

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

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ISSN

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# **JUDICIAL REVIEW AND INDIAN COURTS**

AUTHORED BY - KAJAL CHAUDHARY & DR. RAJEEV KUMAR SINGH

## **JUDICIAL REVIEW AND THE INDIAN COURTS**

Judicial review refers to a superior court revising a lower court's decree or sentence. Judicial review is important in public law, especially in countries with written constitutions that prioritize limited government. Judicial review allows courts to assess the constitutionality of legislative and governmental actions.

The American Supreme Court devised the idea of judicial review, despite the lack of an express provision in the American Constitution. In *Marbury v. Madison*, the Supreme Court established the power of judicial review. Chief Justice George Marshall said, "Certainly all those who have framed the written Constitution contemplate them as forming the fundamental and paramount law of the nations, and consequently, the theory of every such Government must be that an act of the legislature, repugnant to the Constitution is void".

In the United States of America, the Constitution takes precedence above legislative acts. If there is a dispute between the two, courts will rule that the legislative acts are unconstitutional and hence invalid. Courts invalidate legislative and executive activities that violate constitutional restrictions.

### **Judicial Review in India**

In this regard, the Indian Constitution is more similar to the United States Constitution than to the British Constitution.

In the United Kingdom, the doctrine of parliamentary supremacy remains valid. Parliamentary enactments cannot be declared invalid by any court of law. Courts must enforce all provisions of parliamentary laws.

According to India's constitution, parliament is not supreme. Its abilities are limited in two ways. First, there is a separation of powers between the union and the states. Parliament can only pass

laws on matters that protect citizens against legislative encroachment.

This is what makes the court a formidable tool for judicial review under the Constitution. According to Dr. M.P. Jain, the concept of judicial review is deeply ingrained in India and explicitly supported by the constitution.

The judiciary plays a crucial role in a constitution that protects fundamental rights, divides power between the union and states, and defines the powers and functions of all state organs, including parliament, through judicial review.

The judiciary has the capacity to evaluate legislation, as stated in both political theory and the constitution. The Indian constitution includes specific provisions for judicial review of legislation, including Arts 13, 32, 131-136, 143, 226, 145, 246, 251, 254, and 372.

Article 372 (1) establishes judicial review of pre-constitutional laws in a similar manner.

Article 13 states that any law that violates any article of the Fundamental Rights will be void. Our Supreme Court has observed, even without specific provisions in Article 13.

Judicial review is a great weapon in the hands of judges. It comprises the power of a court to hold unconstitutional and unenforceable any law or order based upon such law or any other action by a public authority which is inconsistent or in conflict with the basic law of the land. In fact, the study of constitutional law may be described as a study of the doctrine of judicial review in action. The courts have power to strike down any law, if they believe it to be unconstitutional.

The judgment in *I.R. Coelho v. the State of Tamil Nadu* has answered this question by establishing the pre-eminence of judicial review of every part of the Constitution. The Court has laid down a two-fold test: (a) whether an amendment or a law is violative of any of the Fundamental Rights in Part III (b) if so, whether the violation found is destructive of the basic structure of the Constitution. If the court finds that the impugned enactment damages the basic structure of the Constitution, it shall be declared void, notwithstanding the fictional immunity given to it by Article 31B. Thus, the basic structure doctrine requires the State to justify the degree of invasion of Fundamental Rights in every given case; and this is where the court's power of judicial review comes in.

Under our Constitution, judicial review can conveniently be classified under three heads<sup>i</sup>

- 1) ***Judicial review of Constitutional amendments.*** -This has been the subject-matter of consideration in various cases by the Supreme Court; of them worth mentioning are: Shankari Prasad case<sup>ii</sup>, Sajjan Singh case<sup>iii</sup>, Golak Nath case<sup>iv</sup>, Kesavananda Bharati case, Minerva Mills case, Sanjeev Coke case<sup>8</sup> and Indira Gandhi case. The test of validity of Constitutional amendments conforms to the basic features of the Constitution.
- 2) ***Judicial review of legislation of Parliament, State Legislatures as well as subordinate legislation.*** -Judicial review in this category is in respect of legislative competence and violation of fundamental rights or any other Constitutional or legislative limitations;
- 3) ***Judicial review of administrative action of the Union of India as well as the State Governments and authorities falling within the meaning of State.*** The researcher's emphasis is in this direction.

