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ROLE IN CONSTITUTIONAL ADJUDICATION VARIOUS THEORIES OF JUDICIAL ROLE

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Abstract

Constitutional adjudication represents one of the most significant functions of the judiciary in a constitutional democracy. Courts play a vital role in interpreting constitutional provisions, safeguarding fundamental rights, and ensuring that the actions of the legislature and executive remain within constitutional limits. Over time, several theories have emerged to explain the judicial role in constitutional adjudication, reflecting different philosophies of constitutional interpretation. This paper examines major theories such as judicial restraint, judicial activism, originalism, and the living constitution approach, which influence how judges interpret and apply constitutional principles. Each theory offers a distinct perspective on the scope of judicial power and the extent to which courts should intervene in matters of public policy and governance. The study analyses the relevance of these theories in shaping constitutional jurisprudence and highlights their role in balancing democratic governance with the protection of constitutional values. By examining doctrinal developments and significant judicial interpretations, the paper explores how courts contribute to the evolution of constitutional law. The study concludes that a balanced judicial approach is essential to maintain constitutional supremacy, protect individual rights, and uphold the rule of law in a democratic society.

Keywords

Constitutional Adjudication, Judicial Activism, Judicial Restraint, Originalism, Living Constitution, Judicial Review.

I.INTRODUCTION

India is a union of states and is a sovereign, socialist, secular, democratic, republic with a Parliamentary system of government. The constitution ensures to all citizens, individually and Collectively, some basic freedoms in the shape of fundamental rights that are justiciable. These Include freedom of conscience and freedom to profess, practice, and propagate religion, the Right of any section of citizens to conserve their culture, language, or script and to establish And administer educational institutions of their choice. The need of the judicial interpretation Have ever existed and persisted in every legal system of the world. Initially the judges were Bound only to the literal interpretation. Subsequently, in relation to the constitutional Adjudication, the role of judges broadened from literal interpretation to intent based Interpretation and finally to declaration in cases of vacant spaces. However, it was the supreme Court of the united states of America, one of the oldest constitutional courts of the world, which Gave to itself the power of judicial review the power to hold unconstitutional and hence Unenforceable any law, official action based on law or any other action by a public official, That it deems to be in conflict with the basic law, that is, the constitution thereby protecting the Violation of fundamental rights of the citizens. Constitutional adjudication is the way to Determine such question regarding the validity of such laws, statutes, etc. The courts in such Constitutional adjudication where the fundamental rights infringement were involved provided That these issues deserve an intense review.

THE SUPREME COURT OF INDIA

• The Federal Court of India was created as per the Government of India Act 1935

• This court settled disputes between provinces and federal states and heard appeals Against judgements of the high courts.

• After independence, the Federal Court and the Judicial Committee of the Privy Council

Were replaced by the Supreme Court of India, which came into being in January 1950.

• The Constitution of 1950 envisaged a Supreme Court with one Chief Justice and 7 Puisne Judges.

• The number of SC judges was increased by the Parliament and currently, there are 34 Judges including the Chief Justice of India (CJI).

The Supreme Court of India and its Functions

• It takes up appeals against the verdicts of the High Courts, other courts and tribunals.

• It settles disputes between various government authorities, between state governments, And between the centre and any state government.

• It also hears matters which the President refers to it, in its advisory role.

• The SC can also take up cases suo moto (on its own).

• The law that SC declares is binding on all the courts in India and on the Union as well As the state governments.

What is adjudication?

Adjudication means the legal process of resolving a dispute and the formal pronouncement of a judgment or decree in a court proceeding and also the judgment or decision given. It includes A hearing by a court, after notice, of legal evidence on the factual issue or issues involved and the equivalent of a determination. There are three types of disputes are resolved through.

Adjudication:

1. Disputes between private parties, such as individuals or corporations;
2. Disputes between private parties and public officials; and
3. Disputes between public officials or public bodies.

Theories of Adjudication

The relevance and applicability of different decisions given by different adjudicators creates a lot of confusion in any legal system. Further, questions have always been raised as to whether certain judgments or methods of adjudication are acceptable or not. This confusion is yet to be at bay. But several jurists and legal thinkers have given their own theories as to what should constitute the basis for adjudication by Judges in any Court of law.

