

EDITORIAL

Parliament Overshadowing Supreme Court

Judgements in India: A Game of Ethics

Hotărârile Curții Supreme din India umbrite de acțiunile

Parlamentului: un joc de etică

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Abstract: *The Principles of separation of power form the backbone of most democratic nations in the world. This system of governance also incorporates checks and balances. Parliament, Executive, and Judiciary have well-defined powers and functions within the constitutional Framework. The judiciary is vested with the power to check the legitimacy of laws. This power enables the judiciary to review the constitutionality of laws on the touchstone of the constitution. This paper deals with case study of two important cases which includes Common Cause and Government of NCT Delhi. In both the cases court declared the actions of parliament invalid. Parliament passed the amendments to overshadow the ruling of the Supreme Court. Such actions in democracy disturb the governance of the country. Also, such practices in the state are considered unethical. Therefore, this paper highlights such practices in reference to the ethical standard set by the Constitution of India.*

Keywords: *Judicial Review; Ethics; Legitimacy; Constitutionality; Separation of Power*

Rezumat: *Principiile separației puterilor formează coloana vertebrală a majorității națiunilor democratice din lume. Acest sistem de guvernare include, de asemenea, controale și echilibre. Parlamentul, Executivul și sistemul judiciar au puteri și funcții bine definite în cadrul constituțional. Justiția este investită cu puterea de a verifica legitimitatea legilor. Această putere permite sistemului judiciar să revizuiască constituționalitatea legilor pe piatra de temelie a constituției. Această lucrare analizează două cazuri importante din India, și anume Common*

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Cause (A Registered Society) v. Union of India și Government of NCT of Delhi v. Union of India. În ambele cazuri, instanța a declarat invalide acțiunile parlamentului. Ulterior Parlamentul a adoptat unele amendamente pentru a umbri decizia Curții Supreme. Astfel de acțiuni în democrație perturbă guvernarea țării. De asemenea, astfel de practici în stat sunt considerate lipsite de etică. Prin urmare, această lucrare evidențiază astfel de practici în raport cu standardul etic stabilit de Constituția Indiei.

Cuvinte cheie: control jurisdicțional; etică; legitimitate; constituționalitate; separația puterilor.

1. Introduction

In the complex landscape of the Indian legal and political system, ethics plays a crucial role in shaping the principles and values that guide decision-making and governance. Ethics, as defined by John Rawls (Rawls, 1999), encompasses the pursuit of justice, fair play, and equity. These ethical principles are essential for professionals and leaders as they set the tone for the organization or nation and influence the actions and decision-making of their followers.

We all know the Indian legal system was built upon the principles of fairness, justice, and equality. It is supposed to ensure and aim that every individual is treated with dignity and their Fundamental Rights are protected. However, the effectiveness of the Indian Legal System in upholding these principles is often questioned due to various issues such as delays in the delivery of justice, corruption, and inefficiency.

In few of the recent judgments given by the Supreme Court follows a unique pattern. Wherein, the Court decides some of the complex issues involving substantial questions of laws in relation to the interpretation of the Constitution. Such decisions of the court are overshadowed by parliament through the amendments. For example, in the case of *Common Cause (A Registered Society) v. Union of India & Ors.* (Writ Petition (CIVIL) NO.1374 OF 2020), the court held that the extensions should not be given to Sanjay Kumar Mishra present Enforcement Directorate Director in 2021 but it was overshadowed by the parliament through Central Vigilance Commission Amendment Act, 2021. In another case, *Government of NCT of Delhi v. Union of India* (Civil Appeal No 2357 of 2017), the Supreme Court of India held that government of the state of Delhi has complete control over services (entry 41 of state list) in the National Capital Territory of Delhi (NCTD), except for public order, police, and land, entry 1,2 and 18 of state list extending the responsibility to the lieutenant governor, even though the government was democratically elected. An ordinance was passed by the president on 19th May 2023 Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023. The Ordinance has clearly tried to undermine the authority of the court by giving the power to legislate on service matters to the lieutenant governor. Any organ of the state crossing such limits is considered unethical and against the constitutional spirit.

