

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

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ISSN

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# **JUDICIAL REVIEW: CONSTITUTIONAL GROWTH IN INDIA IN JUDICIAL REVIEW AND IT'S IMPACT**

**AUTHORED BY: RUPALI VIJAY KUMBHAR**

## **ABSTRACT**

This paper explores the profound impact of judicial review on the constitutional growth of India. Moving beyond a static document, India's journey of constitutional growth under judicial review has been transformative, shaping the nation's legal landscape and societal dynamics. This paper delves into the evolution of judicial review in India, tracing its origins, milestones, and impact on governance, rights, and democracy. From the seminal case of Kesavananda Bharati to recent judgments on fundamental rights and governmental powers, the judiciary has played a pivotal role in upholding the Constitution's supremacy and ensuring accountability. The paper examines the mechanisms of judicial review, including writ jurisdiction, PILs (Public Interest Litigations), and judicial activism, highlighting their effectiveness and limitations. Furthermore, it discusses the socio-political implications of judicial review, such as its role in safeguarding minority rights, promoting social justice, and addressing institutional deficiencies. Through case studies and comparative analyses, the paper elucidates how judicial review has fostered a culture of constitutionalism, balancing the powers of different branches of government and reinforcing the rule of law. However, challenges persist, including judicial overreach, delays in justice delivery, and tensions between the judiciary and executive. The paper concludes by proposing strategies for enhancing the efficacy of judicial review, including reforms in judicial appointments, procedural reforms, and public education on constitutional principles. Ultimately, the evolution of judicial review in India reflects the nation's commitment to democracy, pluralism, and constitutional values, while continually adapting to the evolving needs of its diverse populace.

## **INTRODUCTION**

The Constitution of India, adopted in 1950, laid the foundation for a vibrant democracy and a rule of law society. One of the key features embedded within its framework is the provision for judicial review, empowering the judiciary to interpret the Constitution and ensure the supremacy of its principles. This paper explores the trajectory of constitutional growth in India under the mechanism of judicial review and assesses its profound impact on the nation's legal, social, and

political landscape. India's judiciary, particularly the Supreme Court, has played a pivotal role in shaping the course of the nation's governance and upholding the fundamental rights enshrined in the Constitution. The principle of judicial review, though not explicitly mentioned in the Constitution, has been judiciously exercised by the courts to scrutinize legislative and executive actions, ensuring their conformity with constitutional provisions.

Despite these challenges, the institution of judicial review remains indispensable to India's democratic fabric, serving as a bulwark against arbitrary state action and safeguarding the rights and liberties of its citizens. As India continues to grapple with complex socio-political realities and emerging legal paradigms, the role of judicial review will remain central to ensuring constitutional governance and fostering a more just and equitable society.

## HISTORY OF JUDICIAL REVIEW<sup>1</sup>

The concept of judicial review originated in the United States, where the Supreme Court established its authority to strike down laws that were in violation of the US Constitution. In India, the concept of judicial review was borrowed from the US Constitution, but it was adapted to suit the Indian context. US Constitution is one of the Sources of Indian Constitution. The genesis of judicial review in India can be traced back to the influence of the U.S. Constitution. However, India has adapted this concept to fit its unique constitutional and societal fabric. This historical journey reflects India's commitment to a dynamic and evolving judicial system, capable of addressing the complexities of a diverse and populous democracy. The power of judicial review was first established by the Supreme Court in the case of **Shankari Prasad v. Union of India (1951)**, where it was held that the Constitution did not provide for any limitation on the amending power of the Parliament. However, in the case of **Kesavananda Bharati v. State of Kerala (1973)**, the Supreme Court held that there were limitations on the amending power of the Parliament, and that the basic structure of the Constitution could not be altered.

## JUDICIAL REVIEW IN INDIA<sup>2</sup>

However, in general, the Kings had their own judges to administer justice. The commissions of four law and other committees appointed during the years 1834 to 1947, give proper structure to then

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<sup>1</sup> <https://www.centurylawfirm.in/blog/judicial-review-in-india/#:~:text=Judicial%20review%20is%20a%20crucial,of%20the%20citizens>

<sup>2</sup> <https://www.northeastlawjournal.com/post/judicial-review-indian-constitution>

the justice system in India. In India, the judiciary is the guardian of the Indian Constitution, the democratic atmosphere and individual's fundamental rights. An independent and impartial judiciary fights against Legislative Arbitrariness. Indian judiciary is empowered with the power of judicial review.

