

Dr. VIPIN KUMAR SINGH

Assistant Professor

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Topic- Judicial Review In India

Judicial Review In India

Judicial review is recognized as a necessary and a basic requirement for construction up of a novel civilization in order to safeguard the liberty and rights of the individuals. The power of judicial review is significantly vested upon the High Courts and the Supreme Court of India.

Under Article 13 of the Indian Constitution, the compulsion of judicial review was described in fundamental rights in Part III. It is stated that the State or the Union shall not make such rules that takes away or abridges the essential rights of the people. If any law made by the Parliament or the State Legislature contravenes the provisions of this Article, shall be void[1].

Meaning of Judicial Review

Judicial Review can be understood as a form of court proceeding, usually in the Administrative Court where the lawfulness of a decision or action is reviewed by the judge. Where there is no effective means of challenge, judicial review is available. The concern behind Judicial Review is that whether the law has been correctly applied with and right procedures have been followed.[2]

Judicial Review And Constitution of India

In order to scrutinize the legitimacy of administrative action and the statutes, the Constitution of India has given influences to the Higher courts and the Supreme Court of India. To guard the rights of public and implement the fundamental rights are the main objects of judicial review. If any difficulty arises between State and Center relation, then Article 246 and the Schedule 7 of the Constitution has marked the working zone for the regulation construction between both State and Center.

Judicial review has evolved in three dimensions:

To protect the legality of essential rights under Part III of the Indian Constitution.

To authorize the disinterest of organizational achievement.

Interrogation of public interest.[3]

Article 13 of the Indian Constitution

Laws inconsistent with or in derogation of the fundamental rights

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

(3) In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368
Right of Equality[4]

Judicial Review In India

Judicial review plays an important role as a protector when the executive, judiciary and legislature harm the Constitutional values and deny the rights. The judicial assessment is considered as an indispensable feature in the country. In India, there is parliamentary form of democracy where every section of people is involved in decision making and policy making process. It is true that the primary duty of the court to apply rule of law and is the groundwork of social equality. By exercising new powers of Parliament, rule of law which is to be applied by the court cannot be modified. All those here, who are doing public duty, are accountable. They have to work within the democratic provisions of the Constitution of India. The concept of separation of power and rule of law is judicial review. The influence of judicial assessment has been so long under Articles 226 and 227 in case of High Court and Articles 32 and 136 of the Constitution of India for the review.[5]

Mechanisms of Judicial Review

In India, three aspects are covered by judicial review that are as follows:

Judicial review of legislative action

Judicial review for judicial decision

Judicial review of administrative action

These facets of judicial review were pronounced by the Supreme Court of India in case of L. Chandra Kumar v. Union of India[6], stating that the judges of higher court have to interpret legislation up to this end that the Constitutional values are not to be interrupted. To achieve this end, the judges have to keep in mind that the equilibrium of control, specified in the Constitution is not disturbed.[7]

Judicial Pronouncements

1. Shankari Prasad v. Union of India[8]

It was held by six judge bench, five judges not agreed to amending the essential rights under the Indian Constitution. However, in case of Keshavanand Bharti v. state of Kerala where six judges out of seven judges held that Parliament modifying influence has and at all portion of the Constitution can be amended and over ruled the Golaknath case. The Supreme Court held that the essential rights cannot be modified in such a method, which will touch the elementary construction of the

Constitution.

2.I. R. Coelho v. State of Tamil Nadu^[9]

This case was seen from **Keshvanand Bharti case** in which the cases like **Chandra Kumar v. Union of India and others** (1997), **Waman Rao and others v. Union of India** and others (1981), **Minerva Mills Ltd. and others v. Union of India** (1980), **Indira Nehru Gandhi v. Raj Narnia** (1975), where judicial review was considered as essential and integral Part of the Constitution of India.

3. Mitthu v. State of Punjab^[10]

The Supreme Court of India has struck down Section 303 of Indian Penal Code, 1860. This section had made death sentence mandatory. In case Article twenty-one of the Indian Constitution was illustrated by the S.C.I. complete its frequent pronouncement.

4. P.U.C.L v. U. O. I.^[11]

The Indian Supreme Court, in its historical verdict stated that to disregard or disobey the decision given by the court, the lawmakers of India have no power to ask for the instrumentality, if the legislature has influence over the subject matter.

End-Notes

[1] https://shodhganga.inflibnet.ac.in/bitstream/10603/134458/3/012_%20constitution%20of%20india%20and%20judicial%20review.pdf.

[2] https://publiclawproject.org.uk/wp-content/uploads/data/resources/6/PLP_Short_Guide_3_1305.pdf.

[3] Supranote 1.

[4] <https://indiankanoon.org/doc/134715/>.

[5] https://shodhganga.inflibnet.ac.in/bitstream/10603/134458/2/011_%20judicial%20review%20an%20indian%20perspective.pdf.

[6] (1997) 3 SCC 261.

[7] Supranote 5.

[8] AIR 1951 SC 458.

[9] AIR 2007 SC 861.

[10] AIR 1983 SC 473.

[11] AIR 1997 SC 568.