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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

"THE ROLE OF CONSTITUTIONAL COURTS IN DEMOCRACY – EVALUATING HOW CONSTITUTIONAL COURTS MAINTAINS CHECKS AND BALANCES IN GOVERNANCE"

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ABSTRACT

Constitutional courts are necessary for democracy since, through the checks and balances instilled, they ensure the proper working mechanism of the entire governmental structure. Their role is that of the defenders of the constitution, hence interpreting and enforcing constitutional laws, curbing power abuses, and promoting fundamental human rights. The paper examines and explains the function of constitutional courts in sustaining the democratic form of government through an analysis of their tasks, powers, and impact on the distribution of power between the executive, legislative, and judicial bodies. Case studies and comparative assessments are presented, illustrating how constitutional courts act as adjudicators in constitutional disputes, provide an opportunity for judicial oversight of governmental actions, and strengthen the rule of law. The other issues tackled by the discussion include judicial activism, politicization, and potential limited engagement of every entity in constitutional review. Results of the project remind everybody that a strong and independent constitutional court is a prerequisite for the stability of the democratic framework and its integrity, hence providing checks against one branch of government from overreaching its constitutional prerogatives. The work showed that constitutional courts should support constitutional interpretation, judicial review, and the mandate of fundamental rights. It examines the ways through which this court strengthens balance in preventing the tyranny of the majority through exercising accountability, separation of powers, rule of law, and gaining integrity of democratic governance. Included in the discussion were the challenges and impediments faced by constitutional courts, such as judicial activism, political involvement, lack of resources, and public perception. Ultimately, best practices for enabling independence, transparency, and accountability for constitutional courts are made to ensure the efficacy of promoting democratic

governance.

KEY WORDS:- checks and balances, executive, legislative, separation of powers, judicial activism, constitutional courts.

INTRODUCTION

The stones that lay in the foundation of the democratic world are the principles of checks and balances in one another so that no one arm of power becomes too powerful. In this sensitive balance, the position of constitutional courts becomes momentous, as the declaration of the cure against the injury of power and the establishment of basic rights. Being the supreme interpreters of the constitution, constitutional courts are empowered to carry out a review of laws and acts of the executive branch in compliance with democratic values and adherence to the principle of rule by law. In a democracy, these powers might be separated between the Legislative, Executive, and Judicial branches so as to prevent any one that could pose a threat of concentration against the others. But on their own, this separation never is normally enough to avert excesses. That is why there are the special Constitutional Courts, as an extra layer of assurance against the tyranny of the majority and abuse of power. The range of activities offered by the constitutional courts, into whom all of a sudden peace and legitimacy get invested, is really broad. They interpret the constitution, exercise judicial review, and protect fundamental rights, all of which are important to make sure that a democratic system really works. Their problems involve judicial activism, political intervention, and lack of resources. Within this assessment is an intention to take such efforts in view while looking closely at the main operations and difficulties faced with respect to the constitutional courts in socially and politically propagating them. Opening this deadlock could add a great deal to the understanding of the active role of constitutional courts in promoting political governance and freedom from oppression.

Democracy rests on the principles of separation of powers, checks and balances, and the rule of law. Such principles are maintained through the interpretations and enforcements of constitutional provisions by the constitutional courts. These independent judicial bodies assume their role as the last authority in disputes concerning the constitution, hence acting as a barrier against any excesses of the government while at the same time advocating basic liberty. The essential feature of constitutional courts that builds their importance is their ability

to check by law other laws, executive actions, and legislative decisions in as far as such are compatible or not with the constitution.

Acting through judicial review, these courts act as a check against reckless rule, ensuring that no one organ of government becomes too powerful. In most democratic regimes, the constitutional courts have been efficient in nullifying inexistent laws, enabling institutional conciliation, and fortifying democratic accountability. This paper assesses the work of constitutional courts in establishing checks and balances in governance. It discusses their functions, powers, and effects on democratic stability, with an emphasis on focused case studies and comparative perspectives from a variety of jurisdictions.

