

A Study on the Public Opinion on Judicial Review to be A Mandatory Process with Specific Reference to Chennai

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Abstract: *The concept of mandatory judicial review implies that any decision or legislation proposed by the government must undergo judicial scrutiny to assess its constitutionality and compliance with established legal standards. mandating judicial review can have several benefits, including enhancing the separation of powers, protecting individual rights, and ensuring the rule of law. It examines potential challenges and objections to making judicial review mandatory, such as concerns about judicial overreach, delays in policy implementation, and the potential for politicization of the judiciary. The research method followed is empirical research. The data is collected through a questionnaire and a sample size is 201. Convenient sampling method is adopted in the study to collect the data. The samples were collected from in and around Chennai. The independent variables are Age, Gender, Educational qualifications, occupation and Marital status. The dependent variables are whether judicial review should be a mandatory process in legal system, the major reasons for making judicial review mandatory and the impact of mandatory judicial review. The researcher used the graphs and Chi-Square test to analyze the data collected.*

Keywords: Judicial review, mandatory process, administration, constitutionality, government

I. INTRODUCTION

In the realm of modern governance, the concept of judicial review has emerged as a cornerstone of constitutional democracies worldwide. Judicial review provides the judiciary with the power to examine the legality and constitutionality of government actions, ensuring that they align with established legal norms and constitutional principles. Historically, judicial review has primarily been an optional mechanism, where legal challenges are initiated by affected parties or individuals with grievances. However, this paper delves into the intriguing proposition of transforming judicial review from an optional process into a mandatory one. The idea of mandating judicial review represents a significant departure from conventional practices. In essence, it proposes that all government decisions, laws, and policies be subjected to judicial scrutiny as an obligatory step before implementation. This would require government authorities to seek judicial approval or clearance for their proposed actions, thereby making the judiciary an inherent and indispensable part of the policymaking and governance process. The rationale behind this radical proposal lies in the belief that mandatory judicial review has the potential to significantly enhance democratic governance, safeguard individual rights, and strengthen the rule of law. By instituting a mandatory review process, governments may be held to a higher standard of accountability, with their actions subject to impartial and expert legal assessment. This can serve as a formidable check against potential abuses of power, discrimination, or violations of fundamental rights, ultimately contributing to the health and resilience of democratic institutions. However, such a transformative shift in governance practices is not without its challenges and complexities. Concerns about judicial overreach, potential delays in policy implementation, and the risk of judicial politicization loom large on the horizon. This paper aims to explore these issues comprehensively, examining the practical implications and potential solutions



associated with the idea of mandatory judicial review. In recent years, there has been a growing debate surrounding the idea of making judicial review a mandatory process, obligating the judiciary to review all government actions and legislation for their constitutionality and adherence to the rule of law. Such a fundamental shift in the role of the judiciary raises critical questions about the balance of powers, the protection of civil liberties, and the overall health of democratic systems. This paper delves into the compelling argument for and against making judicial review a mandatory process, exploring the potential advantages, challenges, and implications of such a transformation. In this exploration, we will delve into the theoretical foundations, historical precedents, and contemporary debates surrounding the concept of mandatory judicial review. We will also analyze the potential advantages and disadvantages, seeking to strike a balance between the ideals of democracy and the imperatives of governance. Ultimately, this paper invites readers to engage in a thoughtful and constructive dialogue about the merits and pitfalls of making judicial review a mandatory process in today's evolving political and legal landscapes.

OBJECTIVES:

- To know whether judicial review should be made a mandatory process in the legal system.
- To understand the major reasons for making judicial review mandatory.
- To understand the importance of judicial review.
- To know the impact of changing judicial review as a mandatory process.

