

# Judicial Review

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**ABSTRACT:** *Judicial review is a form of court process in which the validity of a decision or action taken by a governmental body is reviewed by a judge. In other words, judicial appeals are a response not to the rights and wrongs of the verdict drawn, but to the manner in which a judgment has been made. As long as the proper protocols have been followed, it is not really concerned with the findings of the process and whether they were 'right'. The court will not overwrite the 'right' ruling with what it believes it is. This may mean that the governmental authority, as long as it does so in a legal fashion, will be able to make the same decision again. Judicial appeal should not be best for you if you wish to argue that a ruling was wrong. Alternative options exist, such as appealing to a superior court against the ruling.*

**KEYWORDS:** *Governmental body; Justice; Judicial Review; Rights; Superior Court.*

## INTRODUCTION

Judicial scrutiny, the jurisdiction of a country's judiciary to investigate the acts of the government's political, executive, and administrative arms and to decide if those actions are lawfully compliant. Acts considered contradictory are ruled unconstitutional and null and void, thus. In this way, the institution of judicial review relies upon the presence of a written constitution[1].

The traditional use of the word judicial review may be more properly defined as "constitutional review," for there still exists a long tradition of judicial review of the acts of federal agencies that entail neither the courts have the authority to find such actions unconstitutional nor that the country have a formal constitution. The supposedly dubious acts of managers against principles of reasonableness and misuse of discretion are assessed by such a 'administrative investigation'[1].

Such acts are rendered null and void when courts decide that the disputed administrative actions are unconstitutional or include violations of discretion, as are actions that are considered inconsistent with constitutional standards when courts exercise judicial oversight in the traditional or constitutional context[2].

Whether or not a court has the authority to find the actions of government officials unconstitutional, it can have the same result by exercising "indirect" judicial scrutiny. In certain cases, the court finds that the legislature may not have intended a disputed provision or action because it is inconsistent with some other rules or existing legal standards[2].

As a defender of the fundamental principles that the founding fathers brought us, the judiciary plays a very important role. They try to reverse the damage that the legislative and the executive are doing to the legislature and then try to provide every person with what the Constitution has promised under the State Policy Directive Principles. Thanks to the right of judicial review, all this is true[3].

All this is not done in a day that took 50 long years for where we are right now, whether one feels it was a roller coaster trip without any hurdles, the brunt of many politicians, technocrats, scholars, lawyers etc. has been faced by the wrong judiciary. Few of them are legitimate issues, and the factor of corruption and the force of criminal disdain is among one of them. I would attempt to illustrate the ups and downs of this largest organization in India in this article[3].

The rule of law is the pillar of democracy, and the judiciary is the primary responsibility for the enforcement of the rule of law. This is now a central characteristic of every constitution, and cannot be changed except by the exercise by parliament of new powers. It is the value of judicial review to ensure that government is inclusive and that anyone who exercises or exercises public authority is responsible. As Edmund Burke said: "all persons in positions of power ought to be strongly and lawfully impressed with an idea that "they act in faith," and must account for their conduct to one great master, to those in whom the political sovereignty rests, the people"[4].

India has opted for a parliamentary model of government, where each division is engaged in policy-making and decision-making, such that every point of view is articulated and every section of the population is equally represented in each of these bodies. The judiciary has a very interesting role to play in this sort of representative democracy. That is the principle of transparency in any republican society, and everyone exercising public authority, regardless of the extra-expressed declarations in the constitution, must note this fundamental theme[4].

## DISCUSSION

The concept of judicial review has been an integral aspect of many countries' written constitutions. Seervai in his book Constitutional Law of India observed that the concept of judicial review is a familiar feature in the Constitutions of Canada, Australia and India, while the theory of Division of Powers has no place in strict sense in Indian Constitution, however the roles of separate organs of the Government have been adequately separated, so that one organ of the Government might[5].

The principle of division of powers in itself has the power of judicial review as an integral part of the rule of law, and is a central aspect of the Indian Constitution. Each conduct by the State must be checked on the anvil of the rule of law and that exercise shall be carried out by the courts, when the occasion arises, on the basis of a doubt posed in that name. As far as the High Courts are concerned, the power of Judicial Review is built into Articles 226 and 227 of the Constitution. With reference to Articles 32 and 136 of the Constitution of the Supreme Court, the judiciary in India has been able to regulate any part of legislative and public activities by judicial examination[5].

Both with respect and skepticism, the widening of the horizon of judicial review is seen; reverence in as far as judicial review is an innovative aspect of interpretation that acts as an omnipresent and ultimately omnipotent check on government branches of legislation and executive branches. But at the same time, there is a danger that the powers granted to the legislature and the executive can infringe upon them[6].

Judicial review should be interpreted as a type of court hearings, normally in the Disciplinary Court, where the judge reviews the validity of a ruling or action. Where no appropriate form of appeal is possible, judicial review is available. The question behind the Judicial Review is whether the legislation has been properly enacted and the relevant protocols have been followed[6].

The Constitution of India has affected the Higher Courts and the Supreme Court of India in order to scrutinize the legality of regulatory acts and laws. The key objects of judicial review are the defence of public interests and the enforcement of basic rights. If some problem occurs between State and Centre connection, then Article 246 and the Schedule 7 of the Constitution has marked the working zone for the law creation of both State and Centre[7].

