

UNIT – III UNION GOVERNMENT

3.7 Judicial Review in India

The judicial review in India is quite broad, and it covers not only the laws passed by the legislature but also the actions of the executive. The courts have the power to strike down any law that is in violation of the Constitution, and they can also issue writs like Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto to protect the fundamental rights of the citizens.

The Constitution provides for five types of writs, which are:

1. Habeas Corpus – a writ that is issued to produce a person who has been detained unlawfully.
2. Mandamus – a writ that is issued to compel a public official to perform a duty that they are required to perform by law.
3. Prohibition – a writ that is issued to prevent a lower court or tribunal from exceeding its jurisdiction.
4. Certiorari – a writ that is issued to quash the order of a lower court or tribunal.
5. Quo Warranto – a writ that is issued to inquire into the legality of a person holding a public office.

Limitations of Judicial Review in India

While the scope of judicial review in India is quite broad, there are certain limitations to this power. The Constitution provides for certain immunities and privileges for the President, Governors, and Judges of the Supreme Court and High Courts. The courts cannot inquire into the acts of these individuals unless they have acted in their personal capacity.

In addition, the courts cannot interfere with the policy decisions of the executive unless they are in violation of the Constitution. The courts also cannot question the wisdom or correctness of a policy decision taken by the executive, as long as it is within the framework of the Constitution.

Significance of Judicial Review

Judicial review is a crucial aspect of the Indian Constitution as it allows the judiciary to act as a check on the legislative and executive branches of the government. It ensures that the government functions within the limits set by the Constitution and that the rights of the citizens are protected.

Judicial review also promotes the rule of law and helps to maintain the balance of power between the three branches of the government. It is an essential mechanism to protect the Constitution and its principles, and to ensure that they are upheld in the face of changing circumstances and challenges.

Process

Initiated by an aggrieved party's petition, the judicial review process in India encompasses preliminary scrutiny, comprehensive hearings, and a final judgment. This rigorous procedure reflects the judiciary's commitment to safeguarding constitutional governance and citizens' rights. The process of judicial review in India involves the following steps:

1. **Initiation:** The process of judicial review is initiated when a person or a group of persons aggrieved by a law or executive action files a petition before a court of law.
2. **Preliminary Scrutiny:** The court examines the petition to determine whether it is admissible or not. The court may reject the petition at this stage if it finds that the petitioner does not have the necessary standing to challenge the law or executive action in question.
3. **Hearings:** If the court finds that the petition is admissible, it will conduct hearings to examine the merits of the case. During the hearings, the petitioner presents arguments to support their case, and the government or the agency responsible for the law or executive action defends it.
4. **Judgment:** After hearing the arguments, the court will deliver its judgment. If the court finds that the law or executive action is unconstitutional or beyond the powers granted by the Constitution, it will strike it down. If the court finds that the law or executive action is constitutional and within the powers granted by the Constitution, it will uphold it.
5. **Implementation:** Once the court has delivered its judgment, the government or the agency responsible for the law or executive action is required to comply with it. If the court has struck down a law or executive action, the government may be required to modify or repeal the law, or to take other steps to ensure compliance with the court's judgment.

It is important to note that the process of judicial review in India can be a time-consuming and expensive process. However, it is a crucial mechanism that ensures that the government functions within the limits set by the Constitution and respects the fundamental rights of citizens.