II. REVIEW OF LITERATURE

Rosalind Dixon (2023) researched on the scope and intensity of responsive judicial review. This book aims to counter this dysfunction by arguing that courts should adopt a sufficiently “dialogic” approach to countering relevant democratic blockages and look for ways to increase the actual and perceived legitimacy of their decisions through careful choices about their framing, and the timing and selection of cases. **D. Klapouschak (2023)** researched on the Peculiarities of judicial review of cases on deprivation of parental rights. The work analyzes the procedural features of consideration of cases of deprivation of parental rights. The general characteristics of the institution of deprivation of parental rights are determined. At the same time, an analysis of the grounds for deprivation of parental rights provided for by the Family Code of Ukraine is carried out. **Andrew Le Sueur, Maurice Sunkin and Jo Eric Kaushal Murkens (2023)** researched on Judicial Review 3: Exclusion and Limitation of Judicial Review. This Chapter considers these issues and focuses on attempts by Parliament to prevent the use of judicial review and judicial responses to these. In particular, it considers the famous 1960’s decision in the Anisminic case and the more recent decision in the Privacy International case. **Gehad Mohamed and Mouaid Al Qudah (2023)** researched on the Judicial Pardon of Punishment: An Evaluative and Comparative Review. Unlike other laws, under the UAE Code of crimes and punishments No. (31) of 2021, the concept of judicial pardon of punishment refers to the legal authority vested in a judicial system to grant forgiveness or leniency to individuals who have been found guilty of a crime. **Sir William Wade, Christopher Forsyth and Julian Ghosh (2022)** researched on the Boundaries of Judicial Review. This chapter discusses the scope of judicial review. Judicial review is a procedure for obtaining the remedies specified in the Senior Courts Act 1981, namely the quashing order, the prohibiting order and the mandatory order, and declaration and injunction.

Neil Parpworth (2022) researched on the Judicial review remedies. This chapter discusses the different kinds of remedy which a court has the power to grant were it to exercise its discretion in favour of a judicial review claimant. It should be noted that the remedies are at the discretion of the court. **Anne Dennett (2021)** researched on the Judicial review: grounds and remedies. This chapter assesses judicial review and the rule of law, the three traditional grounds of judicial review, proportionality, the modern approach to judicial review, and remedies. Judicial review is the rule of law in action. Through judicial review, the courts place constraints on executive power by upholding and projecting rule of law principles on to executive actions. **Svetlana Avdasheva, Svetlana Golovanova and Yannis Katsoulacos (2019)** researched the role of judicial review in developing evidentiary standards: The example of market analysis in Russian competition law enforcement. This paper attempts to fill this gap by analyzing the impact of judicial review on the application of market analysis in competition investigations by the Russian competition authority during 2008–2015.



Sang-Hyeon JEON (2023) researched on the Constitutional Review and Judicial Activism. The Korean Constitution explicitly stipulates the constitutional adjudication system by the Constitutional Court("the Court"), thereby institutionalizing judicial activism. Nonetheless, the discussion of judicial activism still holds significance in Korea, as it raises questions regarding the limits of the Court's authority and the extent of its proper exercise. **Kosmas Kaprinis (2023)** researched on The Limits of Judicial Review as an Accountability Mechanism. The chapter addresses the suitability of judicial review as an accountability mechanism for the FPC. It considers the scope of the courts' power to engage in judicial review of administrative actions and documents the deferential approach of English courts.

Aakash Vishwakarma (2022) researched on Judicial Review as a Process: A Comparative Study. A judicial review is a process by which the judiciary monitors the proceedings and the functioning of the legislature and executive bodies. It helps in checking the accountability of the government. The USA provided us with the most important aspect of the political science by providing the concept of Judicial Review. **John Azzi (2022)** researched on Judicial Review and the Tax-Assessment Making Process. Noting the 'deep concern' of taxpayers and stakeholders with how the assessment power is sometimes used, this article demonstrates that notwithstanding the statutory process for overturning an assessment in part IVC of the Taxation Administration Act 1953 (Cth) **Norazlina Abdul Aziz, Mazlina Mohamad Mangsor, Nur Evan Rahmat and Mastika Nasrun (2023)** researched on an Overview of Judicial Review in The Malaysian Court. Judicial review is the power of court to revise the decision and act of the administrative power and legislative action which had acted in exceeds of their power. However, interpretation of 'exceeding their power' may differ from one case to another to which the courts are given the discretionary power to decide. **Armand Brice Etong (2021)** researched on the Judicial Review: Myths and Realities in the Malaysian Legal System. No one or authority is and should be above the law in a republican and democratic society for the purpose of good governance, rule of law, natural justice, objectivity and equality before the law. **Rosalind Dixon (2023)** researched on Toward Strong-Weak/Weak-Strong Judicial Review and Remedies. Democratic dysfunction can arise in both "at risk" and well-functioning constitutional systems. It can threaten a system's responsiveness to both minority rights claims and majoritarian constitutional understandings.

