People could not be exposed to laws that are disadvantageous to rights guaranteed under Indian Constitution. Hence, the Indian judiciary discharges the duty to protect interest of people by sticking down laws contrary to provisions of Constitution by uplifting the 'check and balance' system in the state. In doing so, judge made laws embodies wisdom to represent 'will of the people'.³⁹ Consequently, In India, debates over impinging the process of judicial review has been put to rest by advocating people's trust and faith, which is also echoed through color of constitutionalism in judicial orders. Judges act as watchdogs to consider pragmatic approach assigned to them in constitutional texts. Moreover, a self-restraint is observed explicitly to deal with issues enduring fundamental values. Presumably, to illustrate the principle of 'a judgment speaks for itself', it is asserted that judiciary is highly disciplined in its approach to shelter the interest of state and public order at large.

Constitutionalism demands judiciary to stand firm on two grounds i.e. (a) prejudices, if any, and (b) to enquire into the intent of legislation as opposed to the 'spirit of the Constitution'.⁴⁰ Judicial responsibility in India requires deep understanding of constitutional parameters for comprehending the relevance of statutory provisions found in the world's largest democracy. Hence, the spirit of the constitution could not be stretched to include something that is explicitly excluded from legislative intent. For example, the principles enshrined in Part IV of the Constitution are fundamental in the governance of state. Nonetheless, policies imposed by governments must be consecrated to establish an egalitarian social order for civilized population.

The most essential aspect of judicial review comes from primordial structure of governance mandated by will of the people and constitutionalism. The right to constitutional remedies enshrined under Indian Constitution confirms to the integrity with which laws could be tested. In any event, the supreme and exclusive jurisdiction to determine constitutional validity of laws by Court of Law was updated by Constitutional (Forty-Third Amendment) Act, 1977. One of

³⁹ *Supreme Court Advocates on Record Association v. Union of India*, (1993) 4 SCC 441: AIR 1994 SC 268.

⁴⁰ *A. K. Gopalan v. State of Madras*, AIR 1950 SC 27 (42).

the main reasons for authorizing and empowering courts in such manner was to shield supreme law of the land from evils of oligarchy. Nevertheless, according to Article 145(3), the precedential value attached to decisions propounded by courts is subject to the approval of a bench consisting of not less than five judges. The procedural due process devised to consider cases involving a substantial question regarding constitutional validity of law serves as a *sine quo non*. Hence, it is essential to observe ‘the procedure established by law’ especially to examine the dichotomy that exists between the legislative intent and will of the people. Since the inception of judicial review through *Murbury v. Medison*,⁴¹ common law states have empowered their apex court to enforce constitutional limitations on legislative powers exercised in arbitrary manner. The case undoubtedly establishes a scheme of requisite judicial supremacy to secure stability in proliferation of constitutional provisions. In any event, the stipulation introduced by Constitution (Forty-Second Amendment) Act, 1976, attempted to limit the scope of judicial review exercised by Court in adjudication of matters. Interestingly, the apex court out-rightly rejected the contention that it was an attempt by Parliament to confer jurisdiction on administrative tribunals for deciding constitutional validity of the Union and State laws under Article 323A and 323B. The above preposition was also addressed by apex court in *L. Chandra Kumar* case⁴². The Court held that establishment of tribunals facilitates and assists Court of Law. The principle laid down in the above judgment, was not readily accepted by academicians. The court essentially opened itself to criticisms. The power accorded under Article 32(3), which authorizes the parliament to empower ‘any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)’, is a wide discretionary power given to parliament by the Constitution. Parliament is thus expected to use the power with utmost responsibility. Implementing administrative procedures have proved beneficial in having a dedicated response mechanism. Administrative adjudication has evolved as a response mechanism in identifying liabilities of administrative authorities. A person who encounters routine issues in his respective occupations and professions seeks answers in administrative machinery. Consequently, to address complex issues administrative authorities are empowered to make rules and regulations. Accountable judicial system is that methods which safeguards equal political participation of citizens in the democratic state. It is considered to be the most appropriate choice as far as despotism of oligarchy is concerned.

⁴¹ 1 Cranch 137; 2 L Ed 60 (1803).

⁴² (1997) 3 SCC 261.