

A Critical Study on Judicial Review in Administrative Action

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Abstract: *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.*

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 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. If found unconstitutional, the following provision shall be made void. The most distinctive feature of the united states supreme court is its power of judicial review. As the guardians of the constitution the judiciary is that they can review the laws which may violate the constitution of the country.

Keywords: Judiciary, Separation of powers , Parliament, Decision making, democracy

I. INTRODUCTION

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. It is the ultimate power of the judiciary to review and determine the validity of a law or an order may be described as the powers of “judicial review”. This system in India has been governed by the principal of ‘procedure established by law’ under which it has one test i.e. Whether the law has been made with procedures of law or not, if not will be declared unconstitutional. In India there is a rule of law and the constitution is the supreme law. The Indian constitution is the law of the land and if any law passed violates the basic structure of the constitution the Indian judiciary is having the power to nullify that law. The term judicial review is actually not there in Indian Constitution but many articles are there which gives the clear idea of judicial review in it. The Indian judiciary are having the powers to examine the actions of legislature, executive, administrative arms of the government and to ensure that such actions should adhere to the provisions of our constitution. If found unconstitutional, the following provision shall be made void. The most distinctive feature of the united states supreme court is its power of judicial review. As the guardians of the constitution the judiciary is that they can review the laws which may violate the

constitution of the country. The power of judicial review was first introduced in the supreme court in the case of Marbury v. Madison (1803) in which the powers of the supreme court was established by limiting the power of the congressional by declaring the legislation unconstitutional. In this case the court ruled out that the newly elected president of that time and his secretary of state, John Madison was wrong to prevent William Marbury from being the justice of the district court as being appointed by the former president before leaving the office. So, he filed a writ of Mandamus against the secretary of the state. The judiciary Act of 1789 gave the supreme court jurisdiction, but the Marshall court ruled the act of 1789 to be an unconstitutional extension of judiciary. The India parliament has adopted this system of judicial review system from US Constitution and the powers of the parliament are not supreme and the power is divided between Centre and the states. The supreme courts also have powers of reviewing the enactments of both the parliament and state legislatures. This makes the courts more powerful and grants an instrument of the judicial review. Judicial review can be conducted on both states and central existing laws and the ordinances of both constitutional and executive amendments. Judicial review cannot be conducted on the laws present in the ninth schedule of the Indian Constitution. The interpretations of the supreme court is honored by every court on the land and thus there is no appeal against the judgement of the supreme court. The system of judicial review is one of the most powerful system of our Indian Constitution. The doctrine of judicial review is thus firmly rooted in India, and has explicit sanctions of the Indian constitution. All the provisions in our Indian clearly mentions the importance of judiciary and helps in keeping a check over the legislative and executive of the Centre as well as states. The system of judicial review act as guardians of protection of our constitution and guarantees individual fundamental rights, divides power between the union and the states and clearly defines the powers of every organ functioning in the country. Thus, legitimizing the actions of the government and the protection of the Indian constitution against any undue encroachment by the government. The main aim of the study is to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the constitution.

Objective

The objectives of the study is to analyse the legal security of the individuals, To analyse if it is the absolute necessity for maintaining the supremacy of the constitution, to examine if there any misuse of power , to analyse if it aids in maintaining the equilibrium between the Central and the State.