Stuart Sime (2020) researched on the judicial review. This chapter discusses the rules for judicial review. Judicial review lies against public bodies and must be brought by a person with a sufficient interest. There are six remedies available on applications for judicial review (quashing order, mandatory orders, prohibitory order, declaration, injunction, and money awards). **Alan John Rycroft (2016)** researched the Legal review of the mandatory mediation process in South Africa. Judicial understandings of mediation in the context of South Africa's Commission for Conciliation Mediation and Arbitration are evaluated from reported decisions where a party sought to set aside a settlement agreement. What is apparent is that courts generally understand that the process of mandatory mediation can be robust and evaluative. **Aleksandr Tsaliev (2016)** researched on Judicial Power as a Mandatory Attribute of a Constituent Entity of the Russian Federation. The article criticizes the idea of territorial federalism and on the example of judicial power the author demonstrates that attempts to reduce the constitutional and legal status of constituent entities of the Russian Federation to the level of administrative-territorial units only pursue the aim to divest them of state authority and property. **Jerome A. Yesavage (1984)** researched on a Study of Mandatory Review of Civil Commitment. The California Civil Commitment Statute provides for prolonged (14-day) involuntary hospitalization of the mentally ill on the basis of grave disability (GD), danger to self, and danger to others. **N. Gurian (2017)** researched on the Rethinking judicial review of arbitration. Mandatory arbitration is everywhere in the daily life of most Americans - when they sign a cell phone contract, buy a cable subscription, or sign up for a checking account. For most Americans, there is no avenue to acquire these basic goods and services without giving up the right to litigate disputes before a court of law.

III. METHODOLOGY

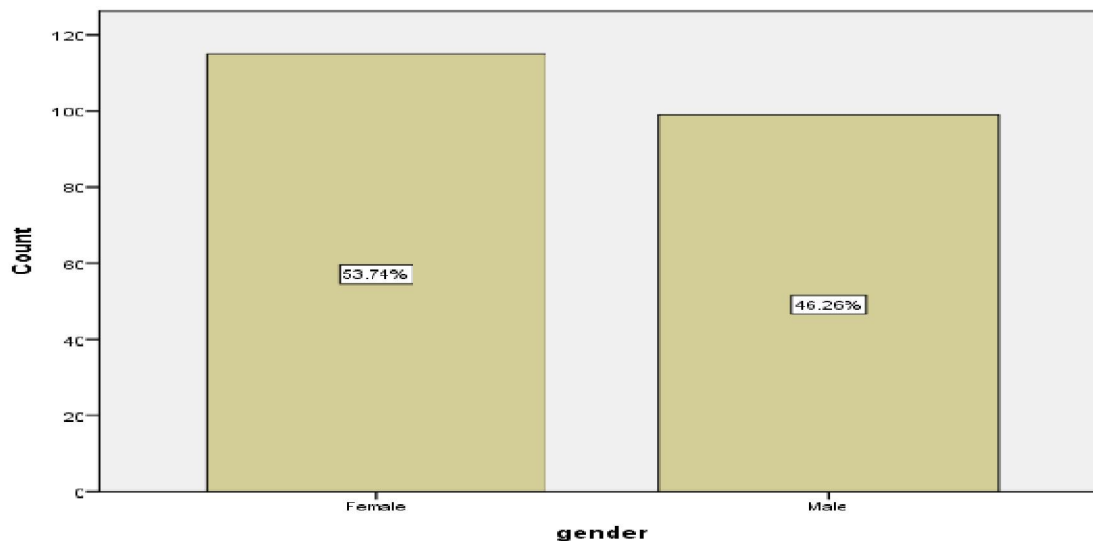
The research method followed is empirical research. The data is collected through a questionnaire and a sample size is 201. Convenient sampling method is adopted in the study to collect the data. The samples were collected from in and around Chennai. The independent variables are Age, Gender, Educational qualifications, occupation and Marital status. The dependent variables are whether judicial review should be a mandatory process in legal system, the major reasons



for making judicial review mandatory and the impact of mandatory judicial review. The researcher used the graphs and Chi-Square test to analyze the data collected.

