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Judicial Review: Meaning, Scope, and Applicability in India

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The final power of the judiciary to review and determine the validity of a statute or ordinance can be described as the power of "judicial review." In India, the rule of law is followed. In other words, the constitution is the supreme law of the country and any law based on it is null and void. The term refers to "the power of a court to consider whether an executive order or other official action is contrary to the written constitution and, if the court concludes that it is, to declare it unconstitutional and void." It is the power exercised by the courts of a country to review the actions of the legislature, executive, and executive branches of the government and to ensure that these actions are consistent with the provisions of the nation's constitution. Judicial review refers to the power of the judiciary to interpret the constitution and declare any such laws or legislative or executive orders invalid if they are found to conflict with the Indian constitution. Judicial review serves two important functions, such as legitimising government actions and protecting the constitution from any undue violation by the government.

Keywords: *judiciary review, judicial power, government action.*

INTRODUCTION

The law plays an important role in today's society. People gave up their rights and made contracts with the government, which in return offered them protection from the wrongdoers. This is the social contract theory proposed by Hobbes. At this stage of the rule of law, laws without justice can become arbitrary and abused. Therefore, in order to check the power of

various government agencies, we further use judicial review. Judicial review is the process by which a court declares any unconstitutional law invalid. We adopted this feature from the U.S. constitution. But it took us years to fix this feature in our constitution. The judiciary plays an important role in this. Judicial review can be of constitutional amendments, legislative actions, and laws enacted by the legislature.

In India, there are three government agencies: legislative, executive, and judicial. The legislature performs the function of making laws, the executive executes and enforces the laws, and the judiciary conducts inspections of the above two bodies and ensures that the laws being made and enforced do not overstep the power of the Indian Constitution. In order for these agencies to work within their mandates, the constitution is characterised by the separation of powers. Article 50 of the Indian constitution talks about the separation of powers. As compared to the United States, which adopted it, this concept is not strictly followed. The concept of judicial review is taken from the U.S. constitution. The judiciary has the power to revoke any law passed by the parliament if it interferes with the Indian Constitution. Any law passed by the legislature that contradicts the constitution can be ruled invalid by the judiciary Pursuant to Article 13(2) of the Constitution of India, any laws made by the Parliament restricting the rights of the people under Article 3 of the Constitution are void from the outset. The power to fully interpret the Indian Constitution rests with the judiciary. It is the protector of the Indian Constitution. Judiciary review powers are granted to many articles, such as 13,[1] 32,[2] 131-136, 143, 226, 145, 246, 251, 254, and 372.

Article 372(1)[3] deals with judicial review of pre-constitutional laws that were in force before the Indian Constitution came into force.

Article 13(2) further provides that any law enacted by Parliament after the entry into force of the constitution shall be declared invalid by the courts. The Supreme Court and the high court are said to be the guarantors of the fundamental principles enshrined in the constitution. If any person's fundamental rights are violated, he/she can file a lawsuit in courts under Article 32 or

[1] Constitution of India, art 13
[2] Constitution of India, art 32
[3] Constitution of India, art 372(1)

226 of the Constitution. Articles 251[4] and 254[5] states that if union law is inconsistent with state law, the union law shall prevail and the state law shall be void.

THE MEANING OF JUDICIAL REVIEW

Judicial review can be understood as a form of court procedure, usually in an administrative court, in which a judge reviews the legality of a decision or action. In the absence of an effective means of challenge, judicial review is available. The focus behind the judicial review is whether the law has been applied correctly and the correct procedures have been followed. Judicial review is a court procedure in which a judge reviews the legality of a decision or action made by a public body. In other words, judicial review is a challenge to the way a decision is made, not a challenge to the rights and the errors of the conclusions drawn. It doesn't really care about the conclusions of the process and whether those conclusions are "correct" as long as the correct procedures are followed. The court won't replace it with what it thinks is correct. The court will not substitute a decision it deems "correct." This could mean that the public body will be able to make the same decision again, as long as it does so in a legal way. If you want to argue that the decision was incorrect, judicial review may not be for you. There are other remedies, such as appealing the decision of a higher court.

The types of decisions that may fall within the scope of judicial review include:

1. Decisions of local authorities to provide various benefits and special education for children in need of such education in the discharge of their duties
2. Certain decisions of immigration authorities and the immigration and asylum service
3. Decisions of supervisory bodies
4. Decision rights in relation to prisoners

THE HISTORY OF JUDICIAL REVIEW

Very early on, the term judicial review came before the courts in the ***Dr. Bonham case***. In this case, Dr. Bonham was banned from practicing in London by the Royal College of Physicians

[4] Constitution of India, art 251
[5] Constitution of India, art 254

because he did not have a license. The case is also known for violating the principles of natural justice because of the pecuniary bias in it. Since Dr. Bonham was fined for being undocumented, the fine will be split between the king and the college itself.

