

# Judicial review

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# INTRODUCTION

- ultimate power of the judiciary
- to review and determine the validity of a law or an order.
- “judicial review” in India has been governed by the principal of ‘procedure established by law’
- law has been made with procedures of law or not, if not will be declared unconstitutional.
- Indian constitution is the law of the land, supreme law
- if any law passed violates the basic structure of the constitution the Indian judiciary is having the power to nullify that law.
- Indian judiciary are having the powers to examine the actions of legislature, executive, administrative arms of the government

# History of Judicial Review

- The India parliament has adopted this system of judicial review system from **US Constitution**
- The **word judicial review** at a very early instance came before the court in **Dr Bonham Case**.
- Dr Bohnam was forbidden to practice in London by the Royal college of physicians as he was not having a license for the same.
- He is fined for his without a license, practicing the fine would be distributed between the king and the college itself.
- This case is also known for the **violation of Principals of Natural Justice** as in this case there is Pecuniary bias.

- Afterwards, the word judicial review was summarized in **Marbury V. Madison, 1803**.
- In this case, the term period of President Adam belonging to the federalist party came to an end and Jefferson the anti-federalist came to power.
- On his last day, Adam appointed the members of the federal party as judges. But when Jefferson came to power he was against this.
- So he stopped Madison the secretary of state, from sending the appointment letter to the judges.
- Marbury, one of the judges, approached the Supreme Court and filed a writ of mandamus.
- Court refused to entertain the plea and first opposed the order of the legislature i.e Congress
- and thus the **US Supreme court developed the doctrine of judicial review**.

# IMPORTANCE OF JUDICIAL REVIEW

- It **safeguards the fundamental rights** of the citizens.
- It is crucial for shielding the **independence of the judiciary**.
- It is an absolute necessity for **maintaining the supremacy of the Constitution**.
- It also helps in intercepting the misuse of power by the legislature and the executive.
- It aids in maintaining the equilibrium between the centre and the state, thus keeping a **federal balance**.

# Scope of judicial review

- The **law violates the fundamental rights** that are enshrined by the Constitution.
- The **law infringes** upon the provisions listed in the Constitution.
- The enacted **law goes beyond the capacity** or power of the official(s) in charge that enacted it.

# Features of Judicial Review

- ***1. Power of judicial review can be exercised by both the Supreme Court and high courts***
- Under Article 226 a person can approach the high court for violation of any **fundamental right or for any legal right.**
- under Article 32 a person can move to the Supreme Court for any violation of a **fundamental right or for a question of law.**

## 2. Constitutional Interpretation

- Judicial review allows **courts to interpret and apply** the constitution to assess the legality and constitutionality of government actions, laws, regulations, and policies.
- It ensures that these actions conform to the principles and values enshrined in the constitution.

- **3. Separation of Powers:** Judicial review **upholds the principle of the separation of powers**, which ensures a system of checks and balances among the three branches of government (executive, legislative, and judicial). This prevents any one branch from becoming too powerful and helps maintain accountability.
- **4. Rule of Law:** Judicial review reinforces the rule of law by ensuring that all government actions, including those of the executive and legislative branches, are subject to legal scrutiny. No one, including government officials, is above the law.

- **5. Protection of Individual Rights:** One of the primary functions of judicial review is to protect individual rights and civil liberties from potential encroachments by the government. Courts can strike down laws or actions that violate fundamental rights guaranteed by the constitution.
- **6. Constitutional Supremacy:** Judicial review establishes the supremacy of the constitution over other laws and actions. If a law is found to be in conflict with the constitution, the court has the authority to invalidate that law, rendering it void.
- **7. Preventing Abuse of Power:** Judicial review acts as a safeguard against potential abuses of power by the government. It ensures that actions taken by government officials are within their legal authority and do not exceed the limits set by the constitution.

- **8. Political Neutrality:** Courts are generally expected to be politically neutral and impartial in their decisions. Judicial review helps ensure that decisions are based on legal principles rather than political considerations.
- **9. Judicial Independence:** An independent judiciary is crucial for effective judicial review. Judges should be free from external pressures and influences to make unbiased decisions based solely on the law and constitution.
- **10. Limited Review Scope:** Judicial review is not a means for courts to interfere in every policy decision made by the government. Courts generally review matters that involve constitutional issues, legality, and the protection of rights, rather than the wisdom or merits of a particular policy.

