

## Role Of Judicial Review In Delivery Of Justice In India: An Analytical Study

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### KEYWORDS

Judicial review in India, Role of Supreme Court related to Judicial review, Judicial review impact on the society, Origin of the Judicial Review, Judicial review is the Fundamental rights.

### ABSTRACT

Judicial review is a process through which the judiciary of a country examines the actions of the legislative, executive, and administrative bodies of the government in order to determine whether their actions are consistent with the Constitution. Judicial review is a fundamental part of the Indian Constitution and is one of the most powerful features of the system. Judicial review allows the judiciary to check the power of the other branches of government and to protect the rights and liberties of citizens. The concept of judicial review is based on the principle that the judiciary is the final interpreter of the Constitution. This means that the judiciary is the only body in the India that can determine whether a law or action taken by the government is constitutional. Judicial review is a powerful tool that the judiciary can use to protect the rights and liberties of citizens. Judicial review is also important because it allows the judiciary to correct mistakes made by the other branches of government. Judicial review is a process that begins with a petition filed by a citizen or group of citizens. The petition must be filed with the appropriate court and must contain a valid argument as to why the court should review the decision or action. The court will then review the decision or action and decide whether it is constitutional. If the court finds that the decision or action is not constitutional, the court will order the government to change the decision or action. Judicial review is a vital part of the Indian Constitution because it allows the judiciary to protect the rights and liberties of citizens. Judicial review is also important because it allows the judiciary to correct mistakes made by the other branches of government. Judicial review is a powerful tool that the judiciary can use to protect the rights and liberties of citizens. In this research article, we will observe the role of judiciary related to judicial review and its impact on the society.

### 1. Introduction

Judicial review is a process through which the judiciary of a country examines the actions of the legislative, executive, and administrative bodies of the government in order to determine whether their actions are consistent with the Constitution. Judicial review is a fundamental part of the Indian Constitution and is one of the most powerful features of the delivery of justice. Judicial review allows the judiciary to check the power of the other branches of government and to protect the Fundamental rights and liberties of citizens. The Constitution of India provide the power to courts of judicial review under article 13. With the help of the power of Judicial Review, the Courts can check the constitutional validity of the Laws framed by the Parliament and legislative assemblies.

### 2. Concept of the Judicial Review:

Concept of Judicial review taken from the Court of America because the doctrine of Judicial Review was for the first time propounded by the Supreme Court of the America.<sup>1</sup> The concept of judicial review is based on the principle that the judiciary is the final interpreter of the Constitution. This means that the judiciary is the only body in the India that can determine whether a law or action taken by the government is constitutional. Judicial review is a powerful tool that the judiciary can use to protect the rights and liberties of citizens. Judicial review is also

important because it allows the judiciary to correct mistakes made by the other government department.

### 3. Types of Judicial Review

Judicial Review can be divided into three parts:

- 1) Legislative Actions,
- 2) Judicial Decisions,
- 3) Administrative Action

### 4. Scope of judicial review<sup>2</sup>

Judicial review is not absolute as some conditions need to be met to challenge any law in the supreme court or the high courts, i.e., a law can be challenged only if:

- The aforementioned law violates constitutionally guaranteed fundamental rights.
- The aforementioned law goes against the constitution's provisions.
- The law that has been put into effect goes beyond the authority that made it.

### 5. Difference between judicial review and Judicial Activism

The power of the judiciary to review and determine the validity of a law or order is referred to as judicial review. On the other hand, Judicial Activism is the use of judicial authority to define and enforce what is in the public interest and beneficial for society as a whole.

### 6. Judicial Review through Judicial Activism


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Many times the Judiciary adopted another way of judicial review like judicial activism. With the help of Judicial Activism, the judiciary can review many laws and check their constitutional validity also. In a judgment of far-reaching consequence in *Rupa Ashok Hurra v. Ashok Hurra*,<sup>3</sup> a five-judge constitution bench of the Supreme Court has unanimously held that in order to rectify gross miscarriage of justice in its final judgment which cannot be challenged again. The Court will "allow" a curative petition by the victim of a miscarriage of justice to seek a second review of the final order of the Court. The honorable court provided the name of this process as a Curative Petition.

