

## Judicial Review

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### I. Introduction

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. We have adopted this feature from the United States Constitution. Judicial review is considered a basic structure of the constitution

This research paper deals with we will discuss the Ground, Types, Importance, Limitations, Provisions, Requirements and features with Indian case laws.

- Law plays an important role in today's society. People have given up on their rights and entered into a contract with the government in return of which the government gave them protection against the wrong. This is known as the Social Contract Theory given by Hobbes. In this phase of Rule of Law, the law without justice can become arbitrary and can be misused. So to keep check and balance on the power of each organ of government we have further adopted Judicial Review.

The Judiciary has the power to set aside any law passed by the parliament if it intervenes in the Constitution of India. Any law passed by the legislature that contravenes the Constitution can be made null and void by the Judiciary. The power to interpret the Constitution of India to its full extent lies within the Judiciary. It is the protector of the Constitution of India. Judicial review is also called the interpretational and observer roles of the Indian judiciary.

- Suo Moto cases and the Public Interest Litigation (PIL), with the discontinuation of the principle of Locus Standi, judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached

### II. Grounds for Judicial Review

#### Constitutional Amendment

Judicial Review in this phase is done for all the constitutional amendments done by the authority. All those amendments which are in violation of Fundamental Rights are declared void and it is held to be unconstitutional.

#### Administrative Actions

In general terms, the constitutional validity of the administrative action can be verified by the tests developed by Lord Diplock in the case of Council of Civil Services Union v. Minister of Civil Services. These tests were as follow:

- A. Illegality
- B. Irrationality
- C. Procedure used

#### A. Illegality

Law regulates the decision. Their acts and their decisions can be made illegal if they fail to follow the law properly. Therefore, an action can be made illegal if the public body has no power to make decisions on its own or if they have acted beyond the powers. For example, if legislation who is related to the public body does not include the necessary power nor do they have precise limits, their power can be used. Public bodies which act in an illegal way are described as "ultra vires".

### B. Irrationality

The courts can also interfere to quash a decision if they think that it is unreasonable as it makes it “irrational” or “perverse” on the part of the decision maker. In the *Wednesbury* case, Lord Greene stated that for review to be successful, the administration decision should be something that a person who is not sensible can dream that it is within the powers of the authority.

### C. Procedural Impropriety

In this, the decision-makers should act fairly in making their decisions. It is the principle which applies only to the matters of procedure which is opposed to the substance of decision reached. This case should be decided and heard by the people to whom it is delegated and not any other person. The rules as follows:

1. A person should not be the judge in his own case.

2. The person should hear the other person also.

It is the duty of authority to act fairly before taking the matter. Public body must not act unfairly as it amounts to abuse of power. It means-

3. The Legislation must follow the decisions if they are expressed procedures laid down by the legislation.

4. It should not breach the rules of natural justice. The public bodies should allow people to make decisions and hold their views which can cause them to reach a decision based on prejudice.

5. Legislature Power

The constitutionality of a legislative act is determined by the courts if a person institutes a case.

### Types of Judicial Review:

1. Reviews of Legislative Actions:

This review implies the power to ensure that laws passed by the legislature are in compliance with the provisions of the Constitution.

2. Review of Administrative Actions:

This is a tool for enforcing constitutional discipline over administrative agencies while exercising their powers.

3. Review of Judicial Decisions:

This review is used to correct or make any change in previous decisions by the judiciary itself.

### Importance of Judicial Review:

1. Apart from allowing the judiciary to intervene in many public issues, even when there is no complaint from the aggrieved party Judicial Review have following importance to the public..

2. It is essential for maintaining the supremacy of the Constitution.

3. It is essential for checking the possible misuse of power by the legislature and executive.

4. It protects the rights of the people.

5. It maintains the federal balance.

6. It is essential for securing the independence of the judiciary.

7. It prevents tyranny of executives.

### Limitations of Judicial Review:

1. It limits the functioning of the government.

2. It violates the limit of power set to be exercised by the constitution when it overrides any existing law.

3. In India, a separation of functions rather than of powers is followed.

4. The concept of separation of powers is not adhered to strictly. However, a system of checks and balances have been put in place in such a manner that the judiciary has the power to strike down any unconstitutional laws passed by the legislature.

5. The judicial opinions of the judges once taken for any case becomes the standard for ruling other cases.

6. Judicial review can harm the public at large as the judgment may be influenced by personal or selfish motives.

7. Repeated interventions of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.

### Constitutional Provisions for Judicial Review

▪ There is no direct and express provision in the constitution empowering the courts to invalidate laws, but the constitution has imposed definite limitations upon each of the organs, the transgression of which would make the law void.

▪ The court is entrusted with the task of deciding whether any of the constitutional limitations has been transgressed or not.

