

Judicial Review

Judicial Review:

- Judicial review refers to the doctrine because of which executive as well as legislative actions are reviewed by the judiciary.

In India power is divided along the three arms of the state:

- Executive, Legislature, and Judiciary.
- The Judiciary is however vested with the power of review over the actions of the other two.
- The scope of Judicial review in India is less than in the USA because the American Constitution provides for 'due process of law' whereas on another hand there is 'the procedure established by law' contained in the Constitution of India.
- The judicial review followed by India is a synthesis of both the American principle of judicial supremacy and the British principle of parliamentary supremacy.
- The Constitution of India itself provides the power of judicial review over the judiciary itself through the Supreme Court and the High Courts.
- Moreover, the Supreme Court has declared the power of judicial review to be a basic structure of the Constitution.
- Therefore, the power of judicial review cannot be reduced or excluded by the Constitutional Amendment.

Justice Syed Shah Mohammad Quadri characterized the judiciary Review into the following 3 classes:

1. Judicial review of the acts which are related to the Constitutional Amendment.
2. Judicial review of the legislation process of the Parliament and State Legislatures.
3. Judicial review on administrative actions which are taken by the Union government or State government and authorities within the State.

Judicial Review and Constitution:

- The Judicial review is called upon for ensuring and also protection of Fundamental Rights that are guaranteed in Part III of the Constitution.

- The power of the Supreme Court of India enforces the Rights which is derived from Article 32 of the Constitution.

The following are the Constitutional provisions that enforce Judicial review:

- **Article 13 (2)** confirms that all laws and regulations that are made by the Union or the States conflicting with or in the discrediting of Fundamental Rights will be invalid and void.
- **Article 32** ensures the option to move the Supreme Court for the enforcement of the Fundamental Rights and enables the Supreme Court to give orders or directs or writs for that purpose.
- **Article 131** affirms the Supreme Court's original jurisdiction concerning the Centre-State and Inter-State disputes.
- **Article 132** accommodates that Supreme Court has re-appraising and appellate jurisdiction concerning Constitutional cases.
- **Article 135** enables the Supreme Court to practice the jurisdiction and powers of the Federal Court under any pre-constitutional law.
- **Article 137** confers an exclusive power to the supreme court to review any judgment articulated or order passed by it.
- **Article 143** empowers the President to seek the opinion of the Supreme Court on any matter relating to the judiciary or fact and any judicial-related doubts before the Constitution.
- **Article 226** authorizes the High Courts to give orders or directions or writs for the implementation of the Fundamental Rights and any of some other purposes.
- **Article 245** deals with the extension of the territorial scope of laws and regulations made by the Parliament and the Legislature of the States.

- **Article 372 (1)** authorizes the continuation of pre-existing provisions of the Constitution.

Judicial Review Classification:

The classification of judicial review classification:

1. **Reviews of Judicial Decisions-** This can be seen in the example of the Bank nationalization case, the privy purse abolition case, and so forth.
2. **Reviews of Legislative Actions-** This type of review ensures that the law passed by that legislature is incompetent with the provision of the Constitution.
3. **Reviews of Administrative Actions-** This is for ensuring the enforcement of constitutional discipline over that of administrative agencies while exercising their powers.

Importance of the Judicial Review:

- Judicial review is necessary to align the supremacy of the Constitution in a nation, and to safeguard the Fundamental Rights of the citizens.
- It is essential to preserve the independence and autonomy of the judiciary in India. This is necessary to maintain a federal balance between the Central Government and the State Governments.
- It is fundamental to curb the conceivable abuse of power by the legislature and the executive and act as a safeguard for the basic structure of the constitution of India.
- Judicial Review is also known as the role of reviewer, and the role of Eyewitnesses.
- It invalidates the provisions which are made by the Parliament or State legislature when those are against the provisions of the Constitution.
- It is a 'basic feature' of the Constitution of India and cannot be taken away by putting a law under the 9th Schedule which violates the fundamental rights

guaranteed under Articles 14, 15, 19, and 21. Also, the 'basic structure' of the Constitution cannot be declared invalid and void.

Limitations of Judicial Review:

- Any law already exercised by the Constitution can be superseded by the judiciary with the exclusive power of judicial review, but we have to note that the Indian Judiciary does not have unlimited powers like the USA or extremely limited powers like the UK.
- Judicial review restricts the working of the public authority.
- It has so far been created only for the Supreme Court and the High Courts, not for any subordinate courts or local courts and these courts have only major interaction with the mass public.
- The repeated interference by the courts in executive affairs might erode the public confidence in the integrity, quality, competence, and proficiency of the ruling governments.
- In the Indian Judiciary, the legal opinions of the Judges of the higher courts, once taken in respect of any case, become the means of standard for judging in other cases, and the judgments of the lower Courts, which limits own their judgment in fresh cases.
- Judicial review can also cause great detriment to society as the judgment is likely to be affected by the private or egotistical or malevolent thought processes of judges.
- The judicial review in India looks only into the constitutionality of the laws and regulations concerning the government, not for speedy judgments, effective justice, the reality of society, etc.

Important Judgments on Judicial Review:

- The Supreme Court gave a key judgment in the I R Coelho case (2007), ruled that there is no immunity from judicial review for laws included in the 9th Schedule and it also held that Judicial Review is a 'basic feature' of the constitution.
- Supreme Court ruled that which of the laws placed in the Ninth Schedule on or after April 24, 1973, could be challenged in court if they violate the fundamental rights guaranteed by the Constitution of India.
- In the case of Indira Gandhi v. Raj Narayan in 1975, the Supreme Court gave a landmark judgment that judicial review should be considered a fundamental structure of the Constitution.
- In 2015, the Supreme Court announced both the 99th Constitutional Amendment, 2014, and the National Judicial Appointments Commission (NJAC) Act, 2014 as unlawful, invalid, and unconstitutional.
- The Supreme Court struck down Section 66(A) of the amended Information Technology Act, 2000 as this section was outside Article 19(2) of the Constitution which deals with freedom of speech.
- The Supreme Court has exercised the power of judicial review in various cases, for example, Golaknath Case (1967), Bank Nationalization Case (1970), Privy Purse Abolition Case (1971), Kesavananda Bharati Case (1973), Minerva Mills Case (1980), and so on.