## 7. Legal Provision related to judicial review in India

There are many laws related to judicial review details given below:

### 7.1. The Constitution of India

The Constitution of India provides for judicial review in several ways. Firstly, it gives the Supreme Court the power to hear appeals from lower courts in both civil and criminal cases. Secondly, it gives the Supreme Court the power to issue writs of habeas corpus, mandamus, prohibition and Quo Warranto under the article 32 of the Constitution of India.<sup>4</sup> Thirdly, it gives the Supreme Court original jurisdiction in cases involving disputes between two or more States or between the Union and a State. Fourthly, it provides for a system of High Courts which have the power to issue writs of habeas corpus, mandamus, prohibition and Quo Warranto in respect of any matter within their territorial jurisdiction. Fifthly, it empowers the Parliament to vest any court with such powers as may be necessary for the effective discharge of its functions. Sixthly, it lays down certain basic principles governing judicial review viz., (i) that no person shall be deprived of his life or personal liberty except according to procedure established by law; (ii) that no law shall be made which takes away or abridges the rights conferred by this Constitution and that any law made in contravention of this provision shall, to the extent of such contravention, be void; (iii) that no executive action which has the effect of making or destroying any right shall be taken except in pursuance of a law; and (iv) that every citizen shall have access to justice.

In India, the legal provision related to judicial review is Article 32 of the Constitution. This Article provides for the right to constitutional remedies, which includes the right to approach the Supreme Court by appropriate proceedings for the enforcement of any of the rights conferred by this Constitution. The Supreme Court has held that this right is a fundamental right and can be invoked by any person aggrieved by any arbitrary or unreasonable action of any State authority.

The scope of judicial review in India is thus very wide and encompasses all actions of the executive and legislative organs of the State which are contrary to law or which infringe any of the fundamental rights guaranteed by the Constitution. In addition, judicial review also extends to actions taken by administrative agencies which are beyond their powers or which are ultra vires.

There are several other legal provisions which also enable judicial review in India. For instance, Article 226 of the Constitution empowers High Courts to issue writs for the enforcement of fundamental rights as

well as for other purposes. Similarly, Article 136 confers on the Supreme Court the power to issue special leave to appeal against any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in India.

Thus, there are ample legal provisions available in India for ensuring effective judicial review of all actions taken by the State. This ensures that no organ of the State can act arbitrarily or unreasonably, and that all citizens can enjoy their Fundamental Rights guaranteed by the Constitution of India.

### Other Constitutional Provisions Related to Judicial Review:

The various provisions of the judicial review system are recognized by the Constitution in various articles. These articles are Art. 13, 32, 131 to 136, 143, 226, 145, 246, 254, 251 and 372.

### 8. No Judicial Review of Economic Policy of Government

The Supreme Court has consistently taken the view that there can be no judicial review of economic policy of the government unless there is violation of the Constitution or any Act. The Court has thus imposed self-restraint on its judicial power.<sup>5</sup>

### 9. Importance of Judicial Review<sup>6</sup>

There are many significance of the Judicial Review such as-

- 1 Judicial review's significance is crucial for preserving the Constitution's supremacy.
- 2 It stops executive tyranny from happening.
- 3 It preserves the federal equilibrium.
- 4 It stops the legislature and executive from using power improperly.
- 5 It protects the judiciary's independence.
- 6 It protects the Fundamental Rights, Legal Rights, and Life and Liberty Rights of the citizens.

### 10. Role of Judiciary:

Indian Judiciary plays a key role in the delivery of justice and many times interprets the provisions of the law in the many landmark judgments. The interpretations of the Supreme Court are honored by every court on the land and thus there is no appeal against the judgment of the Supreme Court. Some important case laws are given below:

- **Shankari Prasad v. Union of India<sup>7</sup>,**

In this case, the First Amendment of 1951 was challenged in the Supreme Court of India on the grounds that the "right to Property" was restricted by the Act. 13(2). The Supreme Court overruled the provision of Section 368, holding that it was entirely general and that under Section 368 of the Indian Constitution, Parliament could amend the Constitution without exception.

