

A Study on Judicial Review of Courts

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Abstract: *Judicial review is the process by which the Courts determine whether or not an administrative decision-maker has acted within the power conferred upon him or her by Parliament. That places the question of statutory construction at the heart of the enquiry. The Supreme Court enjoys a position which entrusts it with the power of reviewing the legislative enactments both of Parliament and the State Legislatures. This grants the court a powerful instrument of judicial review under the constitution. Research reveals that the Supreme Court has taken in hand the task of rewriting the Constitution, which is an important aspect in present scenario. The Constitution of India is the supreme law of the land. The Supreme Court of India has the supreme responsibility of interpreting and protecting it. It also acts as the guardian-protector of the Fundamental Rights of the people. For this purpose, the Supreme Court exercises the power of determining the constitutional validity of all laws. It has the power to reject any law or any of its part which is found to be un-constitutional. This power of the Supreme Court is called the Judicial Review power. State High Courts also exercise this power but their judgements can be rejected or modified or upheld by the Supreme Court. In broad sense, the higher courts have the influence to review issue judicially against the assessment of pronouncement of public authority within their respective provinces. The role of higher court is that to be watched closely whether the executive, legislature and lower courts obeying with the statutory and constitutional limitations. They are exercising their powers in the sphere of the Constitution, if not so, to abstained their action. Normally, the higher court has the power of supremacy to review lower court's actions. The control of judicial review is conferred in the higher courts to define and appraisal legitimacy of a law or a command.*

Keywords: Judicial review, power, statutes, legislation, judgements

I. INTRODUCTION

Equivalent JUSTICE UNDER LAW"- These words mirror a definitive obligation of the Judiciary of India. In India, the Supreme Court is the most elevated council in the Nation for all cases and debates emerging under the Constitution or the laws. (Malve)As the last authority of the law, the Court is accused of guaranteeing the of Indian individuals the guarantee of equivalent equity under law and Judicial Review and Judicial Activism: Administrative Perspective and Writs. (Sorabjee)

Legal survey is the procedure by which the Courts decide if a managerial leader has acted inside the power presented upon that person by Parliament. That places the subject of statutory development at the core of the enquiry. (Sharma et al.)The inquiry that Courts are called upon to answer is whether the arrangement or arrangements of a resolution under which the leader acted engaged them (that is, gave them locale) to settle on the choice which they did, for the reasons which they did, following the method which they did. As it were, the core of the enquiry when taking part in legal audit is the translation of the resolution to figure out what the leader is qualified for do, and what the chief must do. (Singh)

The converse of that suggestion is that the classifications of jurisdictional blunder essentially speak to the manners by which a leader can go outside the power presented upon them by the rule, or neglect to do what the resolution expects them to do.(Dudeja)

The Indian Constitution embraced the Judicial Review on lines of U.S. Constitution. Parliament isn't incomparable under the Constitution of India. Its forces are constrained in a way that the power is isolated among focus and states. (Verma and Goswami)Besides the Supreme Court appreciates a position which depends it with the intensity of looking

into the authoritative establishments both of Parliament and the State Legislatures. This concedes the court a ground-breaking instrument of legal survey under the constitution. (Sharma)

Both the political hypothesis and content of the Constitution has conceded the legal executive the intensity of legal survey of enactment. The Constitutional Provisions which assurance legal audit of enactment are Articles 13, 32, 131-136, 143, 226, 145, 246, 251, 254 and 372. Article 372 (1) sets up the legal audit of the pre-constitution enactment.(Kallivayalil et al.) Article 13 pronounces that any law which negates any of the arrangements of the piece of Fundamental Rights will be void. Articles 32 and 226 endows the jobs of the defender and underwriter of essential rights to the Supreme and High Courts. (Khosla)

