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DOCTRINE OF JUDICIAL REVIEW



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EVOLUTION

The doctrine of judicial review is traced back to the U.S Constitution in the case Marbury V. Madison, 5 U.S. (Cranch) 137 (1803). It has the origin in the theory of limited government and in the theory of two laws that is, an ordinary law and the constitution and it is the part of the Constitutional system all over the common law. In India, judicial review was exercised by the courts prior to the commencement of the Constitution of India.

DOCTRINE OF JUDICIAL REVIEW

The judicial review is the competence of the court to declare constitutionality or legislative enactment. Judicial Review is the power of the High Court and the Supreme Court to pronounce the constitutionality of legislation and executive acts of the government which lies in their jurisdiction and the Supreme Court can review its own judgment order. When the legislative, executive and judiciary violate the Constitution and the rights defined in the Constitution, the judicial review plays an important role in safeguarding the Constitution and the rights thereof.

The acts on contravening the principles of the Constitution such as Fundamental Rights, Directive Principle of State Policy, the Principle of Federalism, and the Principle of Natural Justice, the court exercise the powers of judicial review. The Court may review the action of the subordinate courts and reverse the decision if they are inconsistent with the Constitutional principles.

FUNDAMENTAL PRINCIPLES OF JUDICIAL REVIEW

Judicial review can be done on,

1. Violation of fundamental rights.
2. Violation of constitutional restrictions prescribed in the Constitution.
3. Enactment of the legislative act in violation of the Constitution on the distribution of powers.
4. Violation of limitations and restrictions.



PROVISIONS

The Constitutional provisions which guaranteed the judicial review of legislation are,

- Article 372(1) deals with the judicial review of the pre-constitution legislation.
- Article 13 says that any law violates the fundamental principles of the Constitution shall be void.
- Article 32, any fundamental right can be reviewed by the Supreme Court.
- Article 131 to 136 deals with reviewing power of the Supreme Court
- Article 226 used for reviewing the action of the administration. The High Court shall issue any direction, order, or writ in the nature of habeas corpus, Prohibition, quo-warranto, and certiorari for the enforcement of any fundamental rights.
- Article 245 states that the powers of both State legislatures and Parliament are subject to the Constitution Provisions.
- Article 246(3) ensures the State legislature's exclusive power pertaining to the State List.
- Article 251 and 254 states that inconsistency between the State and Centre laws, the Centre law will prevail and the State law is void.

CASE LAWS

Case 1.

Ramesh Thapper vs State of Madras, AIR 1950 SC 124.

Held - Supreme Court again struck down the Madras Maintenance of Public Safety Act 1949, on the ground that unless a law restricting freedom of speech and expression is directed against undermining the security of the state or to overthrow it, such law cannot fall within the reservation of clause (2) of Article 19.



Case 2.

Shankari Prasad vs Union of India, AIR 1951, SC 455.

Held - The First Amendment was challenged on the ground that it abrogated the fundamental right. The argument was based on the fact that the law under Article 13 (3) shall include the constitutional amendment law. The Supreme Court rejected the contention and held that the word law in Article 13 must be taken to mean rules or regulations made in exercise of constitutional power and therefore A 13(3), did not affect amendments made under Article 13 (3).

Case 3.

Sajjan Singh vs State of Rajasthan, AIR 1965 SC 845.

Held - The validity of the constitution, 17th Amendment Act 1964 was in issue. The Court stuck to the position laid down in Shankari Prasad case and held that the constitutional amendments made under Art 368 fall outside the purview of judicial review by the courts.

Case 4.

Golak Nath Vs. The State of Punjab, (1967) 2 SCR 762.

Held - The validity of three constitutional amendments (1st, 4th and 17th) was challenged, that the Supreme Court reversed its earlier decision and uphold the provision under Article 368 which put a check on the Parliament's propensity to abridge the fundamental Rights under chapter III of the Constitution.

Case 5.

Kesavananda Bharti Vs. State of Kerala, (1973) 4 SCC 225.

Held - The constitutional validity of the 24th, 25th and 29th amendments was challenged wherein the court held that even though the Parliament is entitled to amend any provision of the constitution it should not tamper with the essential features of the constitution; and that Article 31c is void since it takes away invaluable fundamental rights.



Case 6.

L.Chandra Kumar v. Union of India, AIR 1997 SC 1125.

Held - 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 The legislature passed the law, which is in harmony by way of establishment of the Indian Constitution. The powers to review legislation are vested by way of the S.C.I. and state's higher courts, for the resolution of judicial assessment. The judicial assessment of legislation is in conformism, through the establishment of the Constitution.

Case 7.

The Designated Authority V. The Andhra Petrochemical Limited, 2020 SCC Online SC 706.

Held - Access to judicial review is a valuable right conferred upon citizens and persons aggrieved, the Constitution arms the High Courts and this court with powers under 226 and 32. Judicial review should not be exercised virtually as a continuous oversight of the designated authority functions. The judicial review is to be exercised in a circumspect manner, especially where final findings are rendered by the designated authority.

Case 8.

Mukesh Kumar V. Union of India, 2020 SCC Online SC 96.

Held - The quick consideration of the mercy petition and swift rejection of the same cannot be a ground of judicial review of thee order passes under Article 72/161 of the Constitution. Merely because there was quick consideration and rejection of the petitioner's mercy petition, it cannot be assumed that the matter was proceeded with predetermined in the mind.



Case 9.

Municipal Corporation Neemuch V. Makadeo Real Estate And Ors., Civil Appeal No. 7319-7320 of 2019.

Held - While exercising the powers of judicial review of administration action, the court could not interfere with the administration decision unless it suffers not interfere with the administrative decision unless it suffers from the vice of illegality, irrationality of procedural impropriety.

Case 10.

Vasavi Engineering College Parents Association V. State of Telangana and Others, 2019 SCC 7 172.

Held - While adjudicating the validity of an executive decision in economic matters by exercising power of judicial review, it is not errors, but only palpably arbitrary decisions alone can be interfered with by the High Courts.

DISCLAIMER

This write up has been sent to you for information purposes only and is intended merely to highlight legal maxim. The information and/or observations contained in this issue do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this issue do not necessarily constitute the final opinion of M/s.Wallcliffs Law Firm and should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us on mail@wallcliffs.com.



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