Thereafter, the term "judicial review" was summed up in ***Marbury v Madison*** in 1803. In this case, the term of President Adam, who belonged to the Federalist Party, ended, and Jefferson, the anti-federalist, came to power. On his last day, Adam appointed members of the federalist party as judges. But when Jefferson came to power, he opposed it. So he prevented Secretary of State Madison from sending the appointment letter to the judge. Marbury, one of the judges, approached one of the judges. Marbury filed a writ of execution with the Supreme Court. The court rejected the request and first objected to the order of the legislature, the Congress, so the U.S. Supreme Court established the principle of judicial review.

The most notable feature of the Supreme Court of the United States is its judicial review power. As guardians of the constitution, the judiciary can review laws that may violate the country's constitution. Judicial review was first introduced in the Supreme Court in ***Marbury v Madison*** (1803)[6], in which the Supreme Court's powers were established by declaring legislation unconstitutional to limit the powers of Congress. In this case, the court ruled that the newly elected president of that time and his secretary of state, John Madison, were wrong to prevent William Marbury from being the justice of the district court as he was appointed by the former president before leaving office. Therefore, he filed a writ of execution with the secretary of state. The judiciary act of 1789 gave the Supreme Court jurisdiction, but the Marshall court ruled that the 1789 act was an unconstitutional extension of judicial power.

In this prospect of judicial review, the Indian constitution is more inclined to the U.S. Constitution than the UK. In the UK, no court can declare any law passed by the UK Parliament invalid, and in India, the parliament is not supreme and it cannot make any law. Any law enforced there is always subject to judicial review.

[6] *Marbury v Madison* 1 Cranch 137 : 2 L Ed 60 (1803)

WHAT IS THE REMIT OF JUDICIAL REVIEW?

The constitutional validity of legislation or executive orders can be challenged in the Supreme Court or High Court on the following three grounds: It violates fundamental rights; it goes beyond the authorities of the authority that enacted it, and it violates the provisions of the constitution. As can be seen from the above, the scope of judicial review in India is narrower than that in the United States, although to sum up, the scope of judicial review in India is clearly narrower than that in the United States, although the concept of judicial review is not explicitly mentioned in any article of the US constitution. This is because the US constitution provides for "due process of law", not "procedure by law" as contained in the Indian Constitution. Judicial review is not absolute as certain circumstances need to be met in order to challenge any law in the supreme court or high court, i.e., a law can only be challenged if it is constitutional. The law violates the provisions listed in the constitution. An enacted law is beyond the capacity or authority of the official responsible for enacting the law.

JUDICIAL REVIEW AS MENTIONED IN THE INDIAN CONSTITUTION

The Judicial Review is an important body of administrative law whose characteristics are to protect the rights of its citizens and implement the fundamental rights[7] enshrined in the Indian Constitution. The guiding principles of state policy anchored in Part IV of the Constitution from Articles 36-51[8] contain a large number of guiding principles that introduce the concept of the welfare state, which is to be understood as follows:

- The state strives to promote the well-being of people by reducing economic inequalities and inequalities in position and opportunity. It aims to secure the right to a decent livelihood for all citizens and equal pay for equal work for both men and women.

The Indian Constitution grants such a possibility of judicial review on the basis of the American Constitution. The text of the Indian Constitution gives the judiciary the power of judicial review of legislation. The constitutional articles on judicial review can be presented as follows:

[7] Constitution of India, part III
[8] Constitution of India, part IV

- Article 13 states that any act contrary to the provision of fundamental rights shall be declared null and void. Article 13(2) provides that the state shall not make any statute abrogating or reducing the right conferred by this part, and any statute in breach of this clause shall be void to the extent of the breach.
- Article 32 refers to the Supreme Court of India being a protector and guarantor of fundamental rights and Article 226 refers to the High Court being a protector and guarantor of fundamental rights.

A case can be mentioned of ***PN Kumar v Municipal Corp. Of Delhi***[9]**.** A two-judge panel of the Supreme Court ruled that citizens should not come directly to the Supreme Court to enforce their fundamental rights, but should first seek an appeal to the High Court, and if they are dissatisfied with the High Court's ruling, they can appeal to the Supreme Court. In this case, the petitioner challenged the levying of various taxes on his hotel. In deciding the petition, the Apex Court established the following guidelines for the exercise of Article 32 rights:

1. The scope of Article 226 [10] is broader than that of Article 32.[11]
2. It is more convenient for the parties to hear the case in the Supreme Court. It saves a lot of time.
3. The High Court has its own tradition of distinguished judges and solicitors.
4. The workload of the Supreme Court is too heavy as cases have been pending before him for the last 10-15 years.