FUCTIONS OF CONSTITUTIONAL COURTS

Judicial Review: This review of the constitutionalities of the acts of any legislature, its executive order, and enacting laws is one of the primary duties of constitutional courts. It assures that no government institution enacts any policy that erodes the very fundamentals of the constitution. Upon the finding that a law, order, or act is unconstitutional, the court has the jurisdiction to nullify it, which stops conscious or unconscious incursions on democratic governance.

Protection of Fundamental Rights: The constitutional courts are also going to protect human rights and civil liberties when their provisions in the constitution are construed concerning individual freedoms. In this light, constitutional courts will be engaged in the trial of events regarding the violation of fundamental human rights: freedom of expression, equality before the law, and the right to due process. In this case, they make sure that rights of the citizens are not violated by the government and those individuals are treated equally under the law.

Dispute Resolution in Institutions: Constitutional courts take active part in mediating between the different institutions of symbolic state powers in disputes between how the executive and legislative powers operate or conflicts between national or regional authorities. These courts will authoritatively decide constitutional questions to protect the governmental structure from imbalance. By that, they would also stop any institution from overstepping its jurisdiction.

Legal Certainty and Stability Assurance: These courts construe constitutional dispositions

clearly and definitively, contributing to the clarity and predictability of the law. They contribute to the stability of the legal order by providing final judgments on constitutional questions, thus ensuring that laws are applied uniformly and fairly.¹

Review of Electoral Processes: In several democracies, constitutional courts take charge of election-related disputes to guarantee fair and free elections. They deal with electoral fraud, campaigns of the political party underhanded, or unconstitutional ways of changing the electoral law. This helps them to protect the integrity of a democratic process and restore public confidence in elections.

Monitoring the Use of Emergency Powers: Due to emergencies, some powers by a government may have expanded the authority of the particular executive. Constitutional courts evaluate whether these particular powers are exercised within the limits defined by the constitution and fundamental rights. The documented reviews of the exercise made and, where demanded, limits placed on such emergency powers serve a way of preventing abuses of authority and retaining democratic accountability even in exceptional instances.

Constitutional Amendments Supervision: Constitutional courts make certain that amendments made to the constitution are within the different established legal principles and democratic standards. Some constitutional frameworks also require the courts to review amendments before they enter into effect, to avoid any unconstitutional changes that can sabotage democracy.²

THE ROLE OF CONSTITUTIONAL COURT OF DEMOCRATIC SOCIETY

Constitutional courts prevent constitutionally intolerable ways within each branch of the government to build stability for democracies. Such courts can therefore act as nonpartisan arbiters of political strife and emplace the guarantees of the rule of law themselves-the very foundations that sustain any good democracy.

Several main points illustrate this in the line of democratic stability:

Preventing Government Overreach: There are constitutional courts to see that the executive and legislative branches do not overstep their bounds while performing a constitutional task.

¹ https://en.wikipedia.org/wiki/Judicial_review_in_India

² <https://www.drishtijudiciary.com/current-affairs/constitutional-courts>

The striking down of laws and executive actions always goes a long way in achieving a balance of power and stave off any authoritarian trends.

New Arrows for Rule of Law: The entire system of constitutional courts meant to be strong, enforcing respect for dictated norms of law and seeing to it that laws are always applied the same and in a just manner, thereby engendering an aura of reliance in judicial institutions along with a deterrent toward capricious forms of commandeering.

Constitutional courts are one of the main institutions settling political and institutional conflicts. The rulings they reach offer some clarity on legal questions that, in turn, aid some sort of de-escalation of political tensions and governmental stability.

Enhancing public faith in governance: Constitutional courts reinforce public trust in the representative institutions of democracy where they exist transparently and independently. Citizens will be persuaded to get involved in democratic processes once they believe that laws will be applied impartially and that their rights will be defended.

Maintenance of the integrity of electoral processes: Constitutional courts thus sustain the legitimacy of the elections by administering electoral disputes and ensuring their conformity with democratic processes. This helps avert political instability and enables smooth transition of power.