Article 251 and 254 states that if there should arise an occurrence of irregularity among association and state laws, the state law will be void. Article 246 (3) guarantees the express governing body's elite powers on issues relating to the State List. (Jha)It very well may be reasoned that it is Parliament's endeavors to limit access to the Courts specifically (and Parliament's endeavors to restrict the substance of procedural decency to a lesser degree) which has prompted the prospering of an arrangement of legal survey which is progressively adaptable, increasingly hearty, and more broad than any time in recent memory.(Mills) Research uncovers that the Supreme Court has taken close by the assignment of reworking the Constitution, which is absolutely not inside its space. (Jha; Sen)It has endeavored to peruse what has not been written in it. By doing as such it has vanquished the expectation of the establishing fathers. The judges make their vows to protect the Constitution, not as initially ordered but rather as it are in power having been altered from time to time. (Sen)No Court should, along these lines, have capacity to announce an arrangement of the Constitution as illegal and actually, in no county of the world, Courts have capacity to strike down a protected revision. Prof. Tope has appropriately said that the hypothesis of essential structure is only legal legislation.12 Constitution ought not be utilized to crush the Constitution "The fuse of void and unlawful Acts into the Constitution make them protected is a striking verification of the disappointment of Indian enactment to fit in with the Constitution under which it works."(Mathew) The intensity of legal survey is practiced by judges for the benefit of the general population of India. Equity Krishna Iyer has suitably commented that-"The legal power is practiced by courts in the interest of the general population of India, as long as "WE THE PEOPLE" have designated them to exercise such power.("Judicial Review : Pre-Action Protocol for Judicial Review"; Deva). **The main of the paper is to study the Judicial review of Indian courts.**

OBJECTIVES

To study about judicial review in India, to study about evolution of judicial review in.

II. MATERIALS AND METHODS

TYPE OF RESEARCH

Empirical type of research. This paper used both primary and secondary information which are collected from the general public through.

SAMPLING METHOD

Simple random sampling method.

SAMPLE SIZE

The number of samples taken are 1507.

DEPENDENT VARIABLES

The dependent variables are

Are you aware of judicial review in India.

INDEPENDENT VARIABLE

The independent variable is *age.

STATISTICS

The analysis of the survey is done by using chi-square and percentage analysis.

III. REVIEW OF LITERATURE

Literally the notion of judicial review means the revision of the decree or sentence of an inferior court by a superior court. Judicial review has a more technical significance in public law, particularly in countries having a written

constitution which are founded on the concept of limited government. Judicial review in this case means that Courts of law have the power of testing the validity of legislative as well as other governmental action with reference to the provisions of the constitution. The doctrine of judicial review has been originated and developed by the American Supreme Court, although there is no express provision in the American Constitution for the judicial review. In *Marbury v. Madison*, the Supreme Court made it clear that it had the power of judicial review. Chief Justice George Marshall said, "Certainly all those who have framed the written Constitution contemplate them as forming the fundamental and paramount law of the nations, and consequently, the theory of every such Government must be that an act of the legislature, repugnant to the Constitution is void". There is supremacy of Constitution in U.S.A. and, therefore, in case of conflict between the Constitution and the Acts passed by the legislature, the Courts follow the Constitution and declare the acts to be unconstitutional and, therefore, void. The Courts declare void the acts of the legislature and the executive, if they are found in violation of the provisions of the Constitution. The constitution of India, in this respect, is more a kin to the U.S. Constitution than the British. In Britain, the doctrine of parliamentary supremacy still holds goods. No court of law there can declare a parliamentary enactment invalid. On the contrary every court is constrained to enforce every provision" of the law of parliament. Under the constitution of India parliament is not Supreme. Its powers are limited in the two ways. First, there is the division of powers between the union and the states. Parliament is competent to pass laws only with respect to those subjects which are guaranteed to the citizens against every form of legislative encroachment. Being the guardian of Fundamental Rights and the arbiter of constitutional conflicts between the union and the states with respect to the division of powers between them, the Supreme Court stands in a unique position where from it is competent to exercise the power of reviewing legislative enactments both of parliament and the state legislatures. This is what makes the court a powerful instrument of judicial review under the constitution. As Dr. M.P. Jain has rightly observed: "The doctrine of judicial review is thus firmly rooted in India, and has the explicit sanction of the constitution."