The Constitution of India layout provisions for judicial review through Articles 13, 32, 131 to 136, 143, 226 and 246. The power of judicial review includes in its ambit the actions of the Executive as well as statutes passed by the Parliament of India. According to **Dr. B. R. Ambedkar**, the provisions for judicial review, in particular, the writ jurisdiction would provide quick relief to the individuals against the abridgement of fundamental rights.

### LIMITATIONS OF JUDICIAL REVIEW<sup>3</sup>

- With the power to the judiciary of judicial review there are some limitations as well as on the judiciary upon exercising the power of judicial review as when exercising its power if it tries to interfere in their work, it can be changed into Judicial overreach.
- The power of judicial review can only be exercised by the upper courts like the Supreme Court and High Court and the lower courts don't have any of this power.
- The power of judicial review limits the functioning of the government as it is only used for finding the procedure for reaching a decision.
- When the court exercises the power of judicial review then the opinion of the judges in any case becomes the standard for ruling other cases.
- The repeated interventions of the court can diminish the faith of the people in the integrity and efficiency of the government.
- The judiciary's power of judicial review cannot interfere with political questions unless necessary the judgments of the court can be influenced by personal and selfish motives, hence it can cause harm to the public at large.

### SIGNIFICANCE OF JUDICIAL REVIEW<sup>4</sup>

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

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<sup>3</sup> <https://theamikusqrae.com/judicial-review-and-its-impact-on-constitutional-interpretation/>

<sup>4</sup> <https://www.centurylawfirm.in/blog/judicial-review-in-india/#:~:text=Judicial%20review%20is%20a%20crucial,of%20the%20citizens%20are%20protected>

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.

## CLASSIFICATION OF JUDICIAL REVIEW<sup>5</sup>

### 1. REVIEW OF JUDICIAL DECISIONS:

Reviewing or examining a court's decision basically refers to examining it in such a way to determine whether the Supreme Court's decision was correct or not in simple terms, it also refers to the court's authority to determine the constitutionality of the measures taken by state, federal legislatures and courts.

### 2. REVIEW OF LEGISLATIVE ACTIONS:

Article 13 of the Indian constitution, talks about the judicial review of all the enacted laws, and such an authority may promulgate unconstitutional laws, regulations, statutes, ordinances, rules, and ordinances, which are granted to the High Courts and Supreme Court of India. All those actions which violate the Fundamental Rights or other important provisions of the constitution, are declared as void and it is declared to be unlawful. We can trace the marks of judicial review of the legislative actions in the landmark cases like; I. C. Golaknath and Others. v. State of Punjab and Another 1967. Kesavananda Bharti and Others. v. State of Kerala and Another, 1973.

### 3. REVIEW OF ADMINISTRATIVE ACTIONS:

The actions carried out, by authorities under the administrative law are understood as administrative actions. It is a lawful action concerned with the conduct of the public administrative authorities. The constitutionality of the administrative action is verified by a test introduced by Lord Diplock, which was in the case of Council of Civil Services Union v. Minister of Civil Services 1984. The tests include:

- **Illegality:**

The acts and verdicts of the decision makers can be declared as illegal if they do not follow the law, or if they act beyond their stipulated powers.

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<sup>5</sup> <https://www.legalserviceindia.com/legal/article-9158-judicial-review-in-india.html>

- **Irrationality:**

The courts can also interfere for quashing any decision if they think that it is arbitrary, henceforth, making the move of the decision makers as "unreasonable" or "perverse"

- **Procedural Impropriety:**

The onus is on the authority to act impartially before taking and deciding any matter, since, any public body must not act unethically since, it amounts to the abuse of power.

