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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



THE ROLE OF JUDICIAL REVIEW IN PROTECTING FUNDAMENTAL RIGHTS

AUTHORED BY - AYUSH RATURI

Introduction

Every democratic governance system builds its foundation on essential rights to defend personal liberties together with fair social standards. Such rights like freedom of speech and equality before the law combined with protection from unwarranted state actions exist in a nation's foundation of law or constitutional framework. Protecting these rights demands a robust system that stops governments from invading public liberties or exceeding their authorized power. Judicial review exists as the vital mechanism in this context. The power which allows courts to evaluate the constitutional standing of legal frameworks along with governmental policies and decisions falls under judicial review.

The judiciary maintains the authority to challenge laws that conflict with fundamental rights which enables them to protect the democratic principles from violation. Through this power the courts review both legislative actions and executive proposals to prevent any laws which threaten individual liberties from being enacted by the branches of government. Judicial review started from the pioneering 1803 Marbury v. Madison decision of the US Supreme Court. John Marshall enforced from his position as Chief Justice that judges hold a constitutional duty to both interpret the law and eliminate unconstitutionally passed legislation. Widespread adoption of the principle occurs in numerous international legal frameworks starting from its formation while distinctive interpretations exist within India, UK, Canada, and the EU.

The practice of judicial review exists for constitutional protection in written constitutional nations such as India and the United States. Judicial review in India is applied by both Supreme Court and high courts to defend fundamental rights according to the example of Kesavananda Bharati v. State of Kerala (1973). In Kesavananda Bharati v. State of Kerala (1973) the Supreme Court of India ruled that changes to the fundamental framework of the Constitution are prohibited thus defending fundamental rights against any weakening.

Judicial review exists in every nation including the United Kingdom through court action that protects human rights laws and both common law and human rights principles. The European Court of Human Rights functions as an essential force to defend fundamental rights throughout European nations.

Through judicial review democratic systems benefit from protection since it maintains a balance between governmental authority and guarantees citizen rights. The absence of judicial review makes fundamental rights lose their worth because governments could possess unrestricted power. The development of democracies will depend on judicial review because it represents a fundamental tool for justice along with enforcing the rule of law.

Understanding Judicial Review

Origin and Development

The origin of judicial review begins from the early 19th century. The United States Supreme Court confirmed the practice of judicial review during the decisive *Marbury v. Madison* case from 1803. During *Marbury v. Madison* (1803) John Marshall as Chief Justice declared that courts possess the power to declare unconstitutional any laws that violate the Constitution. The principle resides in different legal systems yet countries apply it differently because their constitutional frameworks shape its implementation.

Purpose and Function

The court possesses authority to examine and verify the legality of laws through judicial review thus protecting the people from unauthorized government actions. Under judicial review the courts possess authority to analyze law then decide their validity against constitutional requirements and Through this process democracy remains intact because it defends citizen rights from state interference.

There are three primary forms of judicial review:

1. Constitutional Review – Courts determine whether constitutional compliance exists in executive actions as well as statutes.
2. Administrative Review – This assessment determines if governmental decision abide by legal guideline along with proper procedural standards.

3. Judicial Interpretation - Court provide authoritative interpretations of legal texts when ambiguities arise.

Judicial Review in Practice

Judicial review operates according to specific national specifications across nations. Unconstitutional laws can be invalidated by courts operating at different regional levels within the United States. The United Kingdom operates under parliamentary sovereignty therefore its judicial system conducts review only for administrative decisions instead of laws passed by Parliament. The Indian Supreme Court performs a continuous examination of both legislative bills and executive choices to verify their compliance with fundamental rights along with constitutional requirements.

Historical Background

Judicial review gained its first establishment as a US legal principle through Marbury v. Madison which became an essential case decision in 1803. Madison (1803). Chief Justice John Marshall declared through his historic court decision that “it is clearly the right and duty of the judicial department to tell what the law is.” Through this case judicial review became established as a fundamental component of constitutional governing systems.

Judicial review exists in Indian jurisprudence as an explicit constitutional power through Articles 13, 32, 136, 226 and 227. Judicial authorities in India use their review authority to safeguard fundamental rights through acts of striking down laws or executive orders that violate the Constitution.

Due to the British principle of parliamentary sovereignty the development of judicial review in the United Kingdom diverged from other nations. After the Human Rights Act 1998 went into effect the courts received permission to assess domestic laws against European Convention on Human Rights (ECHR) principles.

