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UK Constitutional Law, Judicial Review

Introduction

Judicial review in the UK law is seen to be a court procedure that looks to review the lawfulness of a prior decision by a public body. The proceeding is used to challenge a decision, as opposed to pondering the rights or wrongs of the conclusion of the case. The core idea is to ensure that the right procedures were followed in making the decision at hand. Initially, Acts of Parliament were not subjected to judicial review when it comes to primary legislation. However, in more recent years judicial reviews have been implemented outside the aforementioned boundaries. The given statement looks to propose that the use of judicial review leads to satisfactory protection from an overreaching executive power. The given essay argues that the principle of judicial review can offer protection against the overreach of executive power. Thus, the conception of the concept and core case law implementing the given notion will be evaluated.

Discussion

The Human Rights Act 1998 Incorporating Judicial Review within UK Law

The contemporary principle of judicial review can be traced back to the “Human Rights Act 1998.” Based upon the “*European Convention for the Protection of Human Rights*,” the “*Human Rights Act of 1998*.” “*Section 5(5)*” of the Act dictates that a UK citizen has the right to receive a declaration of incompatibility from a court, or an order thought to be appropriate (Loveland, 2018). The proposed principle is what would become the legal basis for the notion of judicial review as it is understood in modern UK law.

There are a variety of declarations on the grounds of incompatibility, a few of which have led to amendments being made even in primary legislation. However, the vast majority have been overturned by the “House of Lords” and the “Court of Appeals” due to the appeal of the “Home Office” (Loveland, 2018).

The case of “*Bellinger v Bellinger*” can be viewed as an illustration of the change brought by the act. The case held that “*Section 11(c)*” of the “*Matrimonial Case Act of 1973*” was in conflict with “*Section 8 and 12*” of the “Human Rights Act.” As a remedy to the issue, the “*Gender Recognition Act 2004*” was introduced. While it is noted that the declarations of incompatibility are not favoured in regard to a repeal/enactment of the

Parliament, there are several cases much that have shown formal declarations to have no effect on Acts of Parliament.

Even so, the enactment of the Act in question leads to judicial review holding primary legislations under purview (Loveland, 2018). Comparing that to the doctrine of the past where acts/decision that was subject to judicial review were those that were outside the scope of authority of a public body or official. According to “*Lord Steyn*” in “*Jackson v Attorney General*,” the impact of the Act can be noted as follows;

“Moreover, the European Convention on Human Rights as incorporated into our law by the Human Rights Act, 1998, created a new legal order. One must not assimilate the European Convention on Human Rights with multilateral treaties of the traditional type. Instead, it is a legal order in which the United Kingdom assumes obligations to protect fundamental rights, not in relation to other states, but towards all individuals within its jurisdiction. The classic account given by Dicey of the doctrine of the supremacy of Parliament, pure and absolute as it was, can now be seen to be out of place in the modern United Kingdom.’(emphasis supplied)...”

In that manner, judicial review as a legal principle is widely accepted as a respected legislature within the “European Convention on Human Rights” (Loveland, 2018). The same applies to wrongful actions taken by public officials leading to unlawful verdicts.

Grounds for Judicial Review Overturning a Government Decision/Executive Power

One of the actions of a judicial review is to overturn a decision made by the government. However, for judicial review to be applicable, there are certain grounds highlighted that have to be considered (Knight, 2018). These grounds for proceeding are going to be discussed in the following section of the essay.

In “*Council of Civil Services Union v Minister for the Civil Service*” it was held by “*Lord Diplock*” that in order for the proceeding to occur there are three fundamental grounds that have to be present namely, procedural injustice, illegality, and irrationality. A judicial review can be implemented in a case on the grounds of legality where the decision-maker has the authority to make the decision legally (Knight, 2018). For instance, a public body with less discretion under the Parliament working outside the specified boundaries. When it comes to the grounds of procedural injustice, a decision can be overturned if the process that leads up to it was deemed improper.