It is necessary to distinguish between 'judicial review' and 'judicial control'. The term judicial review has a restrictive connotation as compared to the term judicial control. Judicial review is 'supervisory', rather than 'corrective', in nature. Judicial review is denoted by the writ system which functions in India under Arts. 32 and 226 of the Constitution. Judicial control, on the other hand, is a broader term. It denotes a much broader concept and includes judicial review within itself. Judicial control comprises of all methods through which a person can seek relief against the Administration through the medium of the courts, such as, appeal, writs, declaration, injunction, damages statutory remedies against the Administration.<sup>10</sup> Therefore judicial review is a fundamental principle of law that every power must be exercised within the four corners of law and within the legal limits. Exercise of administrative power is not an exception to that basic rule. The doctrines by which those limits are ascertained and enforced form the very marrow of administrative law. Unfettered discretion cannot exist where the rule of law reigns. Again, all power is capable of abuse, and that the power to prevent the abuse is the acid test of effective judicial review.

Traditionally, courts of law controlled the presence and extent of prerogative authority, but not how it was exercised. The ruling in Council of Civil Service Unions v. Minister for Civil Service clarified that the reviewability of discretionary power is determined by the subject matter, not the source. The scope of judicial review and justifiable area may differ by case.

At the same time, the authority of judicial review is not absolute or infinite. If courts were to evaluate administrative activities deemed 'unfair' based on merits, they would have jurisdiction to do the same thing by admiration.

administrative power, it would put its own legitimacy at risk. It is submitted that the following observations of Frankfurter, I. in *Trop v. Dulles*, lay down correct legal position: "All power is, in Madison's Phrase 'of an encroaching nature'. Judicial Power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint."

### **Cases On Judicial Review In India**

Courts adjudicate disputes between individuals, states, and the union. They may interpret constitutional provisions and laws, and the Supreme Court's interpretation becomes the law recognized by all courts. There are no appeals against the Supreme Court's decision.

In *Shankari Prasad vs. Union of India*<sup>15</sup>, the Supreme Court ruled that the first Amendment Act of 1951 violated the right to property and could not be amended due to Article 13(2) restrictions on fundamental rights.

In the context of Article 13 law must be taken to mean rules or regulations made in exercise of ordinary legislative power and amendments to the constitution made in exercise of constituent power, with the result that Article 13 (2) does not affect amendments made under Article 368." In *Sajan Singh's case*<sup>16</sup>, the compulsion of parliament to enact 17th amendment was challenged before the constitution. Bench comprising of five judges on the ground that it violated the Fundamental Rights under Article 31 (A). Supreme court reiterated its earlier stand taken in *Shankari Sad's case* and held, "when article 368 confers on parliament the right to amend the constitution the power in question can be exercised over all the provisions of the constitution, it would be unreasonable to hold that the word 'law' in article 13 (2) takes in amendment Acts passed under article 368. Thus, until 1967 the Supreme Court held that the Amendment Acts were not ordinary laws, and could not be struck down by the application of article 13(2). The historic case of *Golak Nath vs. The state of Punjab*<sup>17</sup> was heard by a special bench of 11 judges as the validity of three constitutional amendments (1st, 4th and 17th) was challenged. The Supreme Court by a majority of 6 to 5 reversed its earlier decision and declared that parliament under article 368

has no power to take away or abridge the Fundamental Rights contained in chapter II of the constitution the court observed.

- 1) Article 368 only provides a procedure to be followed regarding amendment of the constitution.
- 2) Article 368 does not contain the actual power to amend the constitution.
- 3) The power to amend the constitution is derived from Article 245, 246 and 248 and entry 97 of the union list.
- 4) The expression 'law' as defined in Article 13(3) includes not only the law made by the parliament in exercise of its ordinary legislative power but also an amendment of the constitution made in exercise of its constitution power.,
- 5) The amendment of the constitution being a law within the meaning of Article 13 (3) would be void under Article 13 (2) if it takes away or abridges the rights conferred by part III of the constitution.
- 6) The First Amendment Act 1951, the fourth Amendment Act 1955 and the seventeenth Amendment Act. 1964 abridge the scope of Fundamental Rights and, therefore, void under Article 13 (2) of the constitution.
- 7) Parliament will have no power from the days of the decision to amend any of the provisions of part III of the constitution so as to take away or abridge the Fundamental Rights enshrined there in.

The constitutional validity of the 14th, 25th, and 29th Amendments was challenged in the Fundamental Rights case. The Govt. of India claimed that it had the right as a matter of law to change or destroy the entire fabric of the constitution through the instrumentality of parliament's amending power.