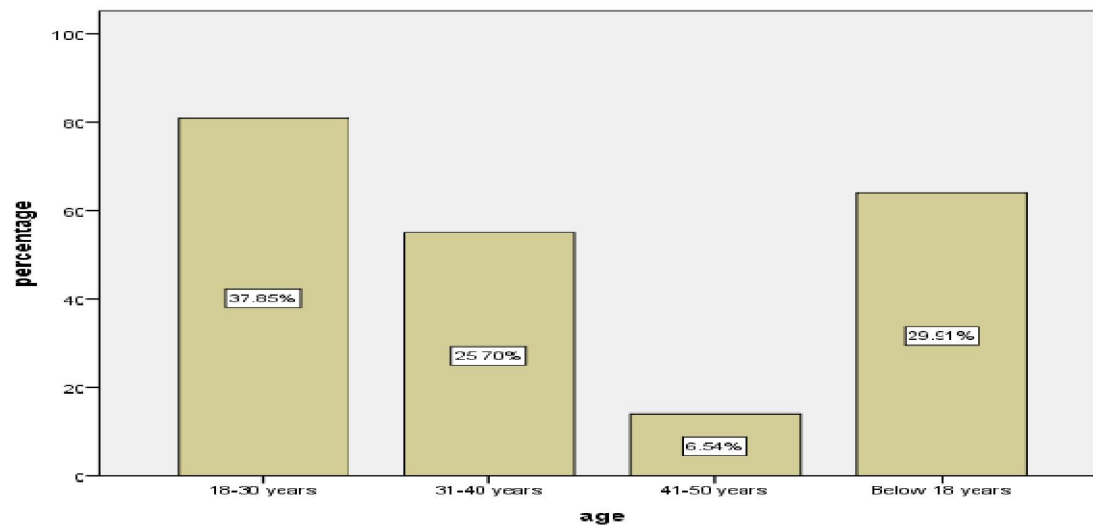
IV. ANALYSIS

Figure 1:



Legend: Figure 1 represents the gender of the respondents.

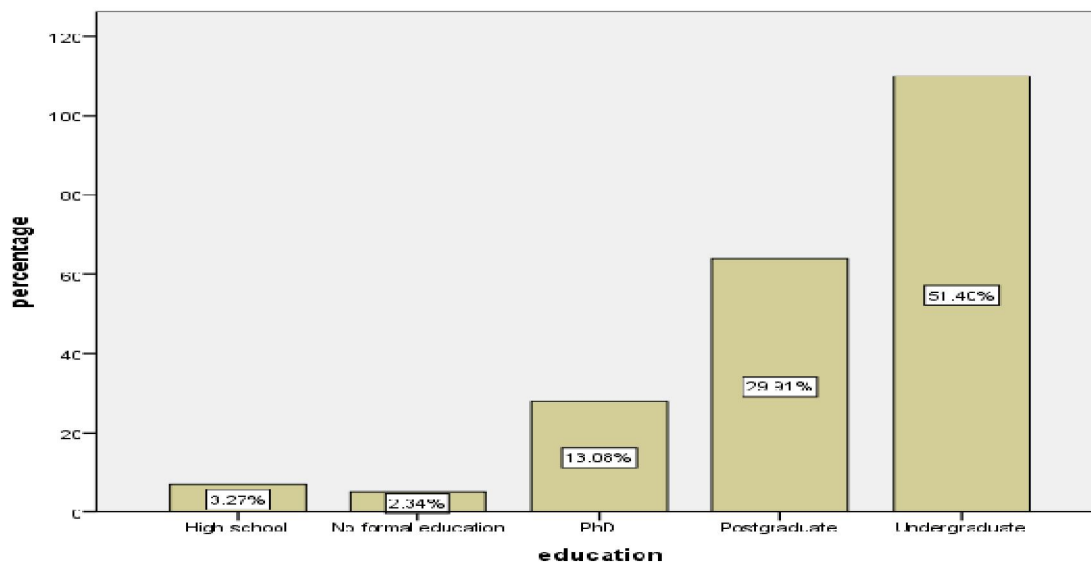
Figure 2:



Legend: Figure 2 represents the age group of the respondent.