- **11.Checks and Balances:** Judicial review complements the system of checks and balances by providing the judiciary with the authority to review and potentially invalidate actions of the other branches of government. This ensures that no single branch becomes overly dominant.
- **12.Stare Decisis:** Judicial review decisions often set precedents, guiding future cases and promoting consistency and predictability in the legal system.

- It's important to note that the extent and nature of judicial review can vary from one country to another based on the specific constitutional provisions, legal traditions, and political contexts of each jurisdiction.



# Constitutional Provisions for Judicial Review

- In India, the power of judicial review is derived from various provisions of the Constitution. The Constitution explicitly provides for judicial review to ensure that laws and actions are consistent with its provisions, especially the fundamental rights.
- **Article 13:** This article declares that laws that are inconsistent with or in derogation of the fundamental rights are void to the extent of such inconsistency. It forms the basis for the judiciary to review and strike down laws that violate fundamental rights.

- **Article 32:** This article grants the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights. The Supreme Court can issue writs, orders, or directions to enforce these rights.
- **Article 131:** This article gives the Supreme Court original jurisdiction to hear disputes between the Government of India and one or more states or between states themselves. This allows the Court to review conflicts between the federal and state governments.
- **Article 136:** This article confers discretionary power on the Supreme Court to grant special leave to appeal from any judgment, decree, determination, sentence, or order in any cause or matter passed or made by any court or tribunal in the territory of India. This enables the Supreme Court to review decisions of lower courts.
- **Article 226:** This article empowers High Courts to issue writs for the enforcement of fundamental rights and for any other purpose. It grants High Courts the authority to review the actions of the executive and other authorities.

- **Article 227:** This article provides High Courts with the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This includes the power to review their decisions and ensure they are following the law.
- **Article 32(2):** This provision restricts the power of the Supreme Court to issue writs for the enforcement of fundamental rights only against the State as defined in Part III of the Constitution. Private individuals and entities are not directly subject to writ jurisdiction under this article.
- **Article 368:** While not directly related to judicial review, this article outlines the procedure for amending the Constitution. The Supreme Court, in the Kesavananda Bharati case, established that there are limits to the amending power of the Parliament and certain "basic features" of the Constitution cannot be amended.

# Types of judicial review

- As famously classified by Justice Syed Shah Mohamed Quadri, there are three major categories of judicial review.

**Reviews of legislative actions**

**Review of administrative actions**

**Reviews of judicial actions**

# Reviews of legislative actions

- **Shankari Prasad case**
- In *Shankari Prasad vs. Union of India (1951)*, a challenge was made to the First Amendment Act of 1951 on the grounds that the 'Right to Property' was restricted. The Supreme Court denied such an argument and stated that this could not be executed since the fundamental rights under Article 13 cannot be curtailed.
- **Sajjan Singh case**
- In *Sajjan Singh vs. State of Rajasthan (1965)*, the existence of the Constitution under the 17th Amendment Act of 1964 was in question. The Court eradicated the position in the *Shankar Prasad case* and held that the constitutional amendments made under Article 368 are not within the ambit of judicial review by the courts.
- **Golakh Nath case**
- In *I. C. Golaknath & Ors vs. State Of Punjab & Anrs. (1967)*, there was a challenge made to three constitutional amendments, namely- the first (1951), fourth (1955) and seventeenth (1964). The Hon'ble Supreme Court asserted that Parliament has no authority under Article 368 to change the Constitution or to take away or restrict fundamental rights.

- Keshavananda Bharati case
- In *Keshavananda Bharti vs. State of Kerala (1973)*, a challenge was made to the 24th (1971) and 25th (1971) Constitutional Amendments. A 13-bench judge was formed to attend the case, and with a 7 : 6 ratio, the Court deduced that:
- Article 368 of the Constitution provides the President with the power to bring about changes in the Constitution.
- Ordinary laws and constitutional amendments are not the same thing.
- The core structure of the Constitution cannot be toppled with or amended by the Parliament.

- Indira Gandhi case
- In *Indira Nehru Gandhi vs. Shri Raj Narain & Anr (1975)*, the then Prime Minister of India- Indira Gandhi was held guilty of electoral malpractices by the Supreme Court.
- Minerva Mills case
- In *Minerva Mills Ltd. vs. Union of India (1980)*, clauses (4) and (5) of Article 368, which were inserted by the 42nd Amendment (1976), were struck down by the Apex Court on the grounds that these clauses destroyed the basic structure of the Constitution.