An example of such would be if the decision making public body was found to be biased against one of the parties involved. Another instance could be the denial of representation to one of the parties prior to the verdict (Sandoiu, 2019). The ground of irrationality states that unreasonable judgements will be overturned using judicial reviews. However, it is noted that being able to prove that the decision was irrational is a high bar to meet in court. Therefore, granting judicial review on that particular basis in courts are noted to be quite rare.

Sufficient Protection from Overreach of Executive Power

In the past, there were instances where the proceedings apply in cases regarding subordinate/delegate legislation. However, the scope of judicial review has been redefined in recent years, as Acts of Parliament have been reviewed. One of the key cases that define the scope of judicial review as a legal principle is “*Jackson v Attorney General*.” The given case evoked an assessment of the “*Hunting Act 2004*” as well as two Acts of Parliament, namely “*Act 1911*” and “*1949*.” The act dealt with hunting with the aid of dogs, generally an illegal action. As stated prior, there are set grounds, three in particular, for the implementation of said principle. A judicial review can be realised in a case on the grounds of legality where the decision-maker has the authority to make the decision legally. When it comes to the grounds of procedural injustice, a verdict can be overturned if the process that leads up to it was believed improper. The ground of irrationality states that unreasonable judgements will be overturned using judicial reviews. Thus, the implementation of judicial review on an Act of Parliament will be held on these grounds. The case saw a changing perspective from the Lords in regard to fundamental constitutional provisions (Knight, 2018). Furthermore, it was also proposed that the courts may strike down an existing law if it is seen to contradict the constitutional values of the UK.

In that manner, the case at hand looked to defied limitations on the executive powers that were at play. The case was noted to be the first time such an expression was made, as in the past it was proposed that the Parliament should be subject to substantive limitations (Knight, 2018). Thus, the courts would have the authority to impose judicial review on a legislature that did not conform to the rule of law.

Furthermore, as expressed by the judgement of Lord Steyn; the general principle of the UK constitution remains to be Parliamentary supremacy. The idea is also seen as a construct of common law as it was created by judges (Knight, 2018). Therefore, it is possible that such circumstances arise that courts might qualify a provision that had been established on an unrelated hypothesis of constitutionalism. The Lord continued stating that; “In exceptional circumstances involving an attempt to abolish judicial review or the ordinary role of the courts, the Appellate Committee of the House of Lords or a new Supreme Court may have to consider whether this is a constitutional fundamental which even a sovereign Parliament acting at the behest of a complaisant House of Commons cannot abolish.”

Similarly, as per the verdict of Lord Hope, it was noted that the UK constitution is such that the idea of Parliamentary sovereignty dominates all provisions. However, in recent times it is seen that the principle is no longer absolute (Sandoiu, 2019). In that regard, Sovereignty of Parliament is no longer a principle that relieves the Parliament from all qualification when legislating. The idea that was introduced by Dicey and derived from Coke and Blackstone is now being qualified gradually.

Consequently, it is the belief of “*Lord Steyn*,” “*Lord Hope*” and “*Baroness Hale*,” while in most cases the courts do not have the authority to question statutes there are extreme instances where the court may refuse to validate a Parliamentary Act (Sandoiu, 2019). For instance, in the case where judicial review jurisdiction is being abolished by the Parliament. Thus, the belief that the principle of judicial review is an effective means to ensure protection against overreaching executive power has substantial weight behind the argument.

Conclusion

Judicial review as a provision under the UK constitution allows for the courts to limited executive power from overreaching. This idea was challenged in the past due to the Parliamentary Sovereignty however in recent years it is noted that even that particular concept is subject to judicial review under specific circumstances. The principle in question was introduced due to the Human Rights Act 1998, and it was made into a foundational element of UK law. As noted in “*Jackson and others v Attorney General*,” and similar cases, while there are still implications that the given principle is limited in its

use, the idea in modern times is much more influential. Therefore, judicial review offers a strong foundation for the protection from overreaching executive power. In that regard, the initial statement being discussed in regard to the notion of judicial review is one that can be viewed to be true under the given circumstances.

References

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