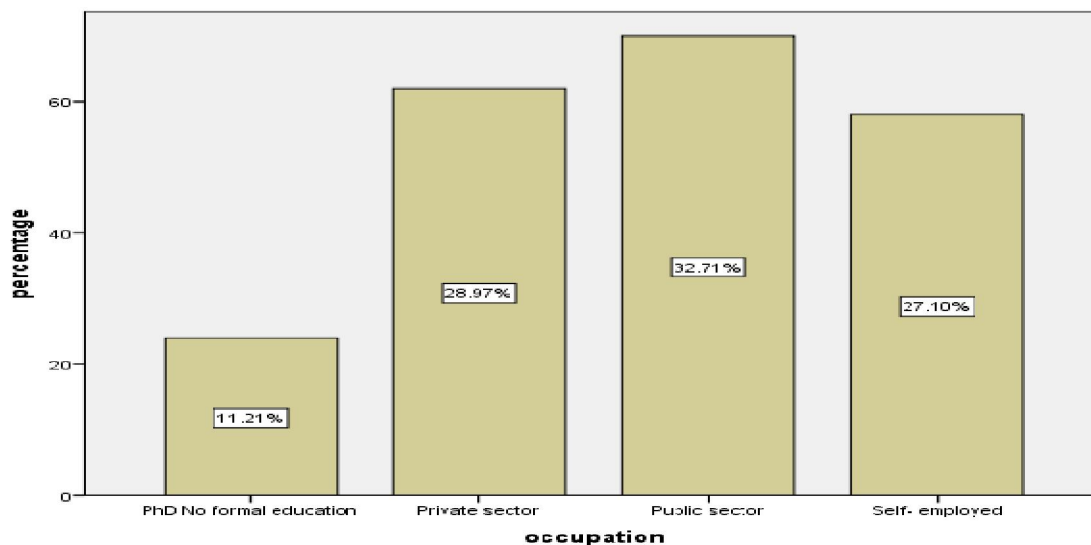


Figure 3:



Legend: Figure 3 represents the educational qualification of the respondents.

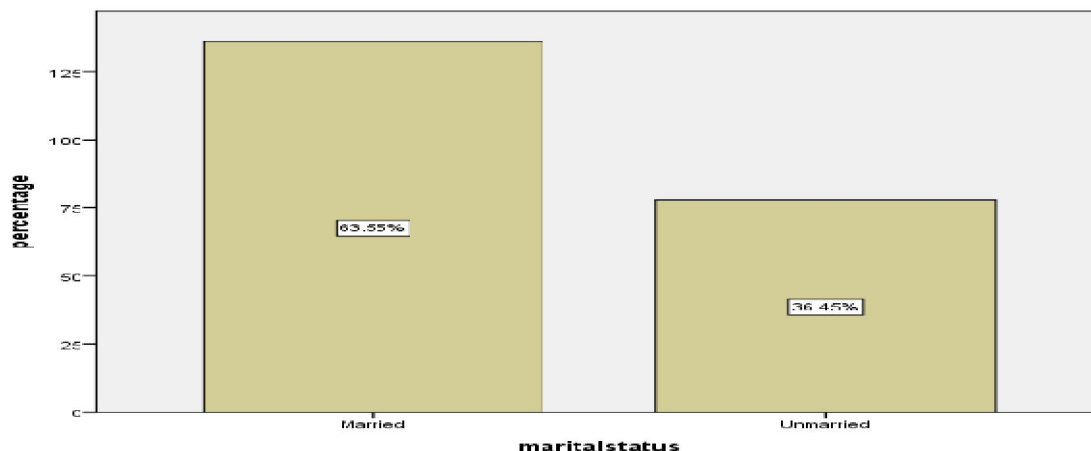
Figure 4:



Legend: Figure 4 represents the occupation of the respondents.