- Article 131-136 of the Constitution grants the court the authority to resolve disputes between individuals, between individuals and states, and between states and the union; however, the court may be asked to interpret constitutional provisions, the interpretation provided by the Supreme Court becomes law recognised by all courts in the country.
- Article 143 constitutes the power of the President to consult the Supreme Court, where appropriate, to seek the Supreme Court's opinion thereon. He may refer the question to

[9] *PN Kumar v Municipal Corp of Delhi* CMP No 8678 of 1986
[10] Constitution of India, art 226
[11] Constitution of India, art 32

that court for consideration, and the court, after hearing such a hearing as it deems appropriate, may give its opinion to the President and Submit a comment on it.

The article mentioned above found its application in the ***Ram Mandir-Babari Masjid Case***[12], also known as the Ayodhya Case', in which the Indian President appealed to the Supreme Court under Article 143 of the Constitution. The reference was to whether before the construction of the Ram Janma Bhoomi and the Babari Masjid (including the inner and outer courtyard premises of such a structure), a Hindu temple or a Hindu religious structure existed in the area in which the structure stands.

- Article 145 sets out the rules of procedure of the General Court. Whereby, subject to the provisions of any act made by Parliament, the Supreme Court may from time to time, with the consent of the President, make rules generally governing the practice and procedure of the Court, including any judgment or order of the Court which may have been received and on the terms of the procedure for such review, including the time limit within which applications to the court for such review must be made;
- Article 246(3) grants the state legislature exclusive authority in matters of the state list.
- Articles 251and 254 state collectively, that where Union and the state law conflict, the state law is null and void.
- Article 372 provides for judicial review of legislation before the constitution.

APPLICABILITY OF JUDICIAL REVIEW

Judicial review finds its applicability in cases where administrative authorities fail to act within their assigned competence and follow due process. Such an act may occur due to:

1. ***Failure to properly exercise discretionary powers, which may occur when*:**
    a. When the designated party has further delegated its powers to another party/administrative officer. Such a condition is descriptive of the maxim ***delegatus non potestdelegareie***. A delegate cannot delegate.

[12] *M Siddiq (Deceased) ThrLrs v Mahant Suresh Das & Ors* [2019] AIR SC

b. When an administrative authority issues a fixed procedural rule that applies to each case, this is tantamount to a breach of powers.

c. If an authority vested with special powers acts solely on instructions from its superior, such action would be struck down by the court as a surrender and relinquishment of power.

2. ***Excessive or abusive discretion is used in cases such as*:**

a) An act without jurisdiction means that, if any authority acts beyond its authority, said the act would be declared void/non-existent in the eyes of the law, or in the case of an act exceeding jurisdiction and exceeding the limit set by law, such action is ultra vires and also void.

b) In the event of an arbitrary, discriminatory, or unreasonable action by an administrative authority, that action must be struck down by the court. In the case of ***Barium Chemicals Ltd. v Company Law Board***[13], the Supreme Court ruled that the central government's finding that the company affairs needed to be investigated was arbitrary and unreasonable and therefore not valid.

c) In the case of mala fide action involving

1. Indeed, malevolence, revenge, personal enmity, and similar factors. If such fraudulent intent is proven by the administrative authority, the court has no choice but to stop the administrative measure.

2. Legal malice, in which there is no personal revenge but the exercise of power without just and reasonable cause.

Judicial Review in the United States of America:

The Court of America established the doctrine of judicial review for the first time. The United States Constitution did not originally include an express provision for judicial review. The

[13] *Barium Chemicals Ltd v Company Law Board* AIR 1967 SC 295

power of judicial review, however, was assumed by the United States Supreme Court in the landmark case of Marbury v Madison.[14]

The following were the facts of the case: The federalists had lost the election of 1800, but they had succeeded in creating several new judicial positions before leaving office. Among these were 42 justices of the peace, forty-two of whom were appointed by retiring Federalist President John Adams. The Senate confirmed the appointments and they were signed and sealed, but Adam's Secretary of State, John Marshall, failed to deliver certain of them. When the new President, Thomas Jefferson, took office, he directed his Secretary of State, James Madison, not to deliver seventeen of these commissions, including one for William Marbury, and filed a petition in the Supreme Court for the issuance of a writ of mandamus against Secretary Madison, ordering him to deliver the commissions. He cited Section 31 of the Judiciary Act of 1789, which stated that "the Supreme Court shall have the power to issue.....writs of mandamus, in cases warranted by the principles and usages of law, to persons holding office under the authority of the United States." The Court, speaking through Marshall, who had now been appointed Chief Justice, ruled that Section 13 of the Judiciary Act violated Article III.