2. Case Study of Common Cause & Delhi NCT v. Union of India

The present chapter will deal in length with unethical practices used by the authorities in undermining the decisions of the Supreme Court.

2.1. Legitimacy of Laws

Laws are expected to be following the principles of justice, morality, and societal standards to maintain their legitimacy (Tyler & Jackson, 2014). This is because laws aim to establish a fair and just framework for governing society. However, there are instances where the legitimacy of laws can be questioned, particularly in cases where they are found to violate fundamental rules and principles (Hooper, 2021). According to the Kelson (Cohen, n.d.) pure theory law, Constitutional norms are considered grundnorms. Any other rule or regulation of the state has to be in consonance with this grundnorm. Therefore, the legitimacy of laws can be challenged if they exceed constitutional limits or if they violate the grundnorm (Cohen, n.d.).

Where the laws contravene the fundamental principles of justness, fairness, and reasonableness they can be struck down by the Courts. In such instances, the Constitutions of various countries empower the judiciary with judicial review. Judicial review plays a crucial role in ensuring the legitimacy of laws by allowing courts to examine the constitutionality of legislation and government actions. In the case of *Common Cause (A Registered Society) v. Union of India & Ors.* (Writ Petition (CIVIL) NO.1374 OF 2020), the issue of extending the term of Enforcement Directorate Director beyond the superannuation age emerged. The original term period for Director as per section 25 of Central Vigilance Commission Act, 2003 was only 2 years (*Cvcact_0.Pdf*, n.d.). Further extension clearly undermines the principles of justness, fairness, and reasonableness which can be considered as arbitrary. Also, the case of *Government of NCT of Delhi v. Union of India* (Civil Appeal No 2357 of 2017) raised concerns regarding the limits of competency and violations of Fundamental rights. The constitutionality of laws was brought into question, as it was argued that the legislation imposed by the Union of India was arbitrary and Ultra vires. The permissibility of the amendment was not in accordance with the principles laid down in the preceding judgment in *Common Cause (A Registered Society) v. Union of India & Ors.* (Writ Petition (CIVIL) NO.1374 OF 2020). The Court clearly stated not to give further extension after attaining the age of superannuation. Similarly, in the case of the Government of the National Capital Territory of Delhi, even if a democratically elected government is not given the power to control the officers, the triple chain of accountability principle will be redundant.

2.1.1. *Common Cause (A Registered Society) v. Union of India & Ors.*

According to an order dated November 19, 2018, the respondent, Sanjay Kumar Mishra, who was a Principal Special Director in the Directorate of Enforcement, was appointed for a term of two years beginning on the day he assumed responsibility for the position or until further instructions, whichever came first. Later, his appointment as the ED Director was extended past the original tenure. Sanjay Kumar Mishra's term extensions were contested in front of the Supreme Court by petitions that questioned the validity of his continuation.

In brief:

Petitioner's Contention

Section 25 of the Central Vigilance Commission Act, 2003 only talks about the appointment of the Director of Enforcement Directorate for a period of 2 years. Therefore, further extension beyond the stated period by law violates the abovementioned provision. Even if the said provision is given an interpretation with section 21 of the General Clauses Act, 1897 the director cannot continue beyond the period of superannuation (60 years as a retirement age).

Respondent's Contention

After the recommendations of the Independent Review Committee, Director can continue beyond the period of two years as per the Guidelines laid down in Vineet Narain & Others vs. Union of India & Another, (1 SCC 226) judgment.

Decision of Court

As per the reading of section 25 Central Vigilance Commission Act, 2003 with section 21 of the General Clauses Act, 1897, and guidelines laid down in Vineet Narain & Others vs. Union of India & Another, (1 SCC 226) judgment, Director can continue holding the post for more than 2 years but for a short period of time after attaining the age of superannuation. Such a extension shall only be given in exceptional cases.