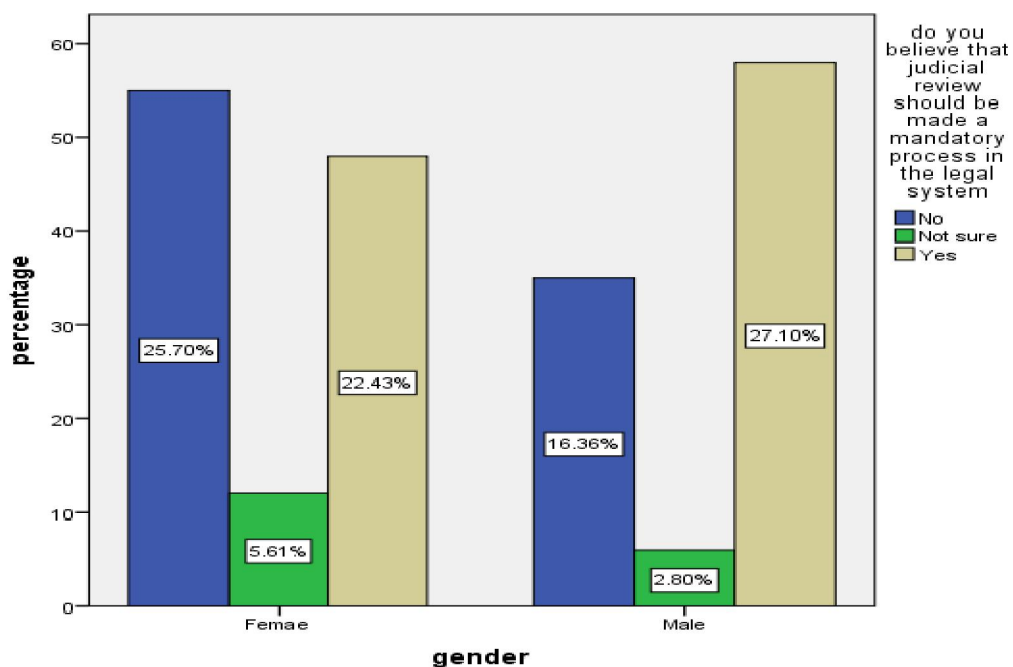


Figure 5:



Legend: Figure 5 shows the marital status of the respondents.

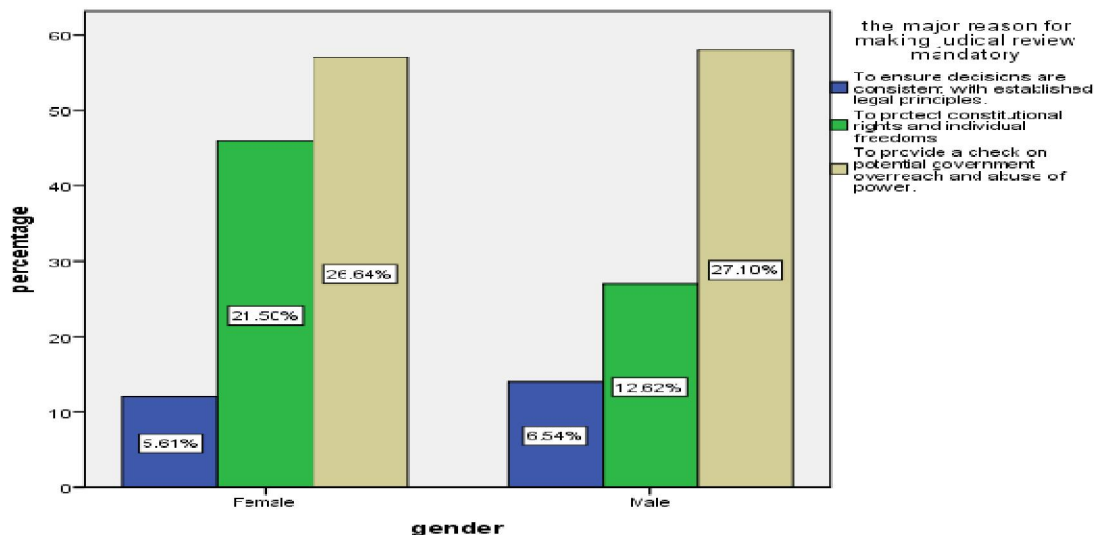
Figure 6:



Legend: Figure 6 shows the opinion of the respondents with respect to the gender of the respondents.

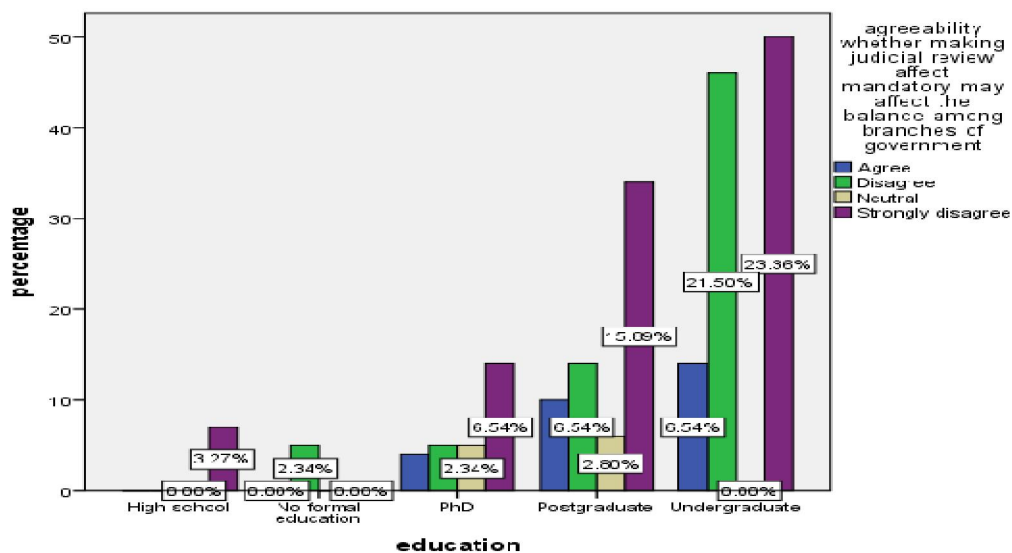


Figure 7



Legend: Figure 7 represents the gender of the respondents with respect to the asked question.

