



The Scope of Judicial Review in the United Kingdom: An Overview

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Abstract: *This research paper delves into the concept of judicial review in the United Kingdom, outlining its historical evolution from the seventeenth century to its contemporary significance. Judicial review empowers the judiciary to assess the decisions and actions of public authorities, ensuring the legality, procedural correctness, and propriety of these actions while maintaining checks and balances. Recent developments have reshaped this practice, influenced by political and constitutional changes like Brexit. Questions have arisen concerning the judiciary's role in relation to government and parliament actions, especially in light of Brexit and the COVID-19 pandemic.*

Key Words: Judicial Review, Constitution, Rule of Law, Parliamentary Sovereignty

Introduction

Judicial Review refers to the process that guarantees the separation of power in a state as its scope has its foundations in the concept of power separation among the three organs of the state. It empowers the court to hold any enactment and action, unenforceable and unconstitutional that is inconsistent with the fundamental rights of the citizens. The two primary grounds for Judicial Review are, “*Supremacy of the Constitution with the requirement that ordinary law must conform to the Constitutional Law*” and “*Theory of Limited Government*”. Judicial Review also entails Judicial Activism within its ambit (Gupta, 2016).

The primary objective of this concept is to ascertain the legal status of the challenged order and statute. It brings the constitution in conformity with the changing conditions and requirements of the time. In the UK, the objectives of judicial review are to safeguard the fundamental rights of the citizens and to maintain the ascendancy of constitutional law (Debbarma, 2022). The validity of judicial review owes itself to the rule of law as well as to the requirement that public entities operate in compliance with the law (Gupta, 2016). It is a mechanism to hold public officials responsible for the exercise of public power, especially

when actions are taken that aren't really in the hands of the political process. Judicial review is an excellent strategy to review laws that are unconstitutional, harassing and unjust (Bridwell, 1980).

In Judicial Review, the judges examine the impugned decision and determine whether the public body has followed the law properly. In addition to the claimant, who seeks an amendment or reversal in the decision, and the defendants, other parties may intervene because they are the affectees of the decision. Public bodies, such as Federal and local governments, must abide by the law while making decisions and if they fail to do so, they are said to have acted illegally. Meanwhile, public law refers to the corpus of law that regulates the actions of public entities and bodies (Street, 2013).

The principles of Public Law ensure that public bodies of the state discharge their legal obligations without abusing or misusing their authority and respect the sanctity of human rights of those citizens that suffer because of their misuse of their authority. There are a number of options for those who are harmed by the illegal actions or decisions of a public body (Bridwell, 1980). Most commonly, the complaint procedures of public bodies are followed, and the right

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to appeal is exercised before a tribunal. If a plaintiff can make another complaint to or about the public body, or if they may appeal the decision, it is usually not required to invoke judicial review (Public Law Project, [2018](#)).

Origin of Judicial Review

The doctrine of judicial review originated in the USA in a landmark case titled “Marbury vs. Madison” (Agrawal, [2022](#)). However, Lord Coke’s historic decision in “Dr Bonham vs. Cambridge University” in 1610 laid down the purview of judicial review in England. Though the Constitution of the US does not directly mention the authority of Judicial review, its Article III states that “*the judicial power of the United States which includes, original, appellate jurisdiction and also matter arising under law and equity jurisdiction incorporates judicial power of the court*”. Similarly, Article IV of the US Constitution says that “*All powers of Government are exercisable only by on the authority of the organ established by the constitution*”. Therefore, this provision states that the “*Constitution of the USA is the supreme law of the land*”. In US Constitution, there is no direct provision for the concept of Judicial review; instead, this concept is the result of judicial interpretation (Debbarma, [2022](#)). The US Supreme Court has the authority to prevent Congress from delegating legislative powers to administrative institutions. The notion of “due process of law” balanced the democracy of the United States by announcing the laws and actions of state institutions as illegal and arbitrary (Gupta, [2016](#)).