## CONSTITUTIONAL PROVISIONS FOR JUDICIAL REVIEW<sup>6</sup>

- There is no direct and express provision in the constitution empowering the courts to invalidate laws, but the constitution has imposed definite limitations upon each of the organs, the transgression of which would make the law void.
- The court is entrusted with the task of deciding whether any of the constitutional limitations has been transgressed or not.
- Some provisions in the constitution supporting the process of judicial review are:
  - **Article 372 (1)** establishes the judicial review of the pre-constitution legislation.
  - **Article 13** declares that any law which contravenes any of the provisions of the part of Fundamental Rights shall be void.
  - **Articles 32 and 226** entrusts the roles of the protector and guarantor of fundamental rights to the Supreme and High Courts.
  - **Article 251 and 254** states that in case of inconsistency between union and state laws, the state law shall be void.
  - **Article 246 (3)** ensures the state legislature's exclusive powers on matters pertaining to the State List.
  - **Article 245** states that the powers of both Parliament and State legislatures are subject to the provisions of the constitution.
  - **Articles 131-136** entrusts the court with the power to adjudicate disputes between individuals, between individuals and the state, between the states and the union; but the court may be required to interpret the provisions of the constitution and the interpretation given by the Supreme Court becomes the law honored by all courts of the land.
  - **Article 137** gives a special power to the SC to review any judgment pronounced or

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<sup>6</sup> <https://www.drishtiiias.com/daily-news-analysis/judicial-review-1>

order made by it. An order passed in a criminal case can be reviewed and set aside only if there are errors apparent on the record.

## **IMPACT ON CONSTITUTIONAL INTERPRETATION<sup>7</sup>**

Judicial review plays a significant role as it declares any actions of legislature, executive, and administrative actions as unconstitutional if it denies the rights to the people and is in contravention of the constitution. In India, we follow a parliamentary system where the people of the country are also involved, so the citizens elect their representative who in turn is answerable to the citizens for their actions, and all those officers who hold public office and have to work within the ambit of constitutional provisions. The concept of judicial review is developed because of the rule of law and the separation of powers between the three organs of the government. Judicial review evolved for three reasons, first to maintain fairness in the actions of the government, second to safeguard the fundamental rights guaranteed to citizens under part III of the Indian constitution, and third to maintain legislative competency between the center and the state. Different articles in the constitution cover the concept and give power to the judiciary of judicial review.

### **ARTICLE 13**

This article confers the power of judicial review and it states that all those laws that are inconsistent with the fundamental rights under part III shall be declared as void. This means all the laws, rules, regulations, and ordinances issued and any amendments in the constitution by the center or state can be challenged if it violates any fundamental rights or violates any part of the basic structure of the constitution. So, by this provision of the constitution, the Supreme Court can strike down and declare it unconstitutional.

### **ARTICLE 21**

This article states that “no person shall be deprived of his life or personal liberty except by procedure established by law” In the Maneka Gandhi case the Right to travel abroad was included under personal liberty under this article, so by this, there was an expansion in the concept of personal liberty and it was also said any type of government restraint on personal liberty should be Just, fair and non-arbitrary and reasonableness mentioned under Article 14, 19 and 21 of the constitution.

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<sup>7</sup> <https://theamikusqraie.com/judicial-review-and-its-impact-on-constitutional-interpretation/>

### **ARTICLE 32**

This article is also called Right to Constitutional Remedies. As per this, any person can move to the Supreme Court for the enforcement of the Fundamental Rights conferred to the citizen by the constitution means any person whose fundamental rights have been violated can directly approach the Supreme Court and High Court to enforce their fundamental rights. The Supreme Court can issue orders or writs like Habeas Corpus, Mandamus, Certiorari, Prohibition, and quo warranto to enforce fundamental rights. These remedies are provided to the citizens to reinforce their infringed rights.

### **ARTICLE 226 & 227**

These articles confer the power of judicial review to all the High courts. So as per Article 226 the High courts can issue writs for enforcing the fundamental rights as well as for any other purposes. Article 226 is the discretionary power of the High Court means the court must listen to the petitioner if they have approached and had no alternative remedy. Whereas as per Article 227 of the Constitution, High Courts have the superintendence power over subordinate courts and tribunals. (Rana, 2022)

### **ARTICLE 131 – 135**

This article empowers the power of the Supreme Court to hear disputes between the center and states and conflicts between two states.

