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JUDICIAL REVIEW IN INDIA: IMPORTANCE, LANDMARK CASES AND CRITICISM

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Introduction

The Structure of India gives for an independent judiciary that acts as a gatekeeper of the Structure and secures the rights of the citizens. One of the key capacities of the Judiciary is to guarantee that the laws passed by the governing body and the activities of the official are in line with the Structure. Typically known as Judiciary review, and it is a basic include of the Indian Structure. Judiciary review in India stands as a foundation of the Structure, guaranteeing that both authoritative and official activities acclimate to the protected system. This crucial prepare, motivated by the U.S. framework however extraordinarily custom fitted to the Indian setting, serves as a gatekeeper of citizens' rights and a rampart against self-assertive administration. In this investigation, we dive into the multifaceted nature of Judicial review, following its verifiable beginnings, understanding its sweeping scope, and increasing in value its significant effect on India's lawful landscape.

History of Judicial Review in India

The concept of Judicial review begun within the Joined together States, where the Preeminent Court built up its specialist to strike down laws that were in infringement of the US Structure. In India, the concept of Judicial review was borrowed from the US Structure, but it was adjusted to suit the Indian setting. US Structure is one of the Sources of Indian Structure. The beginning of Judicial review in India can be followed back to the impact of the U.S. Structure. In any case, India has adjusted this concept to fit its interesting protected and societal texture. This chronicled travel reflects India's commitment to a energetic and advancing Judicial framework, able of tending to the complexities of a different and crowded majority rule government. The control of Judicial review was to begin with built up by the Preeminent Court within the case of Shankari Prasad v. Union of India (1951), where it was held that the Structure did not give for any restriction on the revising control of the Parliament. In any case, within the case of Kesavananda Bharati v. State of Kerala (1973), the Preeminent Court held that there were confinements on the

altering control of the Parliament, which the fundamental structure of the Structure seem not be changed.

Constitutional Provisions for Judicial review

| Articles | Provisions |
|--------------------|--|
| Article 13 | <ul style="list-style-type: none"> ○ The article deals and states that all the laws inconsistent with the fundamental rights shall be deemed void. ○ For the purpose of article 13 – a law is defined as any law enacted by the legislatures, ordinances issued, orders, rules and regulations made by executive legislation. ○ The supreme court states that the Constitution Amendment can be challenged if it violates fundamental rights or disturbs the basic structure of the constitution. |
| Article 32 | <ul style="list-style-type: none"> ○ Empowers the supreme court with the power of Judicial review. ○ The supreme court can issue writs and directions for the enforcement of <u>fundamental rights</u> under Article 32. |
| Article 226 | <ul style="list-style-type: none"> ○ Empowers the High Court for the power of judicial Review. |
| Article 131 | <ul style="list-style-type: none"> ○ Deals with the original jurisdiction of the Supreme Court in disputes related to Centre-state and Inter-state. |
| Article 132 | <ul style="list-style-type: none"> ○ Deals with appellate jurisdiction of the Supreme Court in constitutional cases. |
| Article 133 | <ul style="list-style-type: none"> ○ Deals with appellate jurisdiction of the Supreme Court in civil cases. |
| Article 134 | <ul style="list-style-type: none"> ○ Deals with appellate jurisdiction of the Supreme Court in criminal cases. |
| Article 135 | <ul style="list-style-type: none"> ○ Empowers the supreme court to exercise jurisdiction and power of the federal court under any pre constitutional law. |
| Article 13 | <ul style="list-style-type: none"> ○ Empowers the supreme court to grant special leave for appeal from any Court or Tribunal except military court. |
| Article 143 | <ul style="list-style-type: none"> ○ Gives the president the authority to seek the opinion of the Supreme on any question of law or legal matter. |
| Article 227 | <ul style="list-style-type: none"> ○ Empowers the supreme court superintendence over all courts within prospective territorial jurisdiction except military courts. |
| Article 245 | <ul style="list-style-type: none"> ○ Determine territorial extent made by Parliament and Legislature of the state. |

| | |
|----------------------------|---|
| Article 246 | <ul style="list-style-type: none"> ○ Determine the subjects on which laws can be made by Parliament and state legislatures. |
| Article 251 and 254 | <ul style="list-style-type: none"> ○ Determine the Supremacy of central laws when conflict arises between state and Central law. |
| Article 372 | <ul style="list-style-type: none"> ○ Continuance in force of pre-constitutional laws |