However, there is no written constitution in the UK. Thus, there was no such concept of judicial scrutiny in the United Kingdom initially and the principle of “Parliamentary Sovereignty” governed the constitutional democracy in the country (Woolf, [2004](#)). The Parliamentary Supremacy in the UK encompasses popular will and the judiciary cannot review the actions of the Parliament (Public Law Project, [2018](#)).

The doctrine of Judicial review has also remained prevalent in the United Kingdom as well. Lord Coke’s ruling in “Dr Bonham vs. Cambridge University” in 1610 laid the groundwork for judicial review in the UK (Street, [2013](#)). However, in “City London vs. Wood”, Holt, the Chief Justice stated, “*An Act of Parliament can do no wrong, though it may do several things that look pretty odd*”. This ruling established the idea of parliamentary supremacy, which says that the judiciary lacks jurisdiction to assess the constitutionality of legislative acts (Elliott & Varuhas, [2017](#)).

Historical Development of the Doctrine of Judicial Review in the UK

The roots of the doctrine of this legal concept can be said to have originated from the common law tradition of the UK. The concept was initiated back in the seventeenth century when the court started to exercise precise and limited scrutiny of the official conduct and use of the authority of public officials and monarchs (Elliott & Varuhas, [2017](#)). In later centuries i.e., the 17th and 18th, the court established the concept of “*Prerogative writs*”. This concept entitled with appropriate legal remedies that an individual could entertain against such actions of government which violate their rights (Kirby & Kirby, [2004](#)). The concept introduced writs of Habeas Corpus, Mandamus, and Certiorari for the preservation and liberation of the rights of English citizens (Kavanagh, [2009](#)).

The development in the recent past in the doctrine of judicial review through case laws in the United Kingdom’s courts has been analyzed. These developments expanded the scope of judicial review and made it an essential part of the UK’s constitutional system (Debbarma, [2022](#)). There have been multiple developments in “R v Electricity Commissioners, ex parte London Electricity Joint Committee Co” (Jain, [2018](#)). The court set out in this case that administrative bodies could be subject to judicial review and their actions can be terminated and their powers can be limited if they violate any rights and goes beyond the legal authority of that person. Another key case “Anisimic Ltd v. Foreign Compensation Commission” also introduced the development of the concept of judicial oversight in 1969 (Nason, [2014](#)). The case established the principle that any legal error is subject to judicial review. In the current world scenario, the doctrine of judicial review remains a key means for the public to hold the government official accountable and bound them to work within the scope and jurisdiction of their authority and law (Gupta, [2016](#)).

Parliamentary Sovereignty in the United Kingdom

In England, there is the sovereignty of the public and it is the public which is the repository of all the powers. However, the people have gradually confined the powers of the monarch and strengthened parliamentary supremacy (Fenwick et al., [2017](#)). Thus, powers are vested in the public at large and are exercised through their elected representatives of the Parliament. Consequently, Parliament can legislate upon any matter, and the Constitution imposes no limitations on any lawmaking. So, the enactments and

the Act of Parliament are unchallengeable on any ground regardless of being unjust or contrary to any other law (Agrawal, [2022](#)).

Parliament has unlimited authority in the UK's political structure and there is no room for judicial review of the acts of the legislature (Elliott & Varuhas, [2017](#)). Parliamentary legislation is also referred to as Primary Legislation, while the subordinate and delegated legislation by the executive is referred to as Secondary Legislation. Due to its administrative nature, secondary legislation in the UK is subject to judicial review (Jain, [2018](#)).

Primary and Secondary Legislation

As discussed earlier, there are two levels of the legislative process in which there is primary legislation which consists of laws and enactments passed by the Parliament, and the other is secondary legislation which includes rules, regulations, acts and directives of ministries (Fenwick et al., [2017](#)). Except in a few conditions where it infringes upon European Community Law, the power to exercise Judicial review cannot be applied to primary legislation. Thus, following the passage of the European Union Convention and Human Rights Act of 1998, Parliamentary legislation came within the purview of Judicial review in some instances (Kavanagh, [2009](#)). However, the secondary legislation is within the purview of Judicial Review without any exception. Secondary Legislation encompasses all administrative orders, directives, rules and regulations and subordinate legislation (Kirby & Kirby, [2004](#)). The court has the authority to review any action and declare it ultra vires or unlawful.