As a defender, judicial review plays an important function where the executive, judiciary and legislature damage the principles of the Constitution and deprive privileges. Judicial review is treated as an essential function of the nation. There is a legislative model of democracy in India, where every part of the population is involved in the process of decision-making and policy making. It is correct that the court's primary obligation to apply the rule of law is the cornerstone of civil equity. By exercising the current powers of Parliament, it is difficult to change the rule of law to be enforced by the judge. Both those who are doing public service here are liable[7]. Under the democratic provisions of the Constitution of India, they have to work. Judicial oversight is the principle of the division of authority and the rule of law. Under Articles 226 and 227 in the case of the High Court and Articles 32 and 136 of the Constitution of India, the judicial appraisal has had an effect on the examination for so long[8].

In today's world, the law plays an important role. In order for which the government gave them immunity against the false, citizens gave up on their freedom and entered into a deal with the government. This is known as Hobbes' Social Contract Principle. The law without justice may become subjective and can be misused at this point of the Rule of Law. We also now introduced the Judicial Review in order to preserve oversight and balance of the authority of each government organ. Judicial review is the procedure by which the court declares as unconstitutional any statute that goes against the constitution[8].

We have adapted this feature from the Constitution of the United States. But this element of our constitution took a number of years to repair. In this respect, the judiciary has played a major role. Constitutional changes, constitutional decisions and legislation made by the legislature can be reviewed by the judiciary. We will explore the history, growth, features and modes of Judicial Review with Indian case laws in this research paper[8].

There are three government bodies in India: the Assembly, the Executive and the Judiciary. The Legislature exercises the role of producing the rules, the Executive executes/implements the laws, and the Judiciary maintains a check on all of the above-mentioned organs and ensures that the laws being created and enacted are not ultra vires to the Constitution of India. Our constitution has the function of Division of Authority to make these organs operate within their defined limits. On the division of authority, Article 50 of the Indian Constitution speaks[9].

An especially significant feature of the political settlement in the UK is judicial scrutiny. It is a system, a court case, in which a judge or judges determine if a government body has acted lawfully. It creates a road to justice for those negatively impacted by the decision-making of public bodies and performs critical duties by allowing the courts and judiciary to regulate the decision-making mechanism of government, be it central or local government, or parts of the state that enact government policy, like the NHS or police, as examples[9].

When the Legislature, the Executive and the Judiciary injured the constitutional principles and deprived the Indian inhabitants the privileges that were established under the Indian Constitution. In certain cases, judicial review plays a very valuable function as a safeguard for the defence of people's rights. It's a long ride back to where we're right now. However, also technocrats, lawyers, politicians and academicians have faced the pressure of the judiciary[10].

## CONCLUSION & IMPLICATION

In order to ensure careful oversight over the exercise of public authority, the growth of judicial review is the unavoidable reaction of the judiciary. Growing consciousness of people's rights; the pattern of judicial oversight of any major government activity and the tendency also of the executive to pursue judicial determination of debatable or contentious matters, at times, may have contributed to the increasing importance of the position of the judiciary, in order to escape its responsibility for the decision. There is a general belief that the judiciary has been involved in this country in widening the sphere of judicial review into non-traditional areas which were traditionally considered outside the jurisdiction of the judiciary.

The Judges have a responsibility to execute, which is much more burdensome to keep the judicial vessel afloat even on keel. Without the basis of a juristic theory, it must prevent making any ad hoc decisions, particularly where the decision seems to break new grounds. The decisions must be reasonable, accurate, simple, and sober, made in speech with caution, avoiding saying more than what is expected in the situation.

It must always be noted that there is a possibility that a step taken in a different direction is a possible step in the wrong direction. It needs to be a certain measure in the right direction in order to be a path-breaking pattern. Any change that satisfies these criteria and sets a new pattern towards justice will alone be a New Level of Justice and a real commitment to the growth and development of the law directed at fulfilling the concept of justice.

## REFERENCES

- [1] J. R. Lax, "The new judicial politics of legal doctrine," *Annu. Rev. Polit. Sci.*, 2011, doi: 10.1146/annurev.polisci.042108.134842.
- [2] R. J. Kozel, "Stare Decisis as Judicial Doctrine," *Wash. Lee Law Rev.*, 2010.
- [3] J. L. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention," *Mich. Law Rev.*, 1970, doi: 10.2307/1287556.
- [4] M. A. Bailey and F. Maltzman, "Does legal doctrine matter? Unpacking law and policy preferences on the U.S. Supreme Court," *American Political Science Review*. 2008, doi: 10.1017/S0003055408080283.
- [5] R. Hirschl, "The Judicialization of Politics," in *The Oxford Handbook of Law and Politics*, 2008.
- [6] C. J. Muhl, "The employment-at-will doctrine: Three major exceptions," *Mon. Labor Rev.*, 2001.

- [7] M. C. Stephenson, "'When the Devil turns... ': The political foundations of independent judicial review," *Journal of Legal Studies*. 2003, doi: 10.1086/342038.
- [8] J. Gerards, "Pluralism, deference and the margin of appreciation doctrine," *Eur. Law J.*, 2011, doi: 10.1111/j.1468-0386.2010.00540.x.
- [9] S. Callander and T. S. Clark, "Precedent and Doctrine in a Complicated World," *Am. Polit. Sci. Rev.*, 2017, doi: 10.1017/S0003055416000587.
- [10] I. Wurman, "Constitutional Administration," *Stanford Law Rev.*, 2017.