II. REVIEW OF LITERATURE

Judicial review refers broadly to the jurisdiction of courts to keep the public authorities within their respective domains. Judiciary could only intervene and not interfere. The power is neither a police power nor that of a teacher. **(James,2001)** The precise role is that of anumpire, who has to closely watch whether the executive and the legislature are complying with the constitutional and statutory limitations and mandates while exercising their powers and, if not, to blow the whistle and stop their moves **(Biklen,1997)**. The power of judicial review only looks into the legality, rationality and procedural propriety of the decision and not into the contents, the quality or wisdom of the decision. It is not an appellate power to look into the merits of the decision. **(Holmes,2003)** It is not revisional power either. It is a power to verify whether the decision making authority is competent to take that decision, and whether the decision is taken in a fair and just manner complying with the procedural requirements. **(Ceius,2010)** Practically, the power of judicial review is more concerned with the manner in which the decision is taken than with the decision itself. Wherever legal limitations are imposed upon the organs of government, there has to be an adjudicator to decide the disputes **(Peter,2007)** arising there from and that role is entrusted with the judiciary, which alone is competent to interpret the legal instrumental. The effect of the intermittent and sporadic review of executive or administrative decisions will give an impression to the administration that their decisions, if disputed, are liable to be challenged and to be interfered with by courts. **(Coline,2009)** This may, to a large extent, indirectly influence most of them to be fair and just in their actions and decisions against the citizens, thereby improving the general quality of administration in a system, where the public administration is under perpetual surveillance of the judiciary as mentioned. **(Bodgan,2006)** The administration would thereby become more accountable and its performance would be more qualitative than the other systems, where there is no such check. This is precisely the case with the legislature, when it goes astray from the constitutional limitations and norms while enacting legislations. There is no difference in this matter between the civil

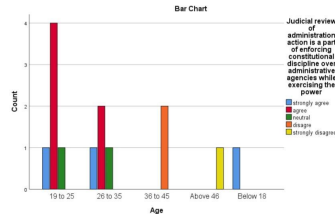
law or common law systems. Irrespective of the form or the venue, the question is whether there is a neutral and (Ceitil,2009) independent agency to intervene, when an illegality or injustice from the administration is challenged by an aggrieved person. Therefore, the scope of judicial review is super-imposing in all constitutional systems governed by rule of law, so long as man hates injustice emanating from public power. This is applicable pari materia to the legislature also. (Marwa ,2011) The principle of constitutionality and validity of legislation coupled with the remedy of judicial review of legislation make it incumbent upon the Parliament and the state legislatures to be watchful, guarded and accountable in their performance. In this way, if all the three organs of the State legislature, executive and judiciary accept the doctrine of constitutionalism (Aaker,2011)and judicial review in its proper legal spirit as permissible under the Constitution, without being influenced by the ego of institutional supremacy, there cannot be any better institution or mechanism than that of judicial review to balance branches of public administration. Therefore, the courts and judicial review are, in effect, shock absorbers of the society, (Mike et al ,2001)which not only absorb the shock of all irregularities and illegalities but also sweep and clean the system of public administration. It appears that the above developments in the 17th century England that lead to the rise and fall of judicial review and the dominance of parliamentary supremacy was the result of institutional conflict and power struggle supported(Casoline,2003) by the intelligentsia, mainly consisting of common law lawyers, judges and parliamentarians. Both the doctrines, viz., ‘judicial review’ and ‘parliamentary supremacy’ were fighting in the same battleground of ‘constitutionalism’. The common law lawyers, motivated by Coke, C.J. and others, sought the help of the parliamentarians to pu(Walter,2019)t a full stop to the Kings’ arbitrary dispensation of justice on the ground that it opposes the common law, the constitution and democracy. (Kotler,1997) It was the triumph of institutional wisdom as against the King’s individual decision or wisdom. It appears, on the same principle Parliament struck back and could succeed in imposing its supremacy on that of judicial review, represent the will of the people at large, opposed to ‘judicial review’ that represent the will or wisdom of a few selected and not elected judges(Marqa et al,2002), howsoever competent and knowledgeable they may be. The last two centuries have seen the slow and steady growth of the institution of judicial review world over as the most(Yin,2004)effective remedial measure against mal-administration and abuse of public power. The concept of rule of law coupled with the constitutional principle of separation of powers has made judicial review of public administration formidable and inevitable”(Aaker,2011). People throughout the democratic world have expressed faith in this judicial mechanism, since there is no better test of excellence of a Government than the efficiency of its judicial system. (Caroline,2008)Nothing more clearly protects the welfare and security of the commoner than his sense of relief and confidence that he can rely on the certain and prompt administration of justice of his country”. But its critics commented that it was emergence of a novel and possibly dangerous role for courts. Human rights and extravagantversion of the rule of law have already given a significant boost to judicial powers“. (Paster,2009) Therefore the true significance of the part played by judicial institutions in any system of administration cannot be evaluated only by reference to the frequency with which their jurisdiction is invoked (James,2011)