Scope of Judicial Review in India

The scope of Judicial review in India is very wide, and it covers not as it were the laws passed by the council but moreover the activities of the official. The courts have the control to strike down any law that's in infringement of the Structure, and they can moreover issue writs like Habeas Corpus, Mandamus, Disallowance, Certiorari, and Quo Warranto to ensure the basic rights of the citizens. The Structure gives for five sorts of writs, which are:

Habeas Corpus:

Literal meaning of Habeas Corpus is 'to have the body of'. This type of writ is used when unlawful detention has occurred to enforce the fundamental right of individual liberty. When this writ is issued, a person or a authority who has arrested a another person has to bring that another person before the court.

Mandamus:

Literal meaning of Mandamus is 'we command.' This type of writ is used when a public official or public body or corporation or lower court or tribunal or even the government has not done the needed duty or refused to do. After this writ is issued, the duty needs to be resumed.

Prohibition:

Literal meaning of Prohibition is 'to forbid.' This type of writ is used when a court which is in lower position i.e., the lower court exceeds its jurisdiction or un pursue a jurisdiction which is not possessed by it.

Certiorari:

Literal meaning of Certiorari is 'to be certified' or 'to be informed.' This type of writ is used when

a transfer of case which is pending in the lower courts or the order given by lower courts in a case needs to be quashed. This writ is issued on the basis of an excess of jurisdiction or lack of jurisdiction or error of law. After this writ is issued, mistakes in the judiciary are cured.

Quo-Warranto:

Literal meaning of Quo-Warranto is 'by what authority or warrant.' This type of writ is used when an illegal usurpation of a public office by a person is done. After this writ is issued, the legality of a claim of a person to office is enquired.

Limitations of Judicial Review in India

Whereas Judicial review is a fundamental perspective of the Indian Structure, it has too been subject to feedback from different quarters. A few of the common reactions of legal review in India are:

Unelected Judges: One of the essential reactions of Judicial review is that it gives unelected judges the control to strike down laws sanctioned by the chosen agents of the individuals. Pundits contend that this undermines the majority rule handle and leads to a circumstance where a little gather of judges can reject the choices of the chosen agents.

Judicial Overextend: Another feedback of Judicial review is that it can lead to Judicial exceed, where the Judicial begins infringing upon the space of the administrative and official branches of the government. Pundits contend that this will lead to an awkwardness within the partition of powers and lead to a circumstance where the Judiciary gets to be as well powerful.

Delay and Cost: Faultfinders too contend that the method of Judicial review can be time-consuming and costly, which can result in deferred equity for the citizens. This could be especially risky in cases where the government is attempting to actualize critical approach measures.

Need of Responsibility: Faultfinders contend that the Judiciary isn't responsible to the individuals within the same way as the chosen agents of the individuals. They contend that since the judges are named through a collegium framework, they are not responsible to the citizens, and their choices cannot be effortlessly challenged.

Restricted Skill: Faultfinders contend that judges may not have the vital ability to form decisions in certain complex arrangement zones, such as financial matters or science. This could result in problematic policy outcomes and can constrain the government's capacity to actualize compelling approaches.

In conclusion, whereas Judicial review may be a pivotal angle of the Indian Structure, it has moreover been subject to feedback from different quarters. Pundits contend that it undermines the democratic process, can lead to Judicial overreach, and may be time-consuming and costly. In any case, supporters of Judicial review contend that it is vital to ensure the elemental rights of citizens and ensure that the government

capacities inside the limits set by the Structure. Eventually, the adjust between these two viewpoints will depend on how well the Judiciary can strike a adjust between ensuring the Structure and regarding the equitable handle.