▪ Some provisions in the constitution supporting the process of judicial review are:

- **Article 372 (1)** establishes the judicial review of the pre-constitution legislation.
- **Article 13** declares that any law which contravenes any of the provisions of the part of Fundamental Rights shall be void.
- **Articles 32 and 226** entrusts the roles of the protector and guarantor of fundamental rights to the Supreme and High Courts.
- **Article 251 and 254** states that in case of inconsistency between union and state laws, the state law shall be void.
- **Article 246 (3)** ensures the state legislature's exclusive powers on matters pertaining to the State List.
- **Article 245** states that the powers of both Parliament and State legislatures are subject to the provisions of the constitution.
- **Articles 131-136** entrusts the court with the power to adjudicate disputes between individuals, between individuals and the state, between the states and the union; but the court may be required to interpret the provisions of the constitution and the interpretation given by the Supreme Court becomes the law honoured by all courts of the land.
- **Article 137** gives a special power to the SC to review any judgment pronounced or order made by it. An order passed in a criminal case can be reviewed and set aside only if there are errors apparent on the record.

#### **Requirement of Judicial Review:**

1. With the power of judicial review, the courts act as a custodian of the fundamental rights.
2. With the growing functions of the modern state, judicial intervention in the process of making administrative decisions and executing them has also increased.
3. When the judiciary surpasses the line of the powers set for it in the name of judicial activism, it could be rightly said that the judiciary then begins to invalidate the concept of separation of powers set out in the Constitution.
4. Making laws is the function and duty of the legislature, to fill the gap of laws and to implement them in a proper manner is responsibility of the executive. So that the only work remaining for the judiciary is interpretations. Only a fine equilibrium between these government bodies can sustain the constitutional values.

#### **Early mentioned of Judicial Review**

The word judicial review at a very early instance came before the court in Dr Bonham Case. In this case, Dr Bohnam was forbidden to practice in London by the Royal college of physicians as he was not having a license for the same. This case is also known for the violation of Principals of Natural Justice as in this case there is Pecuniary bias. As Dr Bonham is fined for his without a license, practicing the fine would be distributed between the king and the college itself.

#### **Latest mentioned Indian Case Law**

Recently, the Supreme Court (SC) refused to treat the Central Vista project as a unique one requiring greater or heightened judicial review.

- The SC said the government was “entitled to commit errors or achieve successes” in policy matters without the court's interference as long as it follows constitutional principles.
- The Central Vista project of New Delhi includes Rashtrapati Bhawan, Parliament House, North and South Block, India Gate, National Archives among others.

#### **Early Indian Case Laws**

##### **Shankari Prasad V. Union of India AIR 1951 SC 458**

In this case, the Zamindars challenged the constitutional validity of the first amendment Act 1951 on the ground that it violates fundamental rights and Article 13(2) of the Constitution of India and contended that Article 31 is unconstitutional. The court held that any amendment made under Article 368 is not a law under Article 13 of the constitution. So, the First Amendment Act is constitutionally valid.

After this case, the Fourth Amendment Act came, which added Article 31(2A) which stated that unless the ownership of property acquired is transferred to state or state corporation, there would be no compensation. It also stated that the adequacy of compensation which is to be fixed by law is not non-justiciable.

Further 17th Amendment came in 1964 which was given retrospective effect. It added Article 31A(2)(a)(iii) and laid down that estate includes Any land for the purpose of agriculture or ancillary purpose which includes wasteland or forest land.

**Sajjan Singh V. State of Rajasthan AIR 1965 SC 845**

In this case, the constitutional validity of the 17th Amendment Act of 1964 was challenged. Hon'ble court by the ratio of 3:2 rejected the contention and applied the doctrine of pith and substance and held that Article 368 gives the power to amend 13(2). The judgement made in Shankari Prasad was upheld in this case.

**I.C. Golak Nath & Ors V. State of Punjab AIR 1967 SC 1643**

In this case, the validity of the 17th Amendment Act of 1964 was challenged again and was referred to a larger bench of 11 Judges. Court by the ratio 6:5 overruled the earlier judgement made in Shankari Prasad and Sajjan Singh and held that the word Law in Article 13 includes constitutional amendment made under Article 368.

CJI Subba Rao, speaking for 5 Judges held that Article 368 provides only for the procedure and not power to amend. As it derives its power from Article 248 i.e Residuary Power (as not mentioned specifically) that is an ordinary law, so the test of Article 13 will apply.

After this landmark case 24th Amendment of 1971, came to neutralize the effect of Golaknath case. It gave us Article 13(4), which says that any amendment made under Article 368 is not a law under Article 13. It also changed the Marginal note of Article 368 to Power of parliament and procedure to amend the constitution.

Soon the 25th Amendment of 1971 came which changed the word "compensation" in Article 31(2) to "amount" to remove the obligation that the government is bound to give compensation.

It added Article 31C to the constitution which stated that Article 14,19,31 won't apply to a law enacted to effectuate policy underlying Article 39(b) and (c) [DPSP].