III. METHODOLOGY

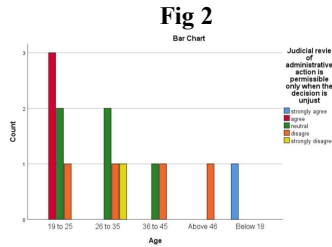
The research method followed here is empirical research. A total of 200 samples have been taken out of which is taken through simple random sampling. The independent variables taken here are age, gender, qualification, occupation, residence. The dependent variables are concerns about homeless lives, right to shelter as a fundamental right and reasons for homelessness. The statistical tool used by the research is graph (mean),scaling.

IV. Analysis

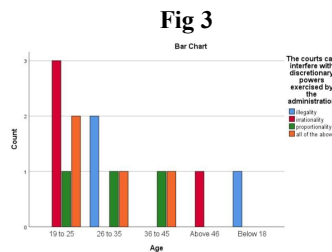
Fig 1



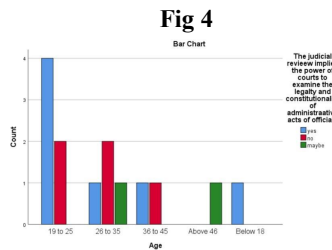
Legend : This graph deals with Judicial review of administrative action is a part of enforcing constitutional discipline over administrative agencies while exercising the power with respect to age



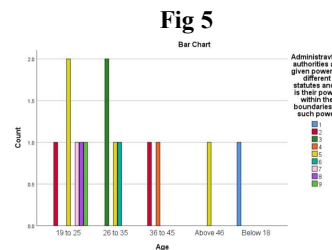
Legend : This graph deals with judicial review of administrative action is permissible only when the decision is unjust with respect to age



Legend: This graph deals with Courts can interfere with discretionary powers exercised by the administration with respect to age

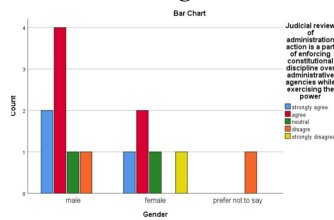


Legend: This graph deals with the administrative authorities are given power by different statutes and it is their power within the boundaries of such powers with respect to Age.



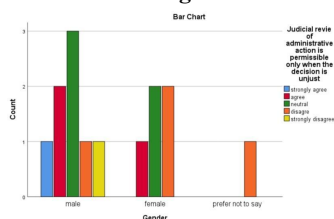
Legend: This graph deals with Judicial review of administrative action is a part of enforcing constitutional discipline over administrative agencies while exercising the power with respect to age

Fig 6



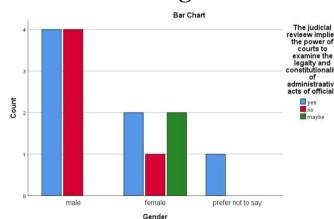
Legend: This graph deals with Judicial review of administrative action is a part of enforcing constitutional discipline over administrative agencies while exercising the power with respect to gender

Fig 7



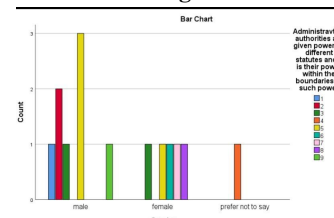
Legend: This graph deals with judicial review of administrative action is permissible only when the decision is unjust with respect to gender