Landmark Cases of Judicial Review in India

Indian Judicial history is packed with point of interest cases where Judicial review has played a significant part. From the statement of the Parliament's alteration control in 'Shankari Prasad v. Union of India' to the seminal 'Kesavananda Bharati v. State of Kerala' case, which set up the 'Basic Structure' teaching, these cases represent Judicial review's transformative affect. Over a long time, there have been a few points of interest cases where the Indian Judicial has worked out its control of Judicial review to strike down laws that were in infringement of the Structure. A few of these cases are: *Golaknath v. State of Punjab (1967)*: In this case, the Incomparable Court held that the Parliament did not have the control to revise the Basic Rights revered within the Structure. This choice was afterward upset by the 24th Correction to the Structure, which permitted the Parliament to revise any portion of the Structure, counting the Elemental Rights. *Kesavananda Bharati v. State of Kerala (1973)*: This case is considered to be one of the foremost critical cases within the history of legal review in India. In this case, the Preeminent Court held that there were confinements on the revising control of the Parliament which the fundamental structure of the Structure might not be changed. *Maneka Gandhi v. Union of India (1978)*: In this case, the Incomparable Court held that the correct to travel overseas was a portion of the correct to individual freedom beneath Article 21 of the Structure. This choice extended the scope of the correct to individual freedom and ensured it from self-assertive confinements by the government. *Vishaka v. State of Rajasthan (1997)*: In this case, the Incomparable Court recognized sexual badgering at the working environment as an infringement of the elemental rights of ladies. The court laid down rules for managers to anticipate and change such badgering at the work environment.

Distinguishing between Judicial Review and Appeal

The qualification between Judicial review and request procedures relates to the control of the court; in offer procedures the court might substitute its choice for the choice of the court at to begin with occasion. In Judicial review procedures the courts fundamental control is to suppress the challenged choice and to discover it invalid; for the merits of the case to be decided the case must return to the initial decision-making specialist. The moment primary refinement relates to the subject matter of the court's jurisdiction. The offer court must choose whether a choice was

right or off-base based on the contemplations of law. The Judicial review court has the capacity to choose on the off chance that the address was legitimate, based upon the fitting powers that the open body have been blessed with. There are numerous statutes, which give for offers from choices by open bodies; commonly such offers are constrained to focuses of law, but in certain occurrences they may expand assist to the truths of the case. Judicial review cases are continuously kept to questions of law. The Lodging Act 1996 awards a right of request and so the claimant is anticipated to look for a cure beneath a request beneath this Act instead of beneath Judicial review. Earlier to 1996, a huge number of lodging cases were being subjected to Judicial review which was a cause for concern by government. As a result, requests which related to vagrancy beneath the 1996 Act are presently managed with offer by means of the district court. Legal review procedures on the issue of housing are presently restricted to extraordinary cases.

Judicial Review in Practice

Claimants turn to judicial review when they have exhausted other avenues of redress, such as the First-tier Tribunal. If the claimant succeeds the matter will normally be remitted to the original decision maker for a new decision in the light of the court's judgment. The decision maker might reach the same decision as was made previously, while this time acting lawfully.

When judicial review proceedings are used to protect 'Convention rights' under the HRA, the court might not be able to reach the same decision after reconsideration.

i. The Judicial Review Procedure

There are a range of tribunals and courts that exercise the jurisdiction to review the legality of public actions. The claim for judicial review procedure in England and Wales is set out in part 54 of the Civil Procedure Rules, (secondary legislation established under the Civil Procedure Act 1997). The judicial review procedure consists of two stages:

Claimants must obtain the permission of a judge to make a claim;

If permission is granted the will proceed to be dealt with by a court.

In order to obtain permission, the claimant must show that the claim was made within the time limits, the claimant has standing, and other potential avenues of redress have been exhausted. The application must be made promptly and claims made within 3 months have been held not to have been made quickly enough and refused. Lord Diplock explained the reasons for strict time limits

judicial review cases in *O'Reilly v Mackman* [1983] 2 AC 237, when he stated that it was in the public interest in good administration that public authorities and third parties be not held in suspense as to the legal validity of a public decision. The court does have the discretion to extend the time limit, but this discretion is only used in rare cases.