1. Theory by Benjamin Nathan Cardozo

He was a well known American lawyer and had a great influence on the development of law in America. He believed in the Realist Theory. In his theory, he totally rejected the Austinian concept of logical interpretation of law and his analytical approach to the judicial process and he emphasized on his need to interpret the law in the light of the social necessities and realities of life. In his most renowned work, 'The Nature of the Judicial Process', he stated, "The judicial process is one of compromise between paradoxes, between certainty and uncertainty, between the literalism that is exaltation of the written word- and the nihilism that is destructive of regularity and order."

He said that the subjective view of the problem cannot render complete justice and that during decision making the judge's, own beliefs, traditions or morals get in the way of adjudication: He said that in order to give out justice, objective approach. Would have to be taken keeping in view the traditions, customs, morals, and needs of the society.

He was primarily concerned with two aspects of the law:

1. How judges need to decide the cases before them?
2. How law itself evolves and grows in the society.

According to Cardozo, Judges are not separate from social realities and that social sciences have a direct effect on the lives of the people and thereby the development of law. Therefore, law must be kept at pace with the rest of the society and shape itself according to various social developments to attain the ends of justice. He stated that all adjudication is 'experimental' and that each new case was an experiment in itself, where the rules applied in previous cases of similar nature may be used He gave great importance to precedents In his own words Every judgment has a generative power. He valued precedents and called them the living from law.

2-**Theory by Oliver Wendell Holmes, Jr.**

He was an American jurist who compared the Law to a bad man "who cares only for the material consequences of things rather than as an independent moral entity". Holmes defined the law in accordance with his pragmatic judicial philosophy. Rather than a set of abstract,Rational, mathematical, or in any way unworldly set of principals, Holmes said that, "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law. "Accordingly, Holmes thought that only a judge or lawyer who is acquainted with the historical, social, and economic aspects of the law would be in a position to fulfill his functions properly. He theorized that lawyers and judges are not logicians and mathematicians.

He writes, "The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, and even the prejudices which judges share with their fellow-men, have had a good deal more to do than syllogism in determining the rules by which men should be governed. Holmes also insisted on the separation of "ought" and "is," which are obstacles in understanding the realities of the law. As a moral skeptic, Holmes stated that if you want to know the real law, and nothing else, you must consider it from the point of view of a "bad man" who cares only of the material consequences of the courts' decisions, and not from the point of view of a good man, who find his reasons for conduct "in the vaguer sanctions of his conscience."

3. **Theory by Ronald Myles Dworkin**

Dworkin has been an influential contributor to both philosophy of law and political philosophy According to him, "Judges should decide hard cases by interpreting the political structure of their community in the following, perhaps special way by trying to find the best justification they can find, in principles of political morality, for the structure as a whole, from the most profound constitutional rules and arrangements to the details of, for example, the private law tort or contract." He propounded the theory of naturalism which included searching underlying principles of law that render the law at once coherent and orally and politically justifiable of to conclude it would be correct to say that there never has been and probably will never be entire uniformity among jurists and legal thinkers as to what constitutes judicial process, which principles must be consulted by the Judges when making decisions and what is law. There will always be diverging views related to the field of what constitutes law and the major aspects affecting it. Basically, the judiciary should ensure that no society or legal system suffers in the way of granting justice.

TWO MODELS OF CONSTITUTIONAL ADJUDICATION

There are two models of constitutional adjudication the foundationalist and the coherentist models. They both present different structural relationship between constitutional, statutory, and regulatory provisions.

1. According to constitutional foundationalism, the relations of justification between constitutional, statutory, and regulatory provisions exclusively con- form to a strict hierarchy. Foundationalists simply assume that constitutional provisions are justified as long as attention is confined to the legal system. It holds, that "a foundationalist system of case adjudication accepts those constitutional norms as given."

2. In case of constitutional coherentism there is flexibility and it permits departures from the strict hierarchy, asymmetry, and unidirectionality of constitutional foundationalism. It raises a possibility that a relevant statute or administrative regulation could help justify, provide content for, or demarcate the legitimate scope of a constitutional provision.

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