Fig 8



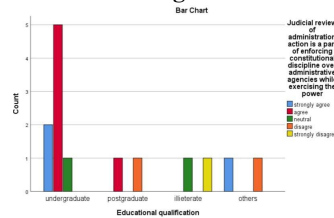
Legend: This graph deals with the Judicial review implies the power of courts to examine the legality and constitutionality of administrative acts of officials with respect to gender

Fig 9



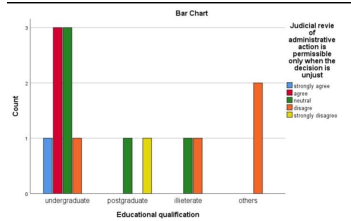
Legend: This graph deals with the administrative authorities are given power by different statutes and it is their power within the boundaries of such powers with respect to gender

Fig 10



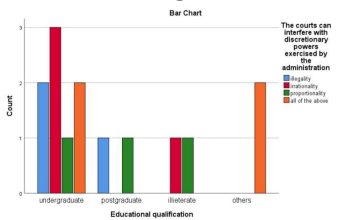
Legend: This graph deals with Judicial review of administrative action is a part of enforcing constitutional discipline over administrative agencies while exercising the power with respect to Educational qualification

Fig 11



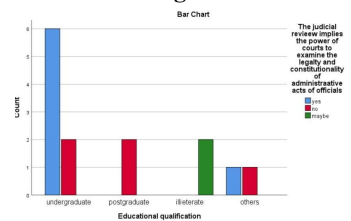
Legend: This graph deals with judicial review of administrative action is permissible only when the decision is unjust with respect to Educational Qualification.

Fig 12



Legend: This graph deals with Courts can interfere with discretionary powers exercised by the administration with respect to Educational Qualification

Fig 13



Legend: This graph deals with the Judicial review implies the power of courts to examine the legality and constitutionality of administrative acts of officials with respect to Educational Qualification

V. RESULTS

While noticing the **figure 1.1** we can come to know about people’s age group who participated in the survey, people whose age group lying between 25-34 years has given yes for a large number of responses and least responses where given by people of age above 45 years. While noticing the **figure 1.2** we can come to know about people’s age group who participated in the survey, people whose age group lying between 25-34 years has given strongly agree for a large number of responses and least responses where given by people of age above 45 years. While noticing the **figure 1.3** we can come to know about people’s age group who participated in the survey, people whose age group lying between 25-34 years has given hacking for a large number of responses and least responses where given by people of age above 45 years. While noticing the **figure 2.1** we can come to know about people’s gender group who participated in the survey people whose gender group is male has given yes for large number of responses and least responses were given by female . While noticing the **figure 2.2** we can come to know about people’s gender group who participated in the survey people whose gender group is male has given disagree for large number of responses and least responses were given by female. While noticing the **figure 2.3** we can come to know about people’s gender group who participated in the survey people whose gender group is male has given 6 for large number of responses and least responses were given

by female. the **figure 3.1** we can come to know about the people's educational qualification group who participated in the survey, people whose educational qualification group is undergraduate has given yes as large number of responses and least responses where given by HSC. While noticing the **figure 3.2** we can come to know about the people's educational qualification group who participated in the survey, people whose educational qualification group is undergraduate has given hacking as large number of responses and least responses where given by HSC. While noticing the **figure 3.3** we can come to know about the people's educational qualification group who participated in the survey, people whose educational qualification group is undergraduate has given 6 as large number of responses and least responses where given by HSC. While noticing the **figure 4.1** we can come to know about the people's occupation group who participated in the survey. People whose occupation group is private has given yes a large number of responses and least responses where given by self employed . While noticing the **figure 4.2** we can come to know about the people's occupation group who participated in the survey. People whose occupation group is private has given disagreement to a large number of responses and least responses where given by self employed. While noticing the **figure 4.3** we can come to know about the percentage of people's occupation group who participated in the survey. People whose occupation group is public has given a large number of responses and least responses where given by unemployment .