Part 54 Civil Procedure Rules states that a claim for a judicial review means a claim to review the lawfulness of an enactment, or decisions or action in relation to the exercise of a public function. It is now possible to use judicial review proceedings to consider whether or not primary legislation is compatible with EU law, or incompatible with Convention rights under s.4 HRA.

Part 54.1 Civil Procedure Rules states that judicial review claims are concerned with the exercise of public functions, they are not limited to government bodies, but can include charities, and self-regulatory organisations that can be subject to judicial review claims through their exercise of public functions. A wide range of bodies, including some that are within the private sector, now exercise public functions.

Case in Focus: *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank and anor* [2003] UKHL 37

[Lord Nichols of Birkenhead] In a modern developed state government function... the manner in which wide-ranging government functions are discharged varies considerably. In the interests of efficiency and economy... functions of a governmental nature are frequently discharged by non-governmental bodies. Sometimes this will be a consequence of privatisation... One obvious example is the running of prisons by commercial organisations...

The main means by which a judge determines whether a body is subject to judicial review is to look at the source of the body's powers. Acts of bodies whose powers derive from statute or the prerogative will usually be reviewable. Decisions taken under contractual obligations are not considered reviewable.

Case in Focus: *R v Panel on Takeovers and Mergers, ex parte Datafin* [1987] QB 815, 824-36

Although it performed important functions, the Panel on Takeovers and Mergers appeared to have no formal legal powers at all. It was located in the Stock Exchange building in the City of London, oversaw, and regulated an important part of the UK financial market. The Panel was an unincorporated association without legal personality... it had not statutory, prerogative or common law powers.

The Court of Appeal however, found that in determining whether a body should be subject to judicial review, the judge could also consider whether the body performs functions that have a 'public element'. The Court of Appeal discerned the public element from the nature and impact of the Panel's functions.

Exam Consideration: when answering a problem question you might be required to decide as to whether the defendant is a public body, whether its decisions are matters of public law, and whether the claimant has ground to bring a case of judicial review. In answering this question you should note that a court would look at the source of the defendant's powers, applying Datafin and analyse the nature of the defendant's functions.

ii. Does the Claimant Have Standing?

Claimants must show that they have sufficient interest in a matter to bring judicial review proceedings in respect of it. Previously judges have taken a 'closed' approach to the persons who had sufficient interest, more latterly a more open approach has been adopted which allows claimants into court if they have an arguable case on the law. An important early decision representing this modified approach is the IRC case.

The House of Lords considered the substance of the claim and found that the Federation did not have sufficient interest in the matter since one tax payer did not have sufficient interest in the tax affairs of another taxpayer, to complain that they had been under-assessed. Lord Diplock's view differed from the majority in finding that the Federations claim failed, not due to lack of standing, but due to the fact that it had failed to establish that the Inland Revenue had acted unlawfully.

Lord Diplock's approach has now become the dominant approach, as seen in the World Development Movement case.

Case in Focus: R v Secretary of State for Foreign Affairs, ex parte World Development Movement Ltd [1995] 1 All ER 611

WDM is a pressure group which campaigns to improve the quality of aid that is delivered to developing countries. It challenged the decision of the Home Secretary to provide funding for the Pergau Dam project in Malaysia. WDM claimed to represent the broader public interest as well as those of people in developing countries as opposed to a particular group of people in the UK. WDM was held to have sufficient interest in the matter to have standing to bring a judicial review claim. WDM was found to have an interest in the matter due to the importance of the matter

raised, the absence of any other challenger, the nature of the breach, and WDM's prominent role in giving guidance and assistance with respect to giving aid.

Even in WDM the courts were very careful to ensure that the claimants had an arguable case in law. The WDM argued that the Home Secretary had misused powers conferred by legislation.

iii. Permissions stage

The permissions stage is governed by part 54(10) Civil Procedure Rules, the court decides whether it will allow the case to proceed to a judicial review hearing. This is to prevent 'trivial complaints and busybodies' from wasting the court's time [Lord Diplock, *IRC v National Federation of Self-employed and Small Businesses Ltd*]. Claims for permission are dealt with by a judge on the papers; if permission is refused the claimant might request an oral hearing. There is a possibility of appeal to the Court of Appeal under CPR 54(12).