Countering democratic backsliding: At times of political crisis, constitutional courts can represent a bulwark against democratic erosion. They support under democratic norms and values, moreover, by countering unconformable practices and admonishing public functionaries.³

Judicial Activism vs. Judicial Restraint:

A blend of activism and restraint must be established in a manner to support the Constitution and guarantee that justice is viable under the conditions existing in society. The combination means that respect is given by courts to legislative power and legal precedents, but interference occurs whenever basic rights or principles of the Constitution are encroached upon. It brings

³ https://www.juridicainternational.eu/article_full.php?uri=2007_XIII%208_the-role-of-the-constitutional-court-in-democratic-society

stability to law while, at the same time, produces necessary evolution. The basis of the respect for the elected branches of government but withholding unconstitutional laws is in the process of protecting democracy. It gives life to fundamental rights and at the same time assures that the power of the judges is not misused.

With the help of this equilibrium, the courts shall not be given room for either unwarranted interventionism or complete inactivity in the sight of injustice.^{4 5}

CASE LAWS

Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala :-

In February 1970 [Swami Kesavananda Bharati](#), senior pontiff and head of the [Hindu monastery Edneer Matha](#) in [Edneer, Kasaragod District, Kerala](#), challenged the [Kerala government](#)'s attempts, under two land reform acts, to impose restrictions on the management of its property. A noted Indian jurist, [Nanabhoy Palkhivala](#), convinced Swami into filing his petition under Article 26, concerning the right to manage religiously owned property without government interference. The case had been heard for 68 days, the arguments commencing on October 31, 1972, and ending on March 23, 1973,

JUDGEMENT

The Supreme Court reviewed the decision in *Golaknath v. State of Punjab*, and considered the validity of the article 24th, 25th, 26th and 29th amendments. The case was heard by the largest ever Constitution Bench of 13 Judges. The bench gave eleven separate judgments, which agreed in some points and differed on others. [Nanabhoy Palkhivala](#), assisted by [Fali Nariman](#) and [Soli Sorabjee](#), presented the case against the government in both cases.⁶

I.C. Golaknath and Ors. v. State of Punjab and Anrs.

The family of Golak Nath held over 500 acres of farmland in [Jalandhar, Punjab](#). In the phase of the 1953 Punjab Security and Land Tenures Act, the state government held that the brothers could keep only thirty acres each, a few acres would go to tenants and the rest was declared

⁴ <https://www.tnsja.tn.gov.in/article/BS%20Chauhan%20Speech-%20Lucknow.pdf>

⁵ <https://ijirl.com/wp-content/uploads/2022/01/JUDICIAL-ACTIVISM-AND-JUDICIAL-REVIEW-IN-INDIAN-HISTORY.pdf>

⁶ https://en.wikipedia.org/wiki/Kesavananda_Bharati_v._State_of_Kerala

'surplus'. This was challenged by the Golak Nath family in the courts and the case was referred to the Supreme Court in 1965. The family filed a petition under Article 32 challenging the 1953 Punjab Act on the ground that it denied them their constitutional rights to acquire and hold property and practice any profession (Articles 19(1)(f) and 19(1)(g)) and to equality before and equal protection of the law (Article 14). They also sought to have the Seventeenth Amendment – which had placed the Punjab Act in the Ninth Schedule – declared *ultra vires*.

The issues involved were whether Amendment is a "law" under the meaning of Article 13(3)(a), and whether Fundamental Rights can be amended or not.

JUDEGEMENT

The Judgement reversed [Supreme Court](#)'s earlier decision which had upheld Parliament's power to amend all parts of the Constitution, including Part III related to Fundamental Rights. The Judgement left Parliament with no power to curtail Fundamental Rights.