Section 2 of the Constitution,[15] because the Constitution limits the Supreme Court's original jurisdiction to cases "affecting ambassadors, other public ministers, and consuls, and those to which a State is a party." Because Marbury did not fit into any of these categories, the court had no jurisdiction over his case. It is worth noting Marshall, C.J.'s observations in that case:

"The Constitution is either superior supreme law, unchangeable by ordinary means, or it is on a par with ordinary legislative Acts, and, like other Acts, is alterable whenever the legislature desires... ..... Certainly, all those who drafted written constitutions to regard them as the fundamental and supreme law of the nation, and as a result, the theory of every such government must be that any act of the legislature that is contrary to the Constitution is null and void. "It is emphatically the province and duty of the judicial department to say what the law is," he adds [16]

[14] *Marbury v Madison* 2L Ed 60
[15] Constitution of India, art 2
[16] JN Pandey, *The Constitutional Law of India* (45 edn, Central Law Agency 2008) 66

JUDICIAL REVIEW IN UNITED KINGDOM

In England, judicial review was common; the case of ***Dr. Thomas Bonham v College of Physicians*** [17]was decided in 1610 by Lord Coke, who established judicial review. However, in the case of ***City of London v Wood case***,[18] Chief Justice Holt stated, "An Act of Parliament can do no wrong, though it may do several things that appear pretty odd." This remark establishes the 'Doctrine of Parliamentary Sovereignty,' which states that the court has no authority to rule on the legality of parliamentary acts. The United Kingdom has a system based on legislative supremacy and parliamentary sovereignty. Previously, there was no judicial review in the United Kingdom, but with the adoption of the European Convention on Human Rights, the scope of judicial review expanded. The Human Rights Act of 1998[19] also requires domestic courts to protect individuals' rights. There is no written constitution in the United Kingdom, and parliamentary supremacy is the rule. The principle of 'Parliamentary sovereignty' dominates constitutional democracy in the United Kingdom. In the United Kingdom, there are two types of legislation:

(1) Primary legislation, consists primarily of legislation enacted by parliament. Except in rare cases where it violates European Community law, primary legislation is not subject to judicial review. Primary legislation is subject to judicial review in some cases since the formation of the European Union and the Human Rights Act of 1998.

(2) Secondary legislation, which includes rules, regulations, directives, and Ministry acts. Judicial review is available for secondary legislation. There are no exceptions to secondary legislation; all executive and administrative functions, rules, and regulations can be reviewed by Courts, and any action can be declared unconstitutional.

According to the decision in ***Les Verts v European Parliament***[20], the "European Union is a community based on the Rule of Law, since neither its member states nor its institutions can

[17] *Ibid*
[18] *City of London v Wood* (1701) 12 Mod 669, 687
[19] Human Rights Act 1998
[20] *Les Verts v European Parliament* (1986) ECR 1339

avoid a review of whether the measures adopted by them are in conformity with the basic constitutional character."

JURISPRUDENCE ON JUDICIAL REVIEW

Below are some jurisdictions that have complemented the growth and development of judicial review in India:

- ***Kesavananda Bharti v State of Kerala***[21] **-** Also known as the Fundamental Rights Case, it gave rise to the concept of Fundamental Structure Doctrine. It is an Indian legal principle stating that the Indian Constitution has certain fundamental features that cannot be altered or destroyed by amendments of Parliament.
- ***Minerva Mills v Union of India***[22] **-** It is a landmark case of the Supreme Court of India which further elaborated the interpretation of the fundamental structure doctrine set out in Kesavananda Bharti v State of Kerala and also a basis for judicial review of laws and judgments in the Court of India. The Court's ruling found that Parliament's power to amend is not a destructive power and, therefore, Parliament cannot impede the fundamental rights of individuals, including the right to liberty and equality (regarded as the fundamental structure of the Constitution).
- ***Golak Nath v State of Punjab***[23] - Prior to the above decision, the Supreme Court held that the amending laws were not ordinary laws and could not be overturned through the application of Article 13. In this case, which challenged the validity of the 1st, 4th, and 17th amendments, the Supreme Court overturned its earlier decision to uphold the Article 368 provision, which contained Parliament's propensity to limit fundamental rights under Chapter III of the constitution and thus to a groundbreaking decision.
- ***P.A. Inamdar v State of Maharashtra***[24] - In that case, the Supreme Court abolished state quotas in private, unsupported vocational schools and ruled specifically that the state