Permission often relies upon whether there is an 'arguable case'. A study of the permissions stage [V. Bondy and M. Sunkin, 'Accessing judicial review' [2008] Public Law 647] found that in 1981 71 per cent of claimants were given permission to proceed, whereas in 2006 this figure had fallen to only 22 per cent. The research concluded that this was partially due to procedural reforms introduced in 2000, which led to higher levels of settlement out to court.

iv. The Hearing

A single judge commonly conducts the hearing, with witnesses and cross-examination being rare. The case is nearly always focused on issues of law rather than fact. Remedies are discretionary.

v. Judicial Review and Exclusivity

The process of discovery was simplified during the changes made to the judicial review process following the Law Commission's report (1976).

Case in Focus: *O'Reilly v Mackman* [1983] 2 AC 237

The House of Lords confirmed that judicial review should be an exclusive procedure. In *O'Reilly* the claimants were prisoners who had been disciplined by the prison Board of Governors for various offences. They alleged breaches of prison rules and the rules of natural justice and asked the court for a declaration using private proceedings rather than judicial review. The House of Lords agreed that the private law claim was an abuse of procedure and should be struck out. The

claims were held to be a blatant attempt to avoid the protections that Order 53 provides. There are safeguards built into the judicial review process which protect the public authority from unmeritorious claims, to include the permission requirement and the strict time limits.

vi. Public Law and Private Law Proceedings

An action against a public authority might be a private law action, such as damages for negligence. If this is the case this is not a judicial review proceeding. In *Davy v Spelthorne Borough Council* [1984] AC 262 the claimant argued that the defendants had negligently failed to inform him of his rights and so failed to appeal an enforcement order in relation to his property. The House of Lords held that this was a valid claim under private law, since he was not arguing that the validity of the enforcement order, but was claiming that the council had acted negligently under private law. However, in *Cocks v Thanet* [1983] 2 AC 286 the subject matter of the claim was whether the claimant was made unintentionally homeless under the Housing (Homeless Persons) Act 1977, he applied for an injunction and damages. The court held that he must apply for judicial review as opposed to these civil law remedies since the court must determine the legality of the authority's decision, which made him homeless. The decision of a body can be challenged in civil and criminal proceedings.

The enactment of the Civil Procedure Rules has led to courts taking a more flexible and pragmatic approach to whether a claimant should proceed under private law or judicial review. In *Clark v University of Lincolnshire and Humberside* [2000] 1 WLR, a student challenged the university appeal process and regulations over a case of alleged plagiarism. She sued the University for breach of contract, but the University argued that it should have been a judicial review hearing which was debarred for being outside the three-month time limit. The Court of Appeal held that since the CPR the court had greater powers to supervise a private law case against a public authority and if such cases were unmeritorious the court could strike the case out; the claimant was allowed to proceed with her public law claim. It was held that the exclusivity principle should not now be applied in an overtly rigorous manner.

vii. Exclusion or restriction of access to judicial review

The government have sometimes inserted ouster clauses into statutes providing that a body such as a tribunal should appeal or review a certain decision.

Courts have taken a similar approach to ouster clauses, for example a clause that states 'a decision

shall not be challenged in a court of law'. These clauses seek to prohibit legal action relating to decisions of a body.

Case in Focus: *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147

The House of Lords held that ouster clauses should be strictly construed; the court should be able to judicially review their decisions so that they are not exceeding their powers and acting ultra vires. Errors of law in this case, took the tribunal or public authority beyond the scope of its powers and thus subject to review with or without an ouster clause.

Time limited ouster clauses impose a time limit on the claimant; these are permissible. Courts have held that when the time limit has expired the clauses prevent a claim for review. In *R v Secretary of State for the Environment, ex p Ostler* [1977] QB 122 Schedule 2 to the Highways Act [1977] QB 122, stated that any challenge to an order had to be made within 6 weeks of the date that the order was published; the claimant made a challenge outside of this time limit. The court upheld this time limit, as in their view the delay and cost would be contrary to the public interest.

