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JUSTICE UNDER SCRUTINY: A COMPREHENSIVE GUIDE TO JUDICIAL REVIEW PROVISIONS

Written By- Afwan Sayyed¹

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ABSTRACT

In modern legal systems, judicial review provisions serve as a critical mechanism for ensuring the accountability, fairness, and constitutionality of governmental actions and decisions. This abstract provides an overview of judicial review provisions, exploring their significance, scope, and application in the realm of administrative law and constitutional governance. Judicial review empowers courts to examine the legality and validity of administrative actions, legislative enactments, and executive decisions vis-à-vis constitutional principles, statutory mandates, and procedural safeguards. It embodies the principle of constitutional supremacy and the rule of law, safeguarding individual rights, liberties, and the separation of powers. This comprehensive guide delves into the multifaceted nature of judicial review provisions, elucidating the various grounds and standards upon which courts assess the legality and rationality of administrative actions. From procedural irregularities and errors of law to violations of fundamental rights and principles of natural justice, judicial review encompasses a wide array of substantive and procedural considerations. Furthermore, the abstract explores the evolving jurisprudence surrounding judicial review, examining landmark cases and judicial doctrines that have shaped the contours of administrative law and constitutional interpretation. It analyzes the delicate balance between judicial activism and deference to administrative expertise, highlighting the role of courts in upholding constitutional values while respecting the legitimate authority and discretion of administrative agencies. Moreover, the abstract addresses contemporary challenges and debates surrounding judicial review, including issues of standing, justiciability, and the scope of judicial intervention in matters of policy and discretion.

¹ Student Under Savitribai Phule Pune University.

Keywords: - *Judicial Review, India, Constitution, Provisions, Democracy, Articles*

INTRODUCTION

This abstract delves into the historical evolution and constitutional provisions related to judicial review of administrative actions in India. The concept of judicial review, pioneered by the 4th American Chief Justice John Marshall in the “Marbury v. Madison”² case, has had a profound impact globally. Initially originating in the United Kingdom and later adapted in the United States, it became a fundamental feature of constitutional frameworks worldwide. The post-World War II era saw an increasing recognition of the need for judicial review to maintain checks and balances in democratic governments. Germany's experiences highlighted the dangers of unchecked government power, motivating nations to adopt democratic systems with separation of powers among the legislative, executive, and judicial branches. The judiciary's role became crucial in ensuring that enacted policies and laws complied with the Constitution. Article 13 sets the stage by declaring laws inconsistent with fundamental rights as void. Article 32 grants the Supreme Court the power to issue writs for fundamental rights violations, described by Dr. Ambedkar as the heart of the Constitution. Articles 133³ and 134⁴ establish appellate jurisdiction for civil and criminal matters from the High Courts to the Supreme Court. Article 227⁵ confers superintendence powers upon High Courts over subordinate courts and tribunals. Articles 245⁶ and 246⁷ expand the scope of judicial review by enabling challenges to the validity of laws enacted by the parliament and state legislatures. Articles 251⁸ and 254⁹ address conflicts between central and state laws, while other articles resolve disputes regarding pre-constitution laws. India's constitutional provisions for judicial review demonstrate its commitment to upholding democratic principles and ensuring government accountability. These provisions empower the judiciary to safeguard citizens' rights and maintain constitutional order, reflecting a rich history of evolving judicial review mechanisms.

² Marbury v. Madison (1803) 5 U.S. 137

³ Constitution of India 1950, art 133

⁴ Constitution of India 1950, art 134

⁵ Constitution of India 1950, art 227

⁶ Constitution of India 1950, art 245

⁷ Constitution of India 1950, art 226

⁸ Constitution of India 1950, art 251

⁹ Constitution of India 1950, art 254

HISTORICAL PERSPECTIVE OF NATIONS ADAPTING THE JUDICIAL REVIEW FEATURE

The concept of Judicial Review was given by the 4th American Chief Justice, John Marshall (1801-35), in the case of “Marbury v. Madison”¹⁰ in which the Supreme Court of America invalidated the legislations made by the parliament.

The concept of Judicial Review originally originated in the United Kingdom and then in the United States of America after undergoing some enhancements and adaptations.¹¹

The rest of the globe, has, in greater numbers taken their view of Judicial Review from the abovementioned predominant nations. It has undergone significant changes and increased its potentiality, vitality as well and its scope in the domain of constitutional frameworks.