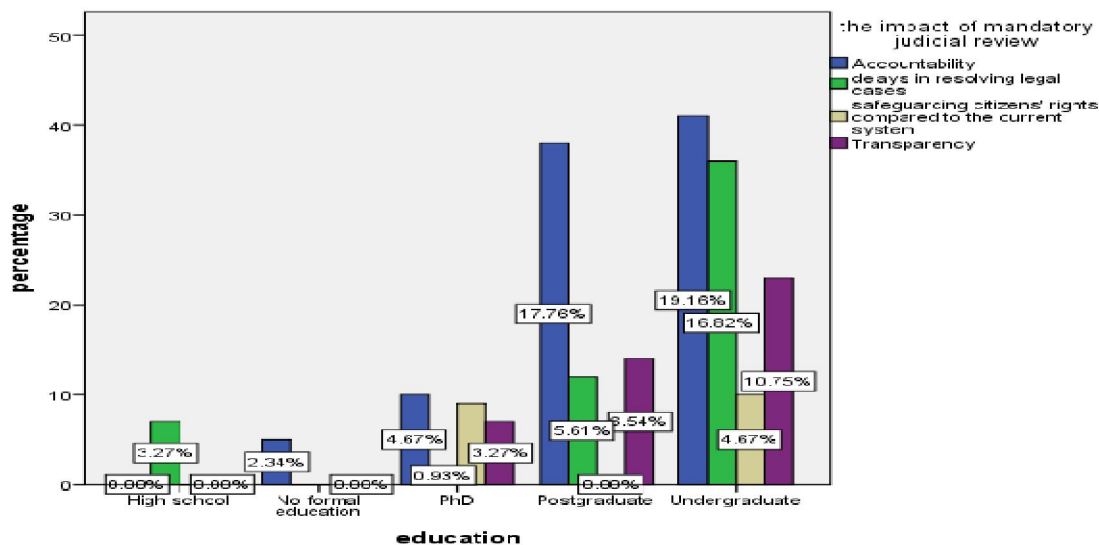
Figure 8:



Legend: Figure 8 represents the educational qualifications of the respondents and the agreeability on whether making judicial review mandatory may affect the balance among the branches of government.

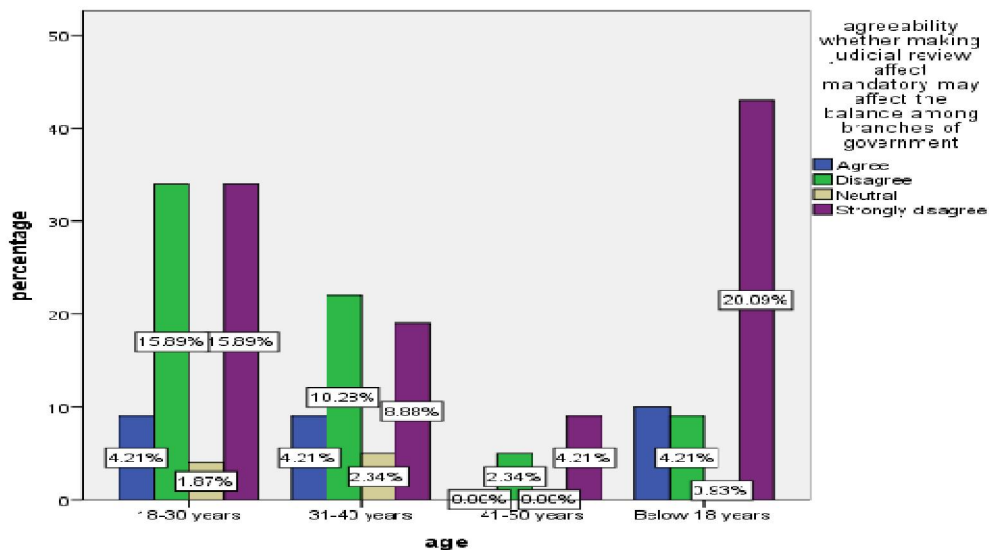


Figure 9:



Legend: Figure 9, represents the Educational qualification and the impact of mandatory judicial review.