Overview of the Grounds for Judicial Review in the United Kingdom

There has been some ground set by the courts which are considered as legal principles on which the court can scrutinize the actions and decisions of the public authorities and the executive government (Gupta, [2016](#)). These legal grounds are formulated to ensure that the process of judicial review and decision-making process of public authority should be fair, lawful, and within the power of that authority (Public Law Project, [2018](#)). Based on the recent practice in the court of the UK, these three main grounds have been finalized: illegality, irrationality, and procedural irregularity.

Illegality

Judicial review, as its foremost task checks the legality of the action or decision. Based on that, illegality is the

first ground for judicial review and it fulfils the first aspect of doctrine by checking the lawfulness of the actions of the person authorized (Craig & De Búrca, [2020](#)). Lawfulness analyzes if the person in authority exceeded his powers, if the action or decision is ultra vires to public welfare, or if the action is contrary to the law of the land. For instance, if the local council granted permission for construction to a person without following the due procedure, then this action can be judicially reviewed on the ground of illegality of this action ("R v. Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd").

Irrationality

The second aspect of judicial review is irrationality which follows the reasonableness of the actions or decisions by the public authority (Bridwell, [1980](#)). The action or decision can be revoked if such action is so unreasonable and will not be acted by any other authority in ordinary circumstances (Woolf, [2004](#)). For instance, if the decision of the authority is made without taking the relevant considerations into account and based on irregular considerations, then the action can be challenged on the ground of irrationality ("Associated Provincial Picture Houses Ltd v. Wednesbury Corporation").

Procedural Impropriety

Procedural impropriety is the third ground for entitling the matter to judicial scrutiny. It makes the law-making and law-implementing powers of the public authority fair and appropriate (Bondy, [2003](#)). An action or decision of a public authority can be considered procedurally improper if the person in authority fails to follow the required procedure of law or does not meet the principles of natural justice. For someone, if a person is not given the right to a fair hearing by the public authority and the decision is made then the person can challenge the decision on the grounds of procedural impropriety ("R v. Bow County Court, ex parte Pelling").

Human Rights Act 1998

Pertaining to the three bases of judicial review as mentioned above, the Human Rights Act 1988 provided the fourth ground for judicial review in the UK (Bondy, [2003](#)). It talks about the rights protected under the European Convention on Human Rights (ECHR) and relates to the compatibility of a decision or action with these rights. The extent to which the power of judicial review can be exercised in the UK received

great influence from the act called the Human Rights Act (Woolf, 2004). The Act makes the ECHR a part of UK law and imposes an obligation on public bodies to uphold the rights guaranteed by the Convention. Human rights abuses have now been added to the list of grounds for judicial review as a result of this (Public Law Project, 2018). If any act of a public official is incompatible with the ECHR then it will be considered unlawful and shall be open to judicial review (“Regina v. Secretary of State for the Home Department, Ex-parte Daly”).

Scope of Judicial Review in the UK

In the UK, the area of legislation governing the role of judicial review is complicated and continuously changing. The judicial review enables the courts to check the validity, propriety, and transparency of actions taken by public entities like government agencies, local governments, and regulatory bodies (Craig & De Búrca, 2020). As mentioned above the bases for having recourse to judicial review are well established and enhance the role of judicial review. Nevertheless, the jurisdiction of judicial review is limited in certain areas of practice. As certain decision-making processes, such as matters of political judgment or foreign policy, are regarded as being outside the purview of judicial review (Bridwell, 1980). Additionally, courts typically avoid overturning decisions made by expert bodies like regulatory agencies or scientific advisory committees (Elliott & Varuhas, 2017).