It is not disputed that the era of adapting judicial review in the constitution in a major part of the democratic countries began after World War II ended¹². The reason is that the nations understood that a government functioning without a leash like the judicial review is volatile and can make things go south in no time. People observed this through the case of Germany. The consequences of lacking a system that keeps checks and balances on the actions of the legislative and the executive were clear before the nations that observed the catastrophe that could even lead to unfortunate events such as World War II. Hence, most of the countries thereby took the liberty of opting for a democratic form of government which had the feature of separation of powers between the legislative, executive, and judiciary. The legislature would enact laws and make government policies which in turn was the job of the executive to implement and execute. The role of the judiciary was the ultimate or the concluding one, as its function was to ensure that the policies enacted were within the framework of the constitution and not outside the ambit of the legal framework. The scenario, if an enactment is found violating the soul of the constitution or perhaps arbitrary to the nature of democracy, is that the judiciary has the power to repeal such laws and make them devoid of legal force. The trilogy of the three bodies was to be separate with the latter one keeping a check of the legality of the prior 2 bodies. It was well understood that the need for judicial tribunals was not just another ordinary requirement in the evolving times to ensure peace and stability in the region. The development of judicial review was such strengthened that any dispute relating to the constitution was a dispute that was to be settled by the judicial tribunals, irrespective of the nature of the dispute being political or moral. The tribunals would fortify the constitutional

¹⁰ Marbury v. Madison (1803) 5 U.S. 137

¹¹ Anirudh Prasad, Judicial Power and Judicial Review (First Edition, 2012) page 239

¹² <https://www.britannica.com/topic/judicial-review>

spirit of the democracy and protect its citizens from arbitrary actions of the executive. It should also be noted that the feature of judicial review operates in its full capacity in only those nations which have a written constitution. It has limited application in nations having unwritten constitutions or perhaps parliament supremacy. The United Kingdom, though not having a written constitution has performed well in implementing a judicial review system.

CONSTITUTIONAL PROVISIONS AVAILABLE THAT SUPPLEMENT JUDICIAL REVIEW DIRECTLY/INDIRECTLY

The Indian Constitution is a borrowed constitution, but it has still managed to showcase what a nation with the sheer will to uphold the concept of democracy is capable of achieving. It is one of the lengthiest constitutions in the world and is enforced no less than in any other prominent democratic country. There are several articles stipulated in the Indian Constitution that have given the judiciary the power to invalidate laws that aren't synchronizing with the spirit of our Constitution.

These articles ensure that not only the laws that are made post-independence have judicial scrutiny but also ensure that the laws existing in the pre-independence era are also under the purview of judicial review. Although the phrase "judicial review" is nowhere explicitly mentioned in the Constitution, several articles have given the High Courts and the Supreme Court enough authority to interpret and abolish laws that are inconsistent with the Constitutional framework. Article 13¹³ for instance sets up the stage for the lawmakers to keep in mind that any law that is made inconsistent or in derogation of the Fundamental Rights would be void. The infamous Article 32¹⁴ gives the Supreme Court the power to issue writs in a case where fundamental rights are violated. Article 32, which in the words of Dr Ambedkar "is the very soul of the Constitution and the very heart of it".¹⁵ A person aggrieved is entitled to the declaration of the invalidity of law under Article 32.¹⁶

¹³ "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."

¹⁴ Constitution of India 1950, art 32

¹⁵ C.A.D. Vol. VII, 953. Dr Ambedkar uttered: "If I was asked to name any particular Article in this Constitution as the most important-an Article without which this Constitution would be a nullity-I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it."

¹⁶ K.K. Kochunni v. State of Madras [1959] AIR 1959 SC 725

Article 131¹⁷ gives the Supreme Court the original jurisdiction for deciding between the centre and the states or amongst the states. Any law that is enacted and is in dispute with the centre or the state can be contested in the Supreme Court under the jurisdiction of this Article.

Article 132¹⁸ gives the Supreme Court the Appellate Jurisdiction to try matters relating to the matters pertaining to the Constitution. It means that after the matter has been dealt with by the High Court, the matter can then be escalated and contested in the Supreme Court if the High Court is of the opinion that the matter at hand involves the question of substantive law. The matter can be of civil or criminal nature.