- **Keshvananda Bharti v. State of Kerala<sup>8</sup>**

Khanna, J., in the Fundamental Rights Litigation, argued that "judicial review has thus become an integral part of our constitutional system, and the powers of the Supreme Court and Supreme Court to adjudicate the constitutional validity of statutory provisions." "A statute, if a provision of the Articles of Incorporation is found to violate a provision of the Constitution, which is the touchstone of the validity of all laws, the Supreme Court and the Supreme Court shall nullify such provision. I have permission.

## 11. Limitations of judicial review in India

The judiciary's ability to exercise its judicial review authority is constrained in certain ways. In point of fact, judicial activism can be referred to as judicial overreach when the judiciary crosses its threshold and interferes with the executive's authority. The some of the limitations of judicial review such as:<sup>9</sup>

- The government's ability to function is restricted by judicial review. It is permissible only to the extent of determining whether the decision-making process was correctly followed, not the decision itself.
- Once a case is decided, the judges' judicial opinions become the standard for other cases.
- It is reserved exclusively for the Supreme Court and other higher courts.
- People's confidence in the honesty, quality, and effectiveness of the government can be eroded by repeated court interventions.
- Unless absolutely necessary, the judiciary cannot intervene in political or policy matters.
- Judicial review has the potential to harm the general public because judgments can be influenced by personal or egotistical motives.
- When it overrides any existing law, it violates the constitutional limit on the amount of power it can have.
- Instead of separating powers, India follows a separation of functions.
- The judicial review does not strictly adhere to the idea of separation of powers. However, the judiciary has the authority to overturn any unconstitutional legislation enacted by the legislature thanks to a system of checks and balances.

## 12. Conclusion

One of the Indian constitution's most important power is the judicial review system. As a result, the Indian Constitution lays out clear penalties for the judicial review doctrine, which is deeply ingrained in the country. The central and state legislative and executive branches of government are governed by the Provisions of the Indian Constitution, which make it abundantly clear how important the judiciary is. The power of judicial review act as a guardian of the protection of our constitution. Provides the guarantees of individual fundamental rights and also protects Legal Rights. Divides power between the union and the states and restricted the use of power with arbitrariness by the Government. The judiciary is playing an important role in the judicial system of India. Judges interpret laws passed by the legislature and ensure that they are followed. They also ensure that laws are applied fairly and impartially. In addition, they give decisions in cases where no clear law exists and other legal questions arise. They also oversee elections and ensure that people are not disenfranchised or coerced into voting. Finally, they ensure that public officials act within their authority and do not abuse their power. All of these roles help to deliver justice in India.

## Endnotes

<sup>1</sup> Dr. J. N. Pandey: The Constitutional Law of India: Central Law Agency: 47<sup>th</sup> Edition 2010, Page 68.

<sup>2</sup> What is judicial review: Importance, scope, and types: <https://www.indiatoday.in/education-today/gk-&-current-affairs/story/what-is-judicial-review-importance-scope-and-types-1882987-2021-12-01>, Updated on 01 Dec. 2021, Last Seen 24th Sep. 2022

<sup>3</sup> AIR 2002 SC 1771.

<sup>4</sup> Article 32: The Constitution of India

<sup>5</sup> Dr. J.N. Pandey: The Constitutional Law of India: Central Law Agency, 47<sup>th</sup> Edition 2010, Page No. 91.

<sup>6</sup> Manav Puri: Judicial Review in India: <https://www.legalserviceindia.com/legal/article-9158-judicial-review-in-india.html>, Last seen: 20th Sep. 2022

<sup>7</sup> AIR 1951 SC458.

<sup>8</sup> AIR 1973, SC1461.

<sup>9</sup> Judicial Review: <https://byjus.com/free-ias-prep/judicial-review>, Last seen 20th Sep. 2022