The proportionality threshold, which has gained more significant influence in recent years, also impacts the scope of judicial review (Gupta, 2016). According to this principle, the decision or action must be appropriate, essential, and proportionate to its intended objective. Application of the proportionality principle may limit public bodies' latitude and broaden the scope of judicial review. Furthermore, the scope of judicial review has been immensely influenced by the UK's membership in the European Union (EU). The courts are obligated to verify that domestic law is consistent with the law made by European Union this law is immediately applicable in the UK. As a result, transgressions of EU law have been added to the list of grounds for judicial review (Kirby & Kirby, 2004). In general, judicial review is a complicated and developing area of law in the UK that is influenced by several things, such as legislative requirements, case law, and constitutional principles. Although the prerequisites for judicial review are well established, each case's specific facts will determine the extent of the review (Nason, 2014).

The idea of judicial review has significantly altered the UK's constitutional framework (Fenwick et al., 2017). Judicial review functions as an essential check and balance on the activities of the legislature and executive as one of the primary foundations of the separation of powers doctrine (Kavanagh, 2009). Courts are equipped to hold the government responsible for upholding the law and safeguard individual liberties and rights through judicial review. The power to contest the legitimacy of government action, including judgments made by public officials and entities, is one of the main features of judicial review (Jowell & O'Conneide, 2019). In the UK, this has led to several landmark cases, including the well-known “Council of Civil Service Unions v. Minister for the Civil Service” (“GCHQ case”), in which the court established the principle that the government could not restrict the rights of civil servants to be members of a trade union through the use of prerogative powers (Elliott & Varuhas, 2017). Such cases have strengthened the notion that no one is above the law and served to build the UK's constitutional landscape.

Importantly, judicial review was instrumental in the evolution of human rights-related legislation in the United Kingdom (Street, 2013). By making the European Convention on Human Rights, a part of the UK's legal system, the HRA increased people's legal protection against government abuses of their rights. Judicial review has enabled courts to implement and interpret human rights law in a way that tackles human rights violations effectively (Elliott & Varuhas, 2017). Despite its importance in the UK's constitutional structure, judicial review has not always been without controversy. According to some detractors, it can result in judicial activism and meddle with the democratic process (Jowell & O'Conneide, 2019). Others contend that the current judicial review's reach is too constrained, which prevents the courts from effectively monitoring governmental action (Craig & De Búrca, 2020). Despite these arguments, it is obvious that the UK's constitutional system has been significantly and broadly impacted by judicial review. Judicial review has contributed to preserving the delicate dichotomy of power between the branches of government by upholding the rule of law, defending individual rights, and guaranteeing the accountability of government before the people (Gupta, 2016).

Recent Developments and Cases in Judicial Review

In recent years, the law and practice of judicial review in the UK have undergone numerous notable modifications. First of all, there has been a lot of

discussion and controversy surrounding the government's planned Judicial Review and Courts Bill. The goal of the law is to change the criteria for judicial review and restrict the courts' authority to influence policy decisions, in particular. The usefulness of judicial review as a way of holding the government accountable could be harmed, according to critics (Davis, [2021](#)).

Second, there has been a considerable influence of Brexit on judicial review in the UK. Regarding the place of EU law in the UK legal framework, in particular, Brexit has sparked some difficult legal and constitutional issues. The Miller cases, which included using the royal powers to initiate Article 50, and the most recent Good Law Project case, which contested the government's granting of Covid-19 contracts, are just two examples of the high-profile judicial review cases that resulted from this ("R (Miller) v Secretary of State for Exiting the European Union").

And last, the role of judicial review in the UK has been significantly impacted by the Covid-19 pandemic. Many judicial review cases have been brought challenging various aspects of the government's decision-making, and the way the government responded to the pandemic has come under intense scrutiny and criticism (Croft, [2021](#)). The validity of the lockdown guidelines, the government's management of the epidemic in nursing homes, and the use of tax dollars to support businesses during the pandemic have all been contested (Davis, [2021](#)). These instances have emphasized the crucial part that judicial review can play in keeping the government responsible during times of crisis, but they have also led to the start of a charged discourse about the limit beyond which judges should not be allowed to intervene in public policy issues.