**Kesavananda Bharti V. State of Kerala AIR 1973 SC 1461**

In this case, the 24th and 25th Amendment Act of 1971 was challenged. A Judge Bench of 13 Judges was constituted. With the ration of 7:6 held that:

1. Power to amend the constitution is to be found in Article 368. It is hard to believe that it lies in residuary power.

2. There is a difference between ordinary law and constitutional amendment.

3. Parliament can't destroy or amend the basic structure of the constitution.

CJI Sikri gave the list of the Basic structure though not exhaustive;

6. The supremacy of the constitution.

7. Republic and democratic form of government.

8. Secular character of the Indian Constitution.

9. Separation of Power.

10. Federal character.

1. Court also held that "compensation" can't be replaced with "amount".

2. Article 31(c)(i) was held valid but Article 31(c)(ii) was declared invalid.

**Indira Nehru Gandhi V. Raj Narain AIR 1975 SC 865**

In this case, the 39th Amendment Clause 4 was challenged as it puts a bar to challenge the election of Speaker and Prime Minister. It was struck down in this case and the court declared it unconstitutional.

**Minerva Mills V. Union of India AIR 1980 SC 1789**

In this case, further Judicial Review was added to the list of Basic Structure of the constitution along with the balance between Fundamental Rights and Directive Principles.

**I.R. Coelho V. State of Tamil Nadu AIR 2008 SC 861**

In this case the court held that any act inserted in Schedule 9 can be judicially scrutinized but only those enactments which are inserted after 24th April 1973.

**Features of Judicial Review****Power of judicial review can be exercised by both the Supreme Court and High Courts:**

Under Article 226 a person can approach the High Court for violation of any fundamental right or for any legal right. Also, under Article 32 a person can move to the Supreme Court for any violation of the fundamental right or for a question of law. But the final power to interpret the constitution lies with the apex court i.e Supreme Court.

**Judicial Review of both state and central laws:**

Laws made by centre and state both are the subject to the judicial review. All the laws, order, bye-laws, ordinance and constitutional amendments and all other notifications are subject to judicial review which are included in Article 13(3) of the constitution of India.

**Judicial review is not automatically applied:**

The concept of judicial review needs to be attracted and applied. The Supreme court cannot itself apply for judicial review. It can be used only when a question of law or rule is challenged before the Hon'ble court.

**Principle of Procedure established by law:**

Judicial Review is governed by the principle of “Procedure established by law” as given in Article 21 of the Indian Constitution. The law has to pass the test of constitutionality if it qualifies it can be made a law. On the contrary, the court can declare it null and void.

**Judicial review of Ordinances**

Article 123 and 213 of the Indian constitution gives the president and the governor of the state to pass an ordinance. An act of ordinance by the president or governor is within the same restrictions as which are placed on parliament which makes any law. This power is used by the president or governor in exceptional conditions only. The power should not be used mala fide. In a report published by the House of People, it was submitted that till October 2016 president has made 701 ordinances.

Through the ordinance, it was held that Rs.500 and Rs. 1000 notes will cease to be liabilities from 31st December 2016.

In the case of **AK Roy v. Union of India (1982) 1 SCC 271** it was held that the president’s power to pass an ordinance is not a subject of Judicial Review.

In the case of **T. Venkata Reddy v. State of Andhra Pradesh (1985) 3 SCC 198** it was held that just like legislative power cannot be questioned, the ordinance made on the ground of motive or non-application of mind, or necessity cannot be questioned.

**Judicial review of Money Bill**

Article 110(3) of the constitution of India states that whenever a question arises for whether a bill is a money bill or not the decision of the speaker of Lok Sabha shall be final.

In the present scenario, a “money bill” is beyond the power of Judicial Review.

Article 212 of the constitution of India provides that the Courts cannot inquire proceedings of the Legislature on the ground of any alleged irregularity of procedure.

Article 255 of the constitution of India provides that the recommendation and previous sanction are matters of procedure only.

In the case of **Mangalore Ganesh Beedi Works v. State of Mysore AIR 1963 SC 589**, it was held that the appellant was liable to sales tax under coinage act which was changed by coinage amendment act, 1955. So the contention was that as it enhanced the tax the bill should be passed as a money bill and as it was not passed as a money bill the tax should be held as invalid.

The Supreme Court held that the coinage amendment act 1955 substituted new coinage in place of old coinage and thus it was no tax.

By the way of obiter dicta, it was observed as if it would be a tax serving bill then also it was out of the proceedings of judicial review.

**III. Conclusion**

Here in India we have adopted the concept of Separation of power so we cannot assume the power of judicial review in full extended form. If the courts presume full and arbitrary power of judicial review it will lead to the poor performance of work by all the organs of government. So to keep all the functions work properly each has to work in its provided sphere. In India, we have the concept of judicial review embedded in the basic structure of the constitution. It helps the courts to keep a check and balance upon the other two organs of government so that they don’t misuse their power and work in accordance with the constitution. Finally, we have developed the concept of judicial review and it has become the part of basic structure in case of *Minerva Mills V. Union of India*. So, at last, it is correct to say that judicial review has grown to safeguard the individual right, to stop the use of arbitrary power and to prevent the miscarriage of justice.

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