IV. DISCUSSION AND ANALYSIS

4.1 FREQUENCY TABLE

2. Age

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Above 20 and below 30	788	52.3	52.3	52.3
	Above 30 and below 40	508	33.7	33.7	86.0
	Above 40 and below 50	179	11.9	11.9	97.9
	Above 50	32	2.1	2.1	100.0
	Total	1507	100.0	100.0	

From the above table it is understood that age group of 20-30 people are with frequency of 788 and percent of 52.3 and valid percentage of 52.3 and cumulative percentage is 52.3 . Age group of 30-40 people are with frequency of 508 and percent of 33.7 And valid percentage of 33.7 and cumulative percent is 86.0. Age group of 40-50 people are with frequency of 176 and percent of 11.9 and valid percentage of 11.9 and cumulative percentage is 97.9. Age group of people above 50 are with frequency of 32 and percent of 2.1 and valid percentage of 2.1 and cumulative percentage is 100.0.

3. Education

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Tenth standard	56	3.7	3.7	3.7
Higher secondary education	102	6.8	6.8	10.5
UG	803	53.3	53.3	63.8
PG	517	34.3	34.3	98.1
Other	29	1.9	1.9	100.0
Total	1507	100.0	100.0	

From the above table it is understood that the people of qualifications, 10th pass are of frequency 56 out of 1507 and percent of 3.7 out of 100 and valid percentage of 3.7 out of 100 and cumulative percent of 3.7. The people of qualification of higher secondary are of frequency 102 out of 1507 and percent of 6.8 out of 100 and valid percentage of 6.8 out of 100 and cumulative percent of 10.5. The people of qualification of undergraduate are of frequency 803 out of 1507 and percent of 53.3 out of 100 and valid percentage of 53.3 out of 100 and cumulative percent of 63.8. The people of post graduation qualification are of frequency 517 out of 1507 and percent of 34.3 out of 100 and valid percentage of 34.3 out of 100 and cumulative percent of 98.1. The people of other qualification are of frequency 29 out of 1507 and percent of 1.9 out of 100 and valid percentage of 1.9 out of 100 and cumulative percent of 100.0.

HYPOTHESIS

NULL HYPOTHESIS

There is no significant in the relation between independent variable age and dependent variable with the statement that are you aware of judicial review.

ALTERNATIVE HYPOTHESIS

There is significant in the relation between independent variable age and dependent variable with the statement that are you aware of judicial review.

2. Age * 54. Do you aware of the term "Judicial Review" Crosstabulation

Count

		54. Do you aware of the term "Judicial Review"		Total
		Yes	No	
2.Age	Above 20 and below 30	428	360	788
	Above 30 and below 40	229	279	508
	Above 40 and below 50	81	98	179
	Above 50	24	8	32
Total		762	745	1507

From the above table it is understood that people of age group above 20 and below 30 among 788 428 said aware and 360 said they are unaware of judicial review. people of age group above 30 and below 40 among 508, 229 said aware and 279 said they are unaware of judicial review. people of age group above 40 and below 50 among 179, 81 said aware and 98 said they are unaware of judicial review. people of age group above 50 32, 24 said aware and 8 said they are unaware of judicial review.

V. CONCLUSION

The idea of legal audit of regulatory activity is inborn in our Constitutional plan which depends on guideline of law and partition of forces. It is viewed as the essential highlights of our Constitution, which can't be revoked even by practicing the Constituent intensity of parliament. It is the best cure accessible against the authoritative over abundances. (Sathe) Well it is certain sense among the majority that if the organization embraces any work or acting under prudence power gave upon it either by statutory guidelines or under the arrangements of the Constitution of India. In the event that it is inability to practice circumspection or maltreatment of prudence capacity to settle its score or increase any private benefit because of this tact control, at that point just choice before the open is to go to legal executive under Article 32, 136 or Article 226 of the Constitution of India. (Chandra and Math) The primary motivation behind legal survey is to guarantee that the laws established by the governing body fit in with the standard of law. Legal audit has certain inborn restrictions. It is more appropriate for arbitration of debates than for performing managerial capacities. It is for the official to direct the law and capacity of legal executive is to guarantee that administration completes its obligation as per the arrangement of the Constitution of India. (Subramanian et al.)

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