The Supreme Court, by thin majority of 6:5, held that a constitutional amendment under Article 368 of the Constitution was an ordinary 'law' within the meaning of Article 13(3) of the Constitution. The majority did not believe there was any difference between ordinary legislative power of the parliament and the inherent constituent power of parliament to amend the Constitution. The majority did not agree with the view that Article 368 of the Constitution contained "power and procedure" to amend, but instead believed that the text of Article 368 only explained the procedure to amend the constitution, the power being derived from entry 97 of the List I of the VII Schedule to the Constitution.⁷

Judicial Politicization:-

Growing politicization impinges on the basis of judicial decisions as political ideologies, partisan interests, and external pressures brandish their influence over courts. Rather than acting as neutral interpreters of the law, the courts could be viewed as vehicles for one or another political orientation. Judicial Appointments and Partisan Influence Political leaders appoint judges, especially high court justices, raising the concern that the judges will rule in favor of the party that appointed them or favor their ideology. Example: The nomination of justices to the U.S. Supreme Court often engenders an intense political battle along lines of

⁷ https://en.wikipedia.org/wiki/I.C._Golaknath_and_Ors._v._State_of_Punjab_and_Anrs.

judicial philosophy. Judicial Elections and Campaign Financing Some countries, states, or territories elect judges, which renders them open to influence through campaign contributions, political endorsements, or lobbying. Use of Courts for Political Battles Litigation has increasingly become the weapon of choice for political parties and interest groups to pursue desired policy ends without sending such bills through the legislature.

Example: Political interests tend to challenge laws dealing with issues such as healthcare, immigration, or election procedures. Media and Public Pressure Courts are increasingly facing scrutiny from the media and the public, and judicial decisions are therefore subject to political commentary and polarization.⁸

Resistance to Judicial Decisions:

Opposition to judicial decisions consists of those, including individuals, governments, or institutions that refuse to comply with, challenge, or seek to undermine court rulings. Resistance may come forth out of political, ideological, social, or institutional disagreements with the decisions rendered by the judiciary. Although it is the courts' function to interpret and enforce the law, their power is only relative; its very application hinges on the other branches of government and the people, who may, or may not, support it.

The first dynamic of the constitutional court that may ensure good governance include Entitlement review Constitutional courts are the courts established under given legal provisions that review the extent to which certain laws, government actions, and policies conform to the constitution.

Limiting the power of executive action The court prevents the executive body from exceeding the limits of the given constitutional power so that this will command lawful processes by the government and therefore, not violate the rights of individuals.

Checking Legislative Authority Courts check with legislatures to see that they obey constitutional principles in passing acts and ensure that these acts do not infringe upon rights and freedoms ensured under the constitution.

⁸ <https://academic.oup.com/edited-volume/35474/chapter/303819594>

Example: Nazi bio-ethics and the German Federal Constitutional Court invalidated laws that undermine privacy right and democratic principles.

The next role of fundamental rights protection One of the duties of the constitutional courts is that they protect, guard, and recognize individual rights and ensure there are government policies in consonance with human rights standards.⁹

CONCLUSION

Constitutional courts are key agents in ensuring conditions of checks and balances central to democratic governance. Through the reclamation and upholding of constitutional principles, they act as defenders against possible abuses of power by the executive, legislature, and even the judicial organs themselves. They do, indeed, form the safeguards for the basic functioning of all democratic institutions within provided from various possible excesses on the part of the concerned organs by virtue of their authority to review laws, settled constitutional disputes, and protect the fundamental freedoms of every individual. Therefore, constitutional courts are a factor in guaranteeing political stability in that they allow for a legal means of conflict resolution rather than resorting to a potential claim for authority over the executive or some possibly excessive legislative action. Their independence and impartiality are crucial for public confidence in the system of justice, making the law itself stronger. Likewise, judicial independence, institutional legitimacy, and adherence to generally accepted values of democracy play a considerable part in the success of Constitutional Courts. Courts may run into pressure from politicians, among other challenges, that would diminish their authority.

Ensuing their independence and strengthening the legal framework by which judicial integrity is continually held is important to continuing democracy. In conclusion, they, too, provide accountability, which may be taken in conjunction with all those rights served as the very balance of forces in the Republic. While its interpretation and enforcement of constitutional principles do provide corresponding investments in good government, a constitutional court also stands guard to protect democratic ideals for the years to come.

⁹ <https://lawreview.uchicago.edu/online-archive/judicial-resistance-and-legal-change>

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- Executive Control over the Legislature.- The President has the power to summon, prorogue, and dissolve the Lok Sabha (Article 85).
- the Constitution: Interpretational authority on what the Constitution means always rests with the Supreme Court (Article 142)
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