LIMITATION:

The major limitation of my study is the sample frame. The sample frames such as online surveys didn't help in interactive collection of responses. The majority of respondents were connected through different social platforms and through contacts. The restrictive area of sample size is also another drawback.

DISCUSSION:

As we can see the results of the questions which were asked to the people through a public survey .While noticing the graph people whose age group lying between 25-36 years has given strongly disagree for a large number of responses and least responses where given by people of age above 45 years. Gender is key importance in defining the power, privilege and possibilities that some people have and some people do not have in a given society. (Fig.1).While noticing the graph people whose age group lying between 25-36 years has given religion for a large number of responses and least responses where given by people of age above 45 years. People are highly aware of Gender affects progress towards equality and freedom from discrimination. (Fig.2).While noticing the graph people whose age group lying between 25-36 years has given disagree for a large number of responses and least responses where given by people of age above 45 years. Majority of Indian people think Gender of a person can influence hygiene and sanitization. (Fig.3).While noticing the graph people whose gender group is male has given disagree for large number of responses and least responses were given by females . The male are aware of Gender of a person can influence.(Fig.4). While noticing the graph people whose gender group is male has given 6 for large number of responses and least responses were given by female. Many male respondent believe that Gender identity is each person's internal and individual experience of gender.(Fig.5) .. hile noticing the graph people whose gender group is male has given disagree for large number of responses and least responses were given by female. Male strongly aware of gender identity conflicts with biological sex of a person. (Fig.6).The graph people whose educational qualification group is undergraduate has given disagree as large number of responses and least responses where given by HSC. The undergraduate believe that Gender is key importance in defining the power, privilege and possibilities that some people have and some people do not have in a given society.(Fig.7) .While noticing the graph people whose educational qualification group is undergraduate has given religion as large number of responses and least responses where given by HSC.most of the undergraduate majority of Indian people Gender affects progress towards equality and freedom from discrimination. (Fig.8).While noticing the graph people whose educational qualification group is undergraduate has given disagree as large number of responses and least responses where given by HSC. Undergraduate Gender of a person can influence lead to exposure of disaster. (Fig.9).While noticing the graph People whose occupation group is private has given disagree a large number of responses and least responses where given by self employed . People of the private sector have knowledge about Gender affects progress towards equality and freedom from discrimination.(Fig.10)While noticing the graph People whose occupation group is private has given 6 a large number of responses and least responses where given by

self employed Consumers have surely taken basic activities such as shopping, education online wherein it tend to generate more personal data and preferences. Private sector people are highly aware of Gender of a person can influence access to healthcare.(Fig.11)While noticing the graph People whose occupation group is public has given a large number of responses and least responses where given by unemployment . Private sector people are believe that Gender identity is each person's internal and individual experience of gender(Fig.12)

Suggestion

- Improve District Courts.
- Increase judicial capacity.
- Improve the Court management.
- Improvise Case management.
- Infrastructure should be developed.

VI. CONCLUSION

Here in India we have adopted the concept of Separation of power so we cannot assume the power of judicial review in full extended form. If the courts presume full and arbitrary power of judicial review it will lead to the poor performance of work by all the organs of government. So to keep all the functions work properly each has to work in its provided sphere. In India, we have the concept of judicial review embedded in the basic structure of the constitution. It helps the courts to keep a check and balance upon the other two organs of government so that they don't misuse their power and work in accordance with the constitution. The function of judicial review is one of the most powerful systems in the Indian Constitution. This doctrine absolutely has its roots in India and has an explicit sanction in the Indian Constitution. The process of judicial review functions as a guardian of the Constitution and also safeguards the fundamental rights enshrined under the Constitution. Moreover, it also distributes power between the union and the states and clearly defines the functions of every organ functioning in the nation. We have developed the concept of judicial review and it has become the part of basic structure in case of *Minerva Mills V. Union of India*. So, at last, it is correct to say that judicial review has grown to safeguard the individual right, to stop the use of arbitrary power and to prevent the miscarriage of justice.

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