Further, Article 133 and 134 provides for, Appellate Jurisdiction to the Supreme Court to try matters appealed from the High Court which are of civil and criminal natures respectively.

Article 135 gives the apex court the jurisdiction to try matters which are not covered under the jurisdiction of Article 133 and Article 134, and the matters for which the Federal Court had the jurisdiction immediately before the commencement of our Constitution. It also implies that a matter contested in High Courts under any applicable law before the commencement of the constitution will have the locus standi to contest under this jurisdiction.

Article 136 provides us that every ruling of a subordinate court can be appealed in the Supreme Court by granting Special Leave. It should be noted that this article is an exception to any order passed by any tribunal of the Armed Forces.

The Supreme Court has recognised its wide range of power under Article 136. *In “Raj Krushna Bose v. Binod Kanungo”*¹⁹, the Supreme Court asserted:

It is sufficient to say that the powers conferred on us by Article 136 of the Constitution and on the High Courts under Article 226 cannot be taken away or whittled down by the legislature. So long as these powers remain, our discretion and that of the High Courts is unfettered.²⁰

The next Article enhances the presence of Judicial Review in our constitution. The reason is that it stipulates that if the President believes that some substantial issue has arisen or may arise in the future, may consult the matter to the Supreme Court for review. The Supreme Court may

¹⁷ Constitution of India 1950, art 131

¹⁸ Constitution of India 1950, art 132

¹⁹ AIR 1954 SC 202

²⁰ (1954) AIR SC 202: 1954 SCR 459

then under Article 143²¹, decide its opinion on the matter and then file a report back to the President.

The coming Articles particularly deal with the judicial reviewing power of the High Courts in India. Taking Article 226²² as the subject, it stipulates that every High Court in India has the power to issue writs in its territory of jurisdiction. The similarities between the provisions in question and those outlined in Article 32 are indeed striking. However, it's important to note that this particular Article boasts a significantly broader scope when compared to the prerogatives bestowed upon the Supreme Court under Article 32 in this specific context.

This Article needs to be discussed in detail to understand the significant powers that this Article gives to the High Courts which are absent in Article 32. The basic difference between the two is that Article 32 is positioned in Part IV of the Indian Constitution, which makes it a Fundamental Right, which also implies that it can be suspended if the President declares an emergency. However, on the other hand, Article 226 comes under the ambit of Constitutional Rights and has the impunity of not being affected in the times of a National Emergency.

Article 32 can only be used to enforce the Fundamental Rights that are enshrined in Part III of the Indian Constitution, whereas Article 226 can be used to enforce the fundamental rights as well as the legal rights. Article 32 has the jurisdiction of issuing writs for disputes arising all over the territory of India, however, the High Courts under Article 226 can issue writs exclusively for disputes arising in their jurisdiction. However, clause 2 of Article 226 states that High Courts may issue writs for disputes arising out of their local jurisdictions if the cause of action is arising in their local jurisdiction.

Article 32 being a basic fundamental right cannot be denied by the Supreme Court but Article 226 gives the High Court discretionary power to decide whether to issue a writ or not. For example, an exercise of power or jurisdiction based on irrelevant and extraneous consideration shall be invalid.²³ If a petition does not carry substance, it may be dismissed at the hearing stage.²⁴ A High Court cannot order police investigation merely based on suspicion,²⁵ nor shall it interfere with examination matters²⁶ and sensitive issues relating to religion.²⁷

²¹ Constitution of India 1950, art 143

²² Constitution of India 1950, art 226

²³ Union of India v. W.N. Chadha, (1993) Supp (4) SCC 260

²⁴ Union of India v. S.P. Anand, (1998) 6 SCC 466

²⁵ State of Karnataka v. Arun Kumar Agarwal, (2000) 1 SCC 210

²⁶ Madhyamic Shiksha Mandal v. Abhilash Shiksha Prasar Samiti, (1998) 9 SCC 236.

²⁷ Syed Ashraf Hussain v. State of U.P., (1998) 3 SCC 167.