Judicial Review as a Guardian of Fundamental Rights

The basis of democratic nations exists from fundamental rights which protect citizens against state interference while securing their freedoms including free expression and protection from arbitrary state actions. Through judicial review mechanisms the government prevents

legislative and executive bodies from violating the protected rights of the citizens. Under judicial review the protection of fundamental rights operates through the following sequence:

1. Through judicial review the Courts possess the power to declare laws unconstitutional which violate fundamental rights of the citizens. For example, in *Roe v. The U.S. Supreme Court through Wade (1973)* eliminated state control of abortion while it confirmed women have exclusive rights to choose abortion.
2. The government resorts to passing laws which limit civil liberties through national security measures and public order concerns. Judicial review functions as a protection system which maintains the preservation of individual liberties from any encroachment by such laws. In *K.S. Puttaswamy v. The Indian Supreme Court declared privacy a fundamental right in its K.S. Puttaswamy v Union of India (2017)* ruling while using this decision to remove provisions that violated individual liberties.
3. Through judicial review the court protects executive departments from exceeding their nominal authority. During the Korean War President Truman attempted to seize steel mills through executive order yet the U.S. Supreme Court declared this act illegal because the executive lacked constitutional powers in *Youngstown Sheet & Tube Co. v. Sawyer (1952)*.
4. By means of judicial review the Court has actively fought against social injustice and discrimination by nullifying unfair laws. The decision in *Brown v. Board of Education (1954)* ruling which abolished the unconstitutionality of segregated schools in educational settings.
5. The freedom to express oneself faces danger from laws which seek to restrict these rights. Judicial review maneuvers played by courts serve as the main tool for safeguarding this essential right. In *New York Times Co. v. United States (1971)*, the U.S. Supreme Court upheld freedom of the press by rejecting the government's attempt to block the publication of the Pentagon Papers.

Challenges of Judicial Review

The constitutional power of judicial review encounters three broad difficulties.

1. **Judicial activism versus judicial restraint**
Accusations against judicial activism claim courts break their legal authority by developing political policies instead of conducting legislative interpretation. Proponents who defend activism maintain that protective action becomes needed

because legislators do not intervene when rights need defense.

1. Political influence

Judicial independence experiences threats from political intervention in various nations. Judicial appointments through political methods can harm the fair judgment delivered by judges when performing court review.

2. Reaction of legislatures

The judicial system encounters opposition from legislative bodies that create fresh laws to eliminate court decisions. For example, after the Citizens United v. Following the Citizens United v. FEC (2010) courts allowed unlimited corporate campaign donations United States elections brought demands to amend the Constitution for control.

4. Public perception and legitimacy

Judicial review has been criticized because judges who are elected to their positions possess the ability to undermine legislation approved by elected lawmakers. Maintaining both judicial independence and accountability presents officials with an intricate situation.

Conclusion:

Through judicial review the fundamental rights stay protected because it ensures laws and executive decisions and policies obey constitutional principles. The mechanism ensures both legal rule maintenance and democratic standards and limits government power. Through its constitutional review process the judiciary upholds individual liberties by preventing government branches from using their power beyond their set limits while safeguarding the rights mentioned in the Constitution.

Judicial review makes its most substantial impact through the process of invalidating constitutional violations contained within laws and policies. The rights of freedom of speech and equality as well as due process belong to democratic societies yet might face threats from political changes in their constitutional frameworks. Through judicial review a system of checks and balances protects the people from abusiveness in governance by eliminating laws and actions violating constitutional bases. Rendering this function fundamental to maintain the safety of minority rights and vulnerable groups against majoritarian rule.

Through judicial review the system encourages evolving fundamental rights by monitoring

societal developments. The judiciary has significantly expanded fundamental rights that received no section in the drafting process of the Constitution. Through adaptability rights retain their validity when facing both emerging technological developments and worldwide concerns about climate change alongside migration challenges. The use of progressive interpretation of constitutional guidelines by judicial review both enhances democratic systems and establishes social equality.

Judicial independence serves as a key operational factor for successful judicial review execution. Legal protection happens through free and autonomous court operation which should remain unimpeded by political interference. Judges who maintain impartiality have the power to check on executive and legislative branches without risking any consequences. The protection of fundamental rights remains stronger in nations that maintain courts with strong independence because such countries experience less democratic institution weakness alongside political interference.

Judicial review generates numerous valuable advantages even though several groups express criticism about its implementation. High judicial authority has drawn criticism since unelected judges have limitless power to strike down legislations made by elected representatives. The dispute between procedural authority of judges and democratic lawmaking ability has become a subject for public discussion. Authoritative oversight functions in government without eliminating the duties entrusted to legislative and executive branches. The authorities enforce adherence to constitutional restrictions. Courts normally practice judicial restraint by backing up the choices of elected officials except when recognition of rights violations becomes apparent.

The constitutional democracy depends on judicial review to conserve fundamental rights that protects democracy from its erosion. The review process functions as a security measure against government overreach and it helps legal officials deliver fair interpretations of laws and sustains fundamental liberties throughout political reforms. The role of judicial review persists as vital because any legal system that wants to protect rights will always need it to maintain justice and equality along with human dignity.