[21] *Kesavananda Bharti v State of Kerala* (1973) 4 SCC 225
[22] *Minerva Mills v Union of India* AIR 1980 SC 1789
[23] *Golak Nath v the State of Punjab* 1967 AIR 1643
[24] *PA Inamdar v State of Maharashtra* AIR 2005 SC 3226

couldn't impose reservations in unsupported institutions. This led to the passage of the Constitution (Ninety-third Amendment) Act 2005 by Parliament in December 2005.

- ***ChampakamDorairajan v State of Madras***[25] - In the Champakam Dorairajan case, the Madras government reserved seats in state medical and technical colleges for different communities in specific proportions based on religion, race, and caste, which has been challenged as unconstitutional. The government defended its order with Article 46 of the Constitution, which allows the state to promote the educational and economic interests of the weaker strata of the population, and in particular the ordered castes and ordered tribes, with special care to ensure social justice. But the Supreme Court overturned the order as violating the equality guaranteed in Article 15(1),[26] noting that directive principles cannot overrule guaranteed fundamental rights. As a result, Parliament introduced an amendment to Article 15, inserting Clause (4) by virtue of the Constitution (First Amendment) Act 1951.

CONCLUSION

Judicial review has proven over the years to be one of the important mechanisms through which the courts can examine the acts of the legislature, executive, and other various government agencies and then decide whether or not the acts of these agencies are valid and within the limits set by the Constitution, thereby not violating the doctrine of the basic structure. Article 13(2) of the Indian Constitution[27] states that the state shall not make any law that takes away or abridges the fundamental rights enshrined in the Constitution, and any law made in contravention of this provision shall be void to the extent of the inconsistency. The inclusion of this provision appears to be due to extreme caution because even in the absence of such a provision, courts would still have the authority to examine the constitutionality of a law on the basis of violation of fundamental rights. One of the distinctive features of the Constitution is that every individual has a fundamental right to petition the Supreme Court. Furthermore, the Supreme Court and High Courts have been given broad original and appellate jurisdiction to rule on the

[25] *ChampakamDorairajan v State of Madras* AIR 1951 SC 226
[26] Constitution of India, art 15(1)
[27] Constitution of India, art 13(2)

constitutionality of any (legislative or executive) action. In India, judicial review is based on the assumption that the Constitution is the supreme law of the land. The supreme courts have the authority to review actions taken by the legislature, executive, and judiciary. It has been extended to the reviewability of constitutional amendments by the doctrine of the constitution's "basic structure" from Gopalan to Golak Nath and Kesavananda Bharati to I.R. Coelho.

The violation of constitutional provisions has been protected by the basic structure doctrine. There should be checks and balances between the three branches of government. The most visible object of judicial review is to ensure that the authority does not abuse its power and that the individual is treated justly and fairly. The ostensible purpose of judicial review is to vindicate some alleged right of one of the parties to litigation and thus grant relief to the aggrieved party by declaring an enactment void, if it is void in law, in the court's judgment. However, the true goal is something higher: no statute that is contrary to the constitution should be enforced by courts of law.[28] As a result, the judiciary should uphold the constitutionality of laws by exercising the power of judicial review.

Because the framers of our Constitution were aware of the inherent flaws of judicial review, they attempted to define its scope and implemented several safeguards to prevent courts from abusing their powers and acting as "supper legislature" or "permanent "third chambers". According to D.D. Basu, an Indian constitutional commentator, our Constitution adopts a via media between American systems of judicial supremacy and the English principle of parliament supremacy by granting the judiciary the power to declare a law unconstitutional if it is beyond the legislative competency, i.e. when the legislature oversteps its assigned field or violates fundamental rights, but it lacks the power to review the wisdom of the legislative policy.[29] With the form of a quasi-federal/quasi-unitary Constitution, the judiciary should be protected the fundamental rights of the people as armor in the light of human rights norms when the functioning of the power of judicial review. It can be concluded that Judicial Review empowers the Court to act as a guardian of fundamental rights and thereby exercise good governance.

[28] Justice CK Thakkar & Ors, *Judicial Review of Legislative Acts* (2nd edn, Lexis Nexis 2009) 116
[29] DD Basu, *Introduction to the Constitution of India*, (6th edn, LexisNexis) 36