Parliament can also restrict the ability of judicial review by introducing alternative statutory appeal processes to a court to tribunal. In *R (A) Director of Establishments of the Security Service* [2009] UKSC 12, the claimant wished to bring a claim for judicial review in the Administrative Court, under section 65(2)(a) Regulation of Investigatory Powers Act 2000 stated that any claim under the HRA against the security services should be brought before the Investigatory Powers Tribunal. The Supreme Court distinguished this case from *Anisminic*, in that Parliament had not ousted judicial security of the security services but simply afforded the power of scrutiny to the IPT, who had more expertise in dealing with sensitive information.

Conclusion:

In conclusion, Judicial review is a basic include of the Indian Structure that guarantees that the laws passed by the assembly and the activities of the official are in line with the Structure. The courts have the control to strike down any law that's in infringement of the Structure, and they can moreover issue writs to ensure the basic rights of the citizens. Whereas the scope of Judicial review is very wide, there are certain limitations to this control, which are essential to preserve a adjust between the three organs of the state – the governing body, the official, and the Judiciary. Judicial review may be a pivotal viewpoint of the Indian Structure that permits the legal to act as

a check on the administrative and executive branches of the government. It guarantees that the government capacities inside the limits set by the Structure which the rights of the citizens are secured. Whereas the scope of Judicial review is very wide, there are certain restrictions to this control, which are essential to preserve a adjust between the three organs of the state – the governing body, the official, and the Judiciary. Judicial review has played a critical part in forming the Indian legitimate framework and ensuring the rights of its citizens.

BIBLIOGRAPHY

Articles

Navisha Uzaira Khan, Kohelica Nag, *Comparative Study Of The Amendment Procedure In India, Switzerland, Canada, Usa, France And Germany*, International Journal of Research and analytical review, 260,276(2023), available at <https://www.ijrar.org/papers/IJRARTH00136.pdf>, last seen on 26/04/2024

Mathias Reimann, *Takeover: German Reunification Under A Magnifying Glass the Imperfect Union: Constitutional Structures of German Unification*. by Peter E. Quint. Princeton: Princeton University Press. 1997. Pp. Xi, 482. \$75., 96 Mich. L. Rev. 1988, 1995-96 (1998)

Malek, Md. A. (2017). Vice and virtue of the Basic Structure Doctrine: a comparative analytic reconsideration of the Indian sub-continent's constitutional practices. *Commonwealth Law Bulletin*, 43(1), 48–74. <https://doi.org/10.1080/03050718.2017.1358648>, Last seen on 26/04/2024

Uddin, Mohammad Moin, and Rakiba Nabi. “JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS IN LIGHT OF THE ‘POLITICAL QUESTION’ DOCTRINE: A COMPARATIVE STUDY OF THE JURISPRUDENCE OF SUPREME COURTS OF BANGLADESH, INDIA AND THE UNITED STATES.” *Journal of the Indian Law Institute*, vol. 58, no. 3, 2016, pp. 313–36. *JSTOR*, <http://www.jstor.org/stable/45163394>. Last seen on 26/04/2024

statutes

Art.368 of The Indian constitution

Case laws

Golakh Nath v.state of Punjab ,AIR 1967 SC 1643

Keshvanand Bharti v.state of Kerala,AIR 1973 SC 1461

Shankari Prasad v.union of India AIR1951SC458 (followed by the majority in sajjan singh vs state of Rajasthan AIR1965 SC 845)

Books

Dr.Durga Das Basu's Comparative Constitutional Law ,(Justice G B Patnaik,Yasobant Das,Rita das,3 rd ed.2014)

Other

Ullman v. United States, 350 U.S. 422, 428 (1956)

Encyclopedia Britannica, Germany, <http://www.britannica.com/EBchecked/topic/231186/Germany>

Section 79 of the Basic Law for the Federal Republic of Germany

<https://www.lawteacher.net/lectures/public-law/judicial-review/what-is-judicial-review/?vref=1>

