



# SNS COLLEGE OF ENGINEERING

Kurumbapalayam (Po), Coimbatore – 641 107

AN AUTONOMOUS INSTITUTION



Approved by AICTE, New Delhi and Affiliated to Anna University, Chennai

## JUDICIAL REVIEW

**Judicial review** refers to the power of a court, especially a **constitutional court** like the **Supreme Court**, to examine the actions of the **executive** and **legislative branches** of government and determine whether such actions are in accordance with the **constitution**. It is an essential feature of a **democracy** and the **rule of law**, ensuring that no law or governmental action is beyond legal scrutiny.

### Concept and Origin:

Judicial review allows the judiciary to check the **constitutionality** of laws, acts, and decisions made by the government or legislature. If a law or action is found to be unconstitutional, the court has the authority to **invalidate** or **strike down** the law or action.

The concept of judicial review originated from **common law systems**, notably the **United States**, where the Supreme Court first exercised it in the landmark case **Marbury v. Madison** (1803). Chief Justice **John Marshall** established that "it is emphatically the province and duty of the judicial department to say what the law is," thus enshrining the judiciary's role as the interpreter of the Constitution.

---

## Judicial Review in Different Systems

### *1. Judicial Review in India*

In **India**, judicial review is a fundamental feature of the Constitution, providing the judiciary with the power to ensure that laws and executive actions conform to the **Constitution of India**. Articles **13**, **32**, **131**, **136**, **143**, **226**, and **246** give the Indian judiciary its powers of judicial review.

- **Article 13:** Laws inconsistent with or in derogation of Fundamental Rights shall be void. It empowers courts to declare any law that infringes on Fundamental Rights as void.
- **Article 32 & 226:** These articles allow individuals to approach the **Supreme Court** or **High Courts** directly for the enforcement of their Fundamental Rights.

## 2. Judicial Review in the United States

In the **United States**, judicial review is not explicitly mentioned in the Constitution but was established through precedent, starting with the case of **Marbury v. Madison** (1803). Judicial review allows the **Supreme Court of the United States** to:

- Declare laws passed by Congress or actions taken by the executive as unconstitutional.
- Interpret the Constitution and determine its application in specific cases.

## 3. Judicial Review in the United Kingdom

In the **United Kingdom**, judicial review focuses more on **administrative law**. Courts cannot declare parliamentary laws unconstitutional (as Parliament is sovereign), but they can review the legality of actions taken by **public authorities**. Courts can determine whether such actions were taken within the legal bounds set by statutes.

---

### Types of Judicial Review:

1. **Constitutional Review:** Courts assess whether laws or executive actions comply with constitutional principles.
  - If a law is found unconstitutional, it may be declared **null and void**.
2. **Legislative Review:** Courts examine the constitutionality of laws passed by the legislature. For example, the judiciary can invalidate laws that violate **Fundamental Rights**.
3. **Administrative Review:** Courts examine the actions and decisions of the executive and administrative bodies to ensure that they act within the limits of their legal authority.
  - This form of review checks whether executive decisions are **legal, reasonable, and not arbitrary**.
4. **Judicial Review of Delegated Legislation:** Courts can assess whether **delegated legislation** (laws made by an authority other than Parliament, under powers granted by an Act of Parliament) adheres to the constitutional framework or parent legislation.

---

### Grounds for Judicial Review:

Judicial review can be invoked on several grounds, including:

1. **Illegality:** The decision-maker must understand the law that regulates their decision-making power and must give effect to it. If an action is contrary to law, it can be invalidated.
2. **Unconstitutionality:** If a law or action is inconsistent with the provisions of the constitution, particularly the **Fundamental Rights** in democratic constitutions, it can be struck down.
3. **Procedural Impropriety:** This occurs when the decision-making process itself is flawed. It could involve failure to follow **due process, natural justice**, or procedural fairness.
4. **Irrationality:** If an action is unreasonable to the point that no reasonable authority would have made the decision, it may be overturned on the basis of irrationality (also called **Wednesbury unreasonableness** in the UK).
5. **Proportionality:** The doctrine of proportionality asks whether the action taken was proportionate to the aims pursued. If a more reasonable alternative could have achieved the same goal, the action may be considered disproportionate and therefore invalid.

---

## Importance of Judicial Review:

1. **Protection of Fundamental Rights:** Judicial review ensures that citizens' **Fundamental Rights** are protected from infringement by government actions or legislation.
2. **Checks and Balances:** It upholds the principle of **separation of powers**, ensuring that the **executive, legislature, and judiciary** operate within their constitutionally defined boundaries.
3. **Rule of Law:** Judicial review ensures that all actions are in accordance with the law and prevents arbitrary use of power by government authorities.
4. **Guarding the Constitution:** It acts as a safeguard against unconstitutional laws or actions, preserving the supremacy of the constitution.
5. **Ensures Accountability:** Judicial review holds government bodies accountable for their actions, ensuring they follow the law and act fairly.

---

## Limitations and Criticism of Judicial Review:

1. **Judicial Overreach:** Critics argue that sometimes courts overstep their role, entering into the domain of the executive or legislature by issuing directives or nullifying laws, which may undermine the principle of separation of powers.
2. **Delays in Justice:** Due to the large volume of cases, judicial review proceedings can often lead to delays in decision-making processes, affecting the speed of governance.
3. **Non-elected Judiciary:** Judicial review vests significant power in **unelected judges**, raising concerns about the democratic legitimacy of decisions that may overturn laws passed by a democratically elected legislature.
4. **Constitutional Amendments:** In some countries (like India), even constitutional amendments can be subject to judicial review, leading to a debate on the extent of the judiciary's power to interpret constitutional changes.

---

## Conclusion:

Judicial review is a powerful tool to maintain the balance of power between different branches of government and protect constitutional rights. While it has some limitations and criticisms, its role in safeguarding democracy, ensuring accountability, and protecting the rule of law makes it an essential feature of constitutional governance. In democracies like India and the United States, it is a critical check on legislative and executive authority, ensuring that all laws and governmental actions conform to the constitution's guiding principles.

---