

Judicial Review

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. In other words, judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

The Court established this doctrine in the case "Marbury vs. Madison."

Constitutional judicial review is usually considered to have begun with the assertion by John Marshall, fourth chief justice of the United States (1801–35), in *Marbury v. Madison* (1803), that the Supreme Court of the United States had the power to invalidate legislation enacted by Congress. There was, however, no express warrant for Marshall's assertion of the power of judicial review in the actual text of the Constitution of the United States; its success rested ultimately on the Supreme Court's own ruling, plus the absence of effective political challenge to it.

Marbury Vs. Madison

Madison----- Secretary of State

Marbury----- One of the nominee/appointee for appointment as Judge

Thomas Jefferson defeated John Adams in presidential elections of 1800.

Before the Jefferson could have formally entered office, Adam and Congress passed an Act, Judiciary Act 1801, just one day prior to oath. This Act created many new courts and required appointments of new judges.

He passed the Act to frustrate his successor, Jefferson.

All these appointments were approved from Senate.

It was necessary for final appointments that all these appointees should be delivered their Commissions from Secretary of State.

At that time secretary of state was James Madison who was ordered by Jefferson not to deliver commissions. Madison refused to deliver the commissions.

One of the person among the appointees was William Marbury, of whom commission was also not delivered by Madison.

Marbury filed writ of mandamus in Supreme Court of U.S.A.

ISSUES:

1. Do the petitioner have the right to receive commission?
2. Can they sue for delivery of commission?
3. Does the Supreme Court have authority to order delivery of commission?

DECISION OF SUPREME COURT:

- Madison's refusal of delivery of commission is illegal but court didn't order for delivery.
- Supreme Court wrote in its judgement that Judiciary Act 1801 through which Marbury has filed writ of Mandamus, is against the constitution and Congress do not have the power to legislate against the constitution in its regular legislation, hence Judiciary Act. 1801 is void.

What could be done in Judicial Review by Courts:

- Courts can give direction to any person in connection with affairs of government.
- Courts can inquire/ require about any act, or person etc.

Principles of Judicial Review:

- The constitution is the supreme law of the country.
- The Supreme Court has the ultimate authority in ruling on constitutional matters.
- The judiciary must rule against any law that conflicts with the Constitution.

Judicial Review in Pakistan

Though no express provision as to "Judicial Review" has been given in the Constitution of Pakistan, however, Supreme Court of Pakistan may under Article 184(3) and any High Court may under Article 199 exercise the power of judicial review.

Categories of Judicial Review

Judicial review can be classified into three categories;

- Judicial review of judicial actions
- Judicial review of executive actions
- Judicial review of legislative actions

It is also the duty of judges to ensure that balance of power is maintained, protect human rights, fundamental rights citizens' rights of life and liberty.

Judicial review of legislative actions:

- Any law made in conflict with any of the fundamental rights granted by constitution.
- Any law made repugnant of Islam.
- Any law inconsistent with the basic character of the constitution.
- Any law creating confliction between two governments.

Judicial review of executive actions:

Grounds to exercise power of judicial review against an administrative action if these are resulting injustice.

- **ULTRA VIRES** • Ultra vires is a Latin phrase meaning literally "beyond the powers" • "If an act requires legal authority and it is done with such authority, it is characterized in law as intra vires (literally "within the powers"; • Acts that are intra vires may equivalently be termed "valid" and those that are ultra vires "invalid"
- SCOPE** • Most fundamental concepts in administrative law • The doctrine of Ultra Vires stands for the acts, which are for any reason in excess of power, are often described as being outside jurisdiction. • Professor Wade declares "any administrative act or order, which is ultra vires or outside jurisdiction, is void in law".
- Doctrine of ultra vires** is in fact is a scale for the measurement of delegated legislation, its validity and the proper observance of procedure created by the said legislation. The doctrine is of two kinds: • **SUBSTANTIVE ULTRA VIRES:** The situation where the executive authorities enact laws or rules, for which they are not authorized by the parliament. • **PROCEDURAL ULTRA VIRES:** When the authorities fail to follow the procedural requirement prescribed by the statutes.

To what extent does the jurisdiction principle enable the reviewing courts to control the exercise of power by the administrative authorities?

Principles applied in Pakistan examined below:

1. Reasonableness
2. Improper motives/ malafide
3. Irrelevant considerations
4. Acting under dictation
5. Abdication of authority

➤ REASONABLENESS

- The doctrine of reasonableness has been adopted in the rule that powers, particularly discretionary ones, have to be exercised "judiciously and not arbitrary or capriciously". • Arbitrary exercise of jurisdiction has been called abuse of jurisdiction. Where the land could be auctioned for „public purpose“, if the „immediate need“ for possessing it was established, the order of requisition was held arbitrary, since the requirement of public purpose and immediate need were not provided.

➤ IMPROPER MOTIVES/ MALAFIDE

- A malafide order means that which is passed not for the purpose contemplated by the enactment granting the power to pass the order, but for some other collateral or ulterior motive. • The court can inquire the motives of the authorities passing order when such orders are under review. Where the government issued notifications for acquisition of land, declaring that the land was needed for a „public purpose“ while in fact it was required for a commercial company, the acquisition was held invalid.

➤ IRRELEVANT ACTING UNDER CONSIDERATIONS DICTATION.

- It is an established principle Discretionary powers must that in exercising be exercised only by the discretion, the authorities persons authorized by the must have regard to all statute. One of the rules to relevant considerations and ensure this policy is that disregard all irrelevant the persons so authorized considerations. must not act under dictation.

MODES OF JUDICIAL REVIEW

Following are the modes of judicial review of administrative action

MODES OF JUDICIAL REVIEW.

Following are the different kinds of writs which can be issued on certain grounds by Supreme Court and High Court • Habeas corpus • Mandamus • Prohibition • Certiorari • Quo warranto.

- MANDAMUS to do anything he is required by law.
- HABEAS CORPUS to do directing that a person in custody.
- PROHIBITION within the territorial jurisdiction functions in connection with the of the Court be brought before it affairs of the Federation, a so that the Court may satisfy Province or a local authority, to itself that he is not being held in refrain from doing anything he is custody without lawful authority not permitted by law to do. or in an unlawful manner.
- CERTIORARI functions in connection with the affairs of the Federation.
- QUO WARRANTO Province or a local authority has been done or taken without requiring a person within the lawful authority and is of no territorial jurisdiction of the Court legal effect holding hold a public office to show under what authority of law he claims to hold that office

Comparison with other countries:

In British system the court can only interpret the law. In Pakistan Courts not only interpret the law but also set aside the same.

Unlike India and America, the Constitution of Pakistan does not confer the powers of judicial review in express terms.

Judicial Review and Judicial Activism:

Judicial review means where legislature or executive exceeds the powers given to it by constitution, judiciary can prevent it by declaring their act or action ultra vires.

Whereas Judicial Activism means readiness and quickness of the judiciary to perform the act of judicial review.