Parliaments Approach to Common Cause v Union of India Decision

The decision given by the Supreme Court was Annulled by the Central Vigilance Commission Amendment Act 2021. The Amendment Act extended the period of Director from 2 years to 5 years.

2.1.2. *Government of NCT of Delhi v. Union of India (Civil Appeal No 2357 of 2017)*

The present case came into consideration of the Supreme Court due to the asymmetric federal model of government in India, specifically the Union Territory of Delhi and the Union Government. The matter pertains to the allocation of authority (Legislative and executive) over the "services" inside the National Capital Territory of Delhi.

In the context of Delhi, the governing authority is either with the Government of the National Capital Territory of Delhi (NCTD) or the Lieutenant Governor, who acts on behalf of the Union Government. The question emerged after a notification dated 21 May 2015 issued by the Union Ministry of Home Affairs. The notification referred to the provisions in Article 239 and sub-clause (a) of clause (3) of 239AA

(Constitution of India, n.d., p. 144). It stated that the President directs that the Lieutenant Governor of the National Capital Territory of Delhi, subject to his control and further orders, shall exercise the powers and fulfill the functions of the Central Government in relation to matters connected with 'Public Order', 'Police', 'Land', and 'Services' as mentioned above. These powers and functions are delegated to the Lieutenant Governor by the President from time to time. The Lieutenant Governor of the National Capital Territory of Delhi has the authority to exercise discretion in seeking the input of the Chief Minister of the National Capital Territory of Delhi on matters pertaining to 'Services', as deemed appropriate. The notification stipulates that the Lieutenant Governor of NCTD has the authority to exert control over "services," as well as "public order," "police," and "land," to the degree that such power is given to him by the President on a periodic basis. The Lieutenant Governor has the authority to exercise discretion in soliciting the opinions of the Chief Minister of the National Capital Territory of Delhi.

In brief:

Petitioner's Contention

As per Article 239AA matters pertaining to public order, land, and police (entries 1,2,18 of the state list) shall exclude from the legislative competence of the Government of NCT of Delhi, rest all the entries of the state list are within the legislative competence. Services, as given under entry 41 of the state list, shall be within the legislative competence of the Government of NCT of Delhi. Also, legislative power is co-extensive with executive power, this would bring all the administrative officers under the control of the elected government of NCT of Delhi.

Respondent's Contention

The notification issued by Ministry is with the legislative Competence. Services shall remain under the control of the Lieutenant Governor.

Decision of Court

Services shall be within the control of the elected government of the NCT of Delhi otherwise it would defeat the purpose of representative democracy. Matters in relation to public order, land, and police (entries 1,2,18 of the state list) shall be within the legislative competence of the Lieutenant Governor.

Union of India Approach to Government of NCT of Delhi v. Union of India Decision

To overcome the effect of verdict given by the Supreme Court, president passed an ordinance on 19th May 2023 which specifically put "Services" under the domain of the Lieutenant Governor.

3. Conclusions

The potential for parliament to overshadow the Supreme Court's judgments through case laws raises pertinent questions about the separation of powers and the

need for a harmonious coexistence between these institutions. It highlights the importance of maintaining an independent judiciary and a vigilant public discourse to ensure the preservation of democratic principles and the rule of law.

Amendments to legislation must be guided by a clear intent to enhance the well-being of citizens and align with the Constitution's spirit. It is essential to ensure that the proposed changes uphold individual rights, promote equitable progress, and maintain the delicate balance of powers enshrined in our democratic framework including the relationship between Parliament and the Supreme Court. Constitutional Courts play a crucial role in maintaining the principles of separation of powers and upholding democratic principles in a country. This failure to enforce ethical standards and governance codes in the system is particularly problematic, as it allows individuals to engage in misleading practices without consequence. To address this issue, proper enforcement of ethical standards and governance codes is essential, alongside necessary changes in regulation. Only through these measures can we hope to foster a more ethical and responsible legal system in India.

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