### **ARTICLE 136**

The first-ever Public Interest Litigation was filed in the case **Hussainara Khatoon v. State of Bihar** also through this case Right to Speedy Trial came and from that time it has evolved in India in issues of Consumer protection, preventing environmental destruction and pollution and for disadvantaged and vulnerable groups of the society.

### **ARTICLE 137**

This article provides an important power to the Supreme Court to review any judgment or order passed by them, but a criminal case will only be reviewed if the error is on the face of the record.

### **ARTICLE 141**

As per this, the Decisions of the Supreme Court are binding on all the courts in India.

**ARTICLE 143**

In this president can ask for the advice of the Supreme Court if the question is of public importance.

**9<sup>TH</sup> SCHEDULE OF INDIAN CONSTITUTION**

As per Article 31-B, all acts that come under the ninth schedule of the Indian constitution cannot be challenged on grounds that it is in contravention to the fundamental rights guaranteed under the constitution but this was later changed in the IR Coelho case where it was held that laws under 9<sup>th</sup> scheduled are open to challenge if they are in contradiction to the fundamental rights or Basic structure of the constitution.

**CASE LAWS**

- 1. Golaknath v. State of Punjab (1967)<sup>8</sup>**:- In this case, the Supreme Court held that the Parliament did not have the power to amend the Fundamental Rights enshrined in the Constitution. This decision was later overturned by the 24th Amendment to the Constitution which allowed the Parliament to amend any part of the Constitution, including the Fundamental Rights.
- 2. Kesavananda Bharati v. State of Kerala (1973)<sup>9</sup>**:- This case is considered to be one of the most significant cases in the history of judicial review in India. In this case, the Supreme Court held that there were limitations on the amending power of the Parliament and that the basic structure of the Constitution could not be altered.
- 3. Maneka Gandhi v. Union of India (1978)<sup>10</sup>**:- In this case, the Supreme Court held that the right to travel abroad was a part of the right to personal liberty under Article 21 of the Constitution. This decision expanded the scope of the right to personal liberty and protected it from arbitrary restrictions by the government.
- 4. Vishaka v. State of Rajasthan (1997)<sup>11</sup>**:- In this case the Supreme Court recognized sexual harassment at the workplace as a violation of the fundamental rights of women.

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<sup>8</sup> 1967 AIR 1643; 1967 SCR (2) 762

<sup>9</sup> AIR 1973 SC 1461, 1973 4 SCC 225

<sup>10</sup> AIR 1978 SC 597

<sup>11</sup> AIR 1997 SC 3011

The court laid down guidelines for employers to prevent and redress such harassment at the workplace.

5. **LR. Coelho v State of Tamil Nadu and others (2007)**<sup>12</sup>:- The Supreme Court held that all Constitutional amendments made on or after 24th April 1973 by which the 9th Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic features of the Constitution enshrined under Article 14, Article 19 and Article 21. To clarify the situation, the court further declared that even though an Act is put in the Ninth Schedule by a constitutional amendment, its provisions would still be tested on the ground that they destroy or damage the basic structure if the fundamental right or rights are taken away or abrogated or pertain to the basic structure.

## CONCLUSION

India's constitutional journey has been intricately intertwined with the evolution of judicial review. This mechanism, though not explicitly enshrined, has served as a cornerstone for the nation's legal and social development. From interpreting fundamental rights to ensuring governmental accountability, judicial review has fostered a dynamic Constitution that adapts to the needs of a growing democracy.

Landmark cases like **Kesavananda Bharati** established the power of judicial review to safeguard the Constitution's core principles. Mechanisms like writs and PILs have empowered citizens to seek justice and hold institutions accountable. The impact extends beyond legalities, shaping social progress by protecting minority rights and promoting social justice.

However, challenges remain. Judicial overreach and delays in justice delivery necessitate ongoing reforms. Nevertheless, India's commitment to judicial review reflects its dedication to a vibrant democracy governed by the rule of law. By continuously refining this vital tool, India can ensure a future where its Constitution remains a living document, responsive to the aspirations of its people.

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<sup>12</sup> AIR 2007 SC 861