In *Minerva Mills* case<sup>18</sup> the Supreme Court by a majority decision has struck down section 4 of the 42nd Amendment Act which gave preponderance to the Directive Principles over Articles 24, 19 and 31 of part III of the constitution, on the ground that part III and part IV of the constitution are equally important and absolute primacy of one over the other is not permissible as that would disturb the harmony of the constitution.

The Supreme Court was convinced that anything that destroys the balance between the two parts will destroy an essential element of the basic structure of our constitution.

## Extent Of Judicial Review In India

From 1950 to 1975, the Indian Supreme Court ruled that more than one hundred federal and state case Laws, constituted unconstitutional. The judiciary in the constitutional system, made a very important position. Indian Supreme court on a series of allegations of violation of basic human rights under the Constitution of India conducted a judicial review of cases. The Supreme Court's position is that any attempt to amend the Constitution related to impact of civil rights legislation or regulations are subject to subject to judicial review. India has also restricted judicial review of executive and legislative powers to play a role. Judicial review of legislation from the early review extends to all acts of government or administration. It can be said that in addition to specific case, the Court exercise their restraint of judicial power, judicial review has almost no borders.

**Judicial review of political issues:** In the early practice of judicial review, Supreme Court of India was that if the case involved political issues, does not apply to judicial review. But then this position has changed slowly, in Keshavananda Bharathi case, the Court noted that "involves tampering with the Constitution judicial review of cases may involve political issues, but only the court has the power to judge cases. interpret the Constitution's powers should be attributed to the State jurisdiction ". The Court's position in the latter case in a series of further specific, as in S. R. Bommai case, the court decision that "The state Governor, the President formed the basis of his political views may be based on judgments, it is not appropriate for judicial review. If Justice falls into a complex political dispute, which the court should be avoided. So, the court cannot forbid the President to exercise the powers conferred on him by the Constitution, unless the evil abuse of power, but the court also noted that "judicial review although it cannot review the President's subjective judgments, but the president may review the basis on which to make decisions." From these precedents it can be seen that the Indian courts in dealing with the basic legal and political position of the judiciary in finding significant matters involving politics should be careful to play its role of judicial review, and some restraint in handling cases, to avoid use of judicial jeopardize the constitutional review powers the legislative and executive powers, but the judiciary but also to minimize the abuse of presidential powers. judicial review and supervision should be ultra vires the right balance.

The basic principles of judicial review of constitutional status: In 1973, the Supreme Court in the landmark Keshavananda Bharathi v. State of Kerala<sup>19</sup> case presented the basic principles of

judicial review. The legislature can amend the constitution but cannot change the basic principles of the Constitution. If the violation of basic constitutional principles, constitutes unconstitutional is generally believed that the basic principles of the Constitution of India has the following five basic points: the supremacy of the Constitution, republican and democratic form of government, secular constitution, legislative, administrative and judicial separation of powers and federalism. These basic principles are throughout the Preamble to the Constitution of India and the entire framework of the Constitution. The Constitution is built on the basic principle's citizens on the basis of freedom and dignity, the Indian Constitution, the Law may not deprive citizens of any form of freedom and dignity. The basic principle of the Constitution is only a matter of principle, not exhaustive revision of the constitution limits the power of all cases. In the subsequent series of cases, the court of judicial review is further recognized as one of the basic principles of the Constitution. The Court in some cases held that judicial review is a constitutional fundamental and essential feature. If the judicial review is absolutely deprived of the Constitution had no vitality. The Court further pointed out that if the Supreme Court ruled out legislation enjoy the constitutional right to judicial review, and with no other alternative mechanisms for judicial review is in violation of the basic principles of the Constitution, the Congress, the legislation goes beyond the scope of legislative power. In 1997, L. Chaiadra Kumar V Union of India. case, the Constitutional Court more clearly that "the Constitution and Articles 32 & 226 were granted to the Supreme Court and High Court judicial review of existing legislation is a constitutional right to an integral and essential element judicial review itself constitutes one of the basic principles of the Constitution. " Indian Supreme Court precedent established by judicial review the basic principles of the Constitution, this Constitution and the rule of law in India's role cannot be ignored, for enhancing the legislative and executive powers of judicial checks and balances play an important role. But given the absolute power of judicial review, in fact distorted the balance of power theory, to some extent, leading to the expansion of judicial review and abuse of power.