The High Courts can pass orders, while exercising their discretion, in the interest of safeguarding public interest and equity. It can direct refund of enhanced rate of market fee paid by traders after having been declared by the Supreme Court as illegal.²⁸

The next provision, i.e. Article 227²⁹ makes it clear that a High Court has the superintendence i.e. it is the commanding body over other subordinating courts and tribunals in the given jurisdiction. It also gives the High Court to request from the subordinating courts or issue guidelines or prescribe forms for the proceedings, or mandate guidelines directing in which books, entries, and accounts shall be kept by the Officers of such subordinate courts.

The difference between Article 226 and Article 227³⁰ is that the former gives the High Courts the power to issue writs, and directive orders to individual entities or perhaps even to the government, while the latter mandates plain supervisory control over other lower courts and tribunals.

In "*State of Gujarat v. Vakhatsinghji Vajesinghji Vaghelas*"³¹, the Supreme Court explained the role of judicial review under superintending capacity and said that the supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of that authority and ensuring that they obey the law. The superintending power of the High Court under Article 227 is an admixture of administrative and judicial powers.³²

Article 245³³ further widens the scope of judicial review by acquiring the power to check the validity of the laws created by the parliament or the state legislature. Appeals can be heard by the High Courts and the Supreme Court pertaining to the territorial applicability of such laws.

Article 246³⁴ of the Indian Constitution pertains to the delineation of legislative authority among the Union, State, and Concurrent Lists. Contentions arising from the enactment of laws pertaining to the subjects listed in these categories can potentially lead to conflicts between the central and state governments. The recent case of the Farm Bill introduced by the Central Government serves as a prominent illustration of how such disputes can materialize. State governments assert that in instances where a bill encroaches upon matters more fittingly placed

²⁸ Anirudh Prasad, *Judicial Power and Judicial Review* (First Edition, 2012) page 246

²⁹ Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction."

³⁰ Constitution of India 1950, art 227

³¹ AIR 1968 SC 1481

³² Ram Roop v. Biswa Nath, (1958), AIR 1958 All 456, 459

³³ Constitution of India 1950, art 245

³⁴ Constitution of India 1950, art 246

within the purview of the State List, they may resort to legal recourse by approaching the Supreme Court to address the constitutional aspects of the legislation in question.

Article 251 and 254 stipulates that when a potential dispute arises between the Centre and the State, the law enacted by the State is to prevail.

The Constitution also has stipulated an Article, which acts as an instrument to allow disputes regarding the laws that were in force before the commencement of the Constitution in 1950.

CONCLUSION

In conclusion, the examination of the historical perspective and constitutional provisions related to judicial review of administrative actions in India underscores the nation's steadfast commitment to democratic principles and constitutional governance. The journey of judicial review, from its origins in the United Kingdom and evolution in the United States, has been embraced and adapted by India to fortify its own democratic framework. The Indian Constitution³⁵, one of the most extensive in the world, contains a comprehensive set of articles that empower the judiciary to ensure that laws and administrative actions align with the fundamental principles enshrined within it. Although the term "judicial review" may not be explicitly mentioned, the constitutional provisions are abundantly clear in granting the High Courts and the Supreme Court the authority to strike down laws that violate the Constitution's spirit. Key articles such as Article 13, Article 32, and Article 131 provide the Indian judiciary with formidable tools to protect citizens' rights and maintain the rule of law. The significance of Article 32, often referred to as the heart of the Constitution, cannot be overstated, as it empowers the Supreme Court to safeguard fundamental rights and liberties. Furthermore, Article 226 grants High Courts a broader scope in issuing writs, encompassing both fundamental and legal rights, with certain distinctions from Article 32. Article 227³⁶ establishes the High Courts' superintendence over subordinate courts and tribunals, ensuring uniformity and consistency in judicial proceedings. India's commitment to judicial review is not just limited to post-independence legislation; it extends to pre-constitution laws as well, ensuring that all laws align with the constitutional framework. In essence, India's comprehensive constitutional provisions for judicial review epitomize its dedication to democratic values, the separation of powers, and the protection of individual liberties. These provisions provide a

³⁵ Constitution of India 1950

³⁶ Constitution of India 1950, art 227

robust framework for maintaining constitutional order, upholding the rule of law, and safeguarding citizens' rights, reinforcing India's position as a vibrant and thriving democracy in the global arena.