Several high-profile cases that caught the public's attention and altered how judicial review is viewed and used have resulted in consequential changes to the UK's judicial review system in recent years (Elliott & Varuhas, [2017](#)). The High Court ruled that the actions taken by the government with regard to detaining asylum seekers who enter the UK without documentation in custody violated the common law principle of liberty in the landmark case of "R (on the application of Refugee Action) v. Secretary of State for the Home Department". The Supreme Court and Court of Appeals later confirmed this judgment, proving the value of judicial review in safeguarding fundamental rights (Gupta, [2016](#)).

The exercise of judicial review to contest how the government handled Brexit is another key change. The Supreme Court's ruling that the government had

no right to use Article 50 of the Treaty on the European Union without taking parliament into confidence in the case of "R (on the application of Miller) v. Secretary of State for Exiting the European Union" has broad ramifications because it effectively gave Parliament control over the terms and conditions of the UK's European Union exit (Craig & De Búrca, [2020](#)).

The government's measures in response to the COVID-19 outbreak have also been the subject of various legal challenges. According to the High Court's ruling in "R (on the application of Dolan) v. Secretary of State for Health and Social Care", the government contravened Article 2 of the ECHR by not procuring the people associated with the healthcare department, personal protective equipment (Croft, [2021](#)). The significance of judicial review in holding the government accountable in emergencies is shown in this case.

Finally, it is pertinent to mention that the role of the courts in the UK's constitutional framework has been the subject of an expanding debate in recent years. Some opponents contend that because the judicial review has grown in authority, judges are making decisions that should be made by elected governments (Street, [2013](#)). Others have argued that judicial review is a crucial tool for protecting fundamental rights and reining in government excess (Nason, [2014](#)).

It is worth noting that recent events and court judgements have highlighted the significance and influence of judicial review in the country's constitutional system (Jain, [2018](#)). Judicial review is an important instrument for holding governments responsible and promoting the rule of law, with uses ranging from protecting basic rights to guiding the nation's reaction to Brexit and the outbreak of COVID-19 (Agrawal, [2022](#)).

Reforms to the UK's Current Judicial Review System

Some criticism and reform recommendations have been levelled at the UK's present judicial review system. Some argue that the system is overly expensive, laborious, and complicated. Others argue that judges are given too much leeway in deciding whether to allow judicial review, which can lead to inconsistent outcomes (Woolf, [2004](#)). One potential modification is the introduction of a filter system in which cases are evaluated before proceeding to a full hearing. In this case, a preliminary examination by a judicial panel would be required to determine if the lawsuit had enough substance to proceed to a full hearing

(Kavanagh, 2009). As a consequence, fewer frivolous or meaningless cases would be brought, and court resources would be better utilized.

Another possible option is to create a legislative code of principles to guide judicial review. This would improve the clarity and consistency with which judicial review is implemented, as well as ensure that the courts continue to do their constitutionally mandated duty (Fenwick et al., 2017). There have also been calls for heightened transparency in the methods used to assess whether or not to grant judicial review. This can involve disclosing the logic behind choices and providing more specific guidance on the criteria used to decide authorization. The desire for efficient and effective use of judicial resources must be balanced with the necessity for access to justice and the preservation of individual rights in any reform of the UK's judicial review system. It remains to be seen whether any substantial changes will be implemented shortly.

Conclusion

The doctrine of judicial review in the United Kingdom has its roots in the common law tradition and has been modified by past rulings that have cemented its function as a critical component of the nation's constitutional system and expanded its reach. Judicial review permits courts to analyze the legality, propriety, and fairness of government decisions and acts. A variety of variables impact the intricacies and ever-changing scope of judicial review, including legislative requirements, case law, and constitutional considerations. Incorporating ECHR into the domestic law of the UK left a profound influence on the emergence of judicial review, providing individuals with more human rights protection and enabling them to challenge government decisions. In recent years, the concept of proportionality has gained importance, requiring a decision or action to be necessary, appropriate, and proportionate to the goal it seeks to achieve, limiting the freedom of public authorities while broadening the scope of judicial review.

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