Figure 10:



Legend: Figure 10 represents the age of the respondents and agreeability on whether making judicial review mandatory may affect the balance among branches of government.

V. RESULT

From figure 1, it clearly shows that 53.74% of the respondents are female and 46.26% the respondents are male. From the figure 2, it is clear that 29.91% of the respondents are below 18 years, 37.85% of the respondents are of the age



group 18-30 years, 25.70% of the respondents are from 31-40 years, 6.54% of the respondents are of the age 41-50 years and 17.86% of the respondents are of the age group above 51 years. From the **figure 3**, it shows 3.27% of the respondents have completed their higher secondary, 51.40% of the respondents have completed their undergraduate, 29.91% of the respondents have completed their Post graduate, 13.08% respondents have completed their PhDs while the remaining 2.34% of the respondents have no formal education. From **figure 4**, it shows that 11.21% of the respondents are not employed, 28.97% of the respondents are from private sectors, 32.71% of the respondents are from public sectors, 27.10% of the respondents are self-employed. From **figure 5**, it shows 63.55% of the respondents are married and 36.45% of the respondents are unmarried. From **figure 6**, it shows the majority of the male respondents positively support the statement. From **figure 7**, it shows that the majority of the male respondents think the major reason for making judicial review to be a mandatory process is to provide a check on the potential government to veer each and abuse of power. From **figure 8**, it shows that respondents who are undergraduates strongly disagree. From **figure 9**, it shows that the majority of the undergraduates have given a positive statement on accountability. From **figure 10**, it shows that the respondents below the age of 18 years have disagreed the statement.

VI. DISCUSSION

From **figure 1**, it clearly shows that the majority of the respondents are female and this is because they are well aware about the judicial review process. From the **figure 2**, it shows that the majority of the respondents are of the age group 18-30 years. This is because they have easy access to knowledge in schools and colleges and they are easily aware about such things. From the **figure 3**, it is clear that the majority of the respondents are those who are of the undergraduates. This is because they have easy access to knowledge in schools and colleges and they are easily aware about such things. From **figure 4**, it shows that the majority of the respondents are public sector. This is because they are well aware of the judicial process and are well knowledgeable about its various other impacts. From **figure 5**, it can be observed that the majority of the respondents are married. This is because they are well aware of and majority of the crimes are committed by people who are married and so they are well aware of such things. From the **figure 6**, it shows that male respondents are aware and so they think that judicial review should be made as a mandatory process in the legal system. From the **figure 7**, It is clear that the majority of the male respondents and they think that the major reason for making judicial review mandatory and to provide a check on potential government overreach and abuse of power. From **figure 8**, it is clear that the majority of the respondents who are undergraduates think that making judicial review mandatory may affect the balance among the branches of the government. From the **figure 9**, it is clear that the majority of the undergraduates have supported the statement because they think that by making judicial review a mandatory process it becomes more accountable and provides transparency. From **figure 10**, It is clear that the majority of the respondents who are below the age of 18 years disagree with the statement. This is because they think that it may affect the branches of government.

LIMITATION

The Major limitation of the study is the sample frame. The restrictive area of sample size is yet another drawback of the research. The researcher could only come to an approximate conclusion of what the respondent is feeling to convey.

VII. CONCLUSION

The concept of making judicial review a mandatory process is a complex and multifaceted issue that requires careful consideration. Mandatory judicial review can ensure the protection of individual rights and liberties by subjecting government actions to legal scrutiny. This process helps maintain the balance of power and accountability in a democratic society. It serves as a critical component of the system of checks and balances, allowing the judiciary to review the constitutionality of laws and executive actions, preventing potential abuse of power by other branches of government. A mandatory process provides legal certainty by establishing a clear framework for resolving disputes and interpreting the law consistently. This can contribute to stability and predictability in a legal system. However, implementing mandatory judicial review may place a significant burden on the judicial system. It could lead to delays in the administration of justice, potentially overwhelming courts with cases. The decision to make judicial review



mandatory is often influenced by political factors, as it impacts the power dynamics between the branches of government. Striking the right balance between legal oversight and political discretion is a complex challenge. making judicial review a mandatory process has its advantages in safeguarding constitutional rights and maintaining a system of checks and balances. However, it also poses challenges related to resource allocation and potential delays in the legal system. Decisions regarding the implementation of such a system should be carefully considered in the context of a nation's legal and political framework.

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