**Judicial activism the expansion of judicial review:** After 80 years of the 20th century, public demand for government administration in strict accordance with the Constitution and laws, hoping to promote administrative reform through judicial growing louder and louder, the judiciary is also required in response to the public judicial activism began to take position. In the subsequent case of Menaka Gandhi, the Supreme Court to promote the implementation of the Constitution in terms of protection of citizens basic human rights, and to seek India's laws in line with the global trend of legal protection of basic human rights. The court of human rights protection thanks to a series of successful litigation procedural law reform, as introduced in

the procedural law of social activities on litigation, public interest litigation and other new design of the system, so that vulnerable groups in society can more easily enter the judicial process. Indian court has also sought, through judicial interpretation of constitutional provisions to achieve its goals. 80 years in the 20th century and early 90s, the Indian court would change its traditional law enforcement agencies as a simple nature of many of its political decision to the Indian society, the enormous social and economic change. While judicial activism has played an active court supervision of administrative and legislative powers, the role of the effective exercise of judicial power, to some extent contributed to the improvement of the rule of law in India. But on the other hand, the Supreme Court's new role of judicial activism also has been criticized, and many Critics accused him of breach of the principle of separation of powers, especially the Supreme Court administrative action policies and guidelines established by the widely criticized, is considered by more powers of the executive and legislative areas. As a result, limit the power of judicial review has become India's new task of constitutional law.

### **Five Restrictions On The Right Of Judicial Review**

The power to limit judicial review of administrative justice is important to prevent undue interference. Additionally, laws on Indian courts might lead to judicial activism and horizontal expansion. It has a respectful and skeptical approach towards mixed complexes. Judicial review of creative interpretations of the Constitution can impact legislative and executive powers. However, individuals have the right to judicial review of legislation, which may be independent of executive power concerns. Judicial evaluation of constitutional concerns can be subjective, potentially leading to major consequences if not properly regulated.

Justice Dwivedi of the Indian Supreme Court stated that the court cannot handle the complicated mix of political activities and attitudes that influence basic societal choices. Without defined constitutional requirements and proper conditions, the court's conclusion on the trade-off is subjective and influenced by judges' personal preferences. Electronic copy available at <https://ssrn.com/abstract=1990601>, highlighting the judge's subjective nature. Reduce legal certainty, one of which is the nature of the rule of law. The Supreme Court's rulings on constitutional issues, including Congress's constitutional rights, federal relations, and presidential powers, have varying perspectives.

Restrictions on judicial scrutiny of content. India's judicial review of constitutional and procedural

law is limited by two principles: the principle of delay slack (Doctrine of Laches), which states that if rights are lost due to slack, the court will not grant relief, and the principle of res judicata, which states that regardless of the outcome of the verdict, the parties and courts must accept the verdict content. India, although the legal procedures commenced against the law of other than the Constitution and for other restrictions on judicial review, but 90 years after the 20th century, social pressure or the introduction of appropriate doctrine of judicial self-restraint.

Although judicial self-restraint during legislative review may be illegal, it should nonetheless be considered constitutional. The court must prove that a bill breaches the core principles of the Constitution, even if it has not been formally declared unconstitutional. The court reviewed the constitutionality of an application to adopt constitutional interpretation technology. This involves reviewing the constitutionality of Act provisions and determining which interpretation is unconstitutional. The court typically favors the former explanation, but this can also be influenced by the judge's personal views.

Administrative action is considered less constitutional than legislation under judicial review. The legislature allowed for administrative discretion, and the court will use the judicial restraint concept. The Court of Administrative Discretion cannot question constitutionality unless there is misuse of the executive branch or when the Chief Administrative Discretion is not applicable.

### **Conclusion**

Increased public knowledge in India has led to significant government actions on judicial review, reflecting the country's legal development trends. Some executive branches are seeking judicial review on difficult matters to lessen decision-making responsibilities. Based on India's judicial review development and framework, the following conclusions can be drawn. India's judicial review of the constitutional system is significant in the context of Indian capitalism. The rule of law strengthens the constitutional system. Judicial review is to balance legislative and administrative limits while ensuring the interests of all sectors. Judicial review in India aims to establish the constitutional principle and expand its scope. Judicial review is an important tool for good constitutional governance. In judicial review, courts must balance social interests, use appropriate activism or restraint, and consider various factors such as laws, discretion granted to the target, and the nature and scope of discretionary decisions that may impact the rights and interests of those affected. Judicial review in India traces back to the British colonial era and its

constitutional structure, as well as common law.

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<sup>i</sup> Justice Syed Shah Mohammed Quadri, *Judicial Review of Administrative Action*, (2001) 6 SCC (Jour) 1. Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458.

<sup>ii</sup> *Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458

<sup>iii</sup> *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

<sup>iv</sup> *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

