

Judicial Review

What is the Judicial Review?

When any organ of government violate the constitution or are inconsistent with the basic principles of it, then the court have right to intervene and judge, if the activity is constitutional or not. As a result, Judicial Review ensures that the legislation doesn't have the absolute power to pass the laws. The courts have the authority to review the laws to check the constitutionality and validity of the laws. Indian Judiciary also plays the observer and interpretational roles in judicial review. The concept of Judicial Review in Indian Constitution is incorporated from the American Constitution.

The Constitution of India is the longest hand-written constitution in the world. Starting from the regulating act in the pre-independence era to the making of the constituent assembly, our forefathers have put in their hard work to make our country a better place to live in the future. Constitutionally, the Judicial Review is considered to be the part of the basic structure of it. And it is a constitutional provision that no changes can be made to the basic structure of the constitution.

First Case under The Judicial Review System

The judicial review system originated in the USA. It was proposed for the first time in the famous case of Marbury Versus Madison in 1803. Sir John Marshall gave the doctrine of judicial review to the Chief Justice of the American Supreme Court at that time. In India, the judicial review system comes under Article 13, which is the Constitution's basic structure.

Judicial Review: An Absolute Power System

The main question that comes to readers' minds while studying the judicial review is, "Is the judicial Review an absolute power system or not?" Judicial Review comes under Part 3 of the Constitution. India has a separation of powers between the executive, legislature, and judiciary.

Article 13 of the Constitution states that any law abridging or violating things in Part 3 of the Constitution can be declared null and void. So, here there is a conflict whether Article 13 is an exception to Article 368 or Article 13 is beyond Article 368. So, to resolve this conflict, the Supreme Court, in the Kesavananda Bharti case (1973), declared that Article 368 can amend every part of the Constitution, including the fundamental rights, but cannot modify or change the basic structure of the Constitution.

The judicial review is considered a part of the basic structure of the Constitution, so it cannot be amended and is considered an absolute power system.

Before 24 April 1973, judicial review was a part of Article 13. In the I.R. Coelho case of 2007, the doctrine of judicial review was promoted as the basic structure of the Constitution. So, every law placed in the ninth schedule before 24 April 1973 is safe from judicial review. But the laws placed in the ninth schedule after 24 April 1973 cannot be taken away by the Parliament as it is a part of the basic structure of the Constitution under judicial review.

Classification of Judicial Review System

Justice Syed Shah Mohamed Qadri has classified the **Judicial Review** system into three categories:

- **Judicial Review of Constitutional Amendments:**
The Supreme court and High court can review the amendments in the Constitution and state any of them as null and void if it is affecting the fundamental essence of the Constitution.
- **Judicial Review of Parliament legislature, State legislature, and Subordinate legislation:**
According to the Judicial review system, if a legislative enactment or an executive notification by the state or centre violates the basic structure of the Constitution, then it can be declared unconstitutional. After it is stated null and void, the legislature or the executive can't implement that law.

The Parliament and the state under their jurisdiction can form organizations that can decide independently in their fields. For example, a domestic industry established by the government has a 60% stake in the government and a 40% stake in some private sectors. This industry also becomes a part of the state legislature, and the laws made by the industry, which are being implemented at ground level, come under subordinate legislation.

- **Judicial Review of Centre and State's administrative actions:**
The centre and state government is forming policies to enhance the lifestyle of the citizens. The state and the union government authorities can also take administrative action. For example, if a commissioner from the GST department issues an order. If the order is violating the beliefs and laws of the Constitution, then the Supreme Court can exercise the power of judicial review.

Cases Related to Judicial Review

- Golaknath Case, 1967
- Bank Nationalization, 1970
- Privy purse abolition case, 1971
- Keshwananda Bharti Case, 1973
- Minerva Mills case, 1980
- NJAC-2014 Act was stated null and void under Judicial review.

Judicial Review Article

Constitutional Provisions under Judicial Review are mentioned below.

- **Article 13:** Any law violating fundamental rights can be stated null and void by the Supreme Court and High Court.
- **Article 32:** Supreme Court is entitled to the power of writ jurisdiction. The citizens of the country can appeal to the courts if their fundamental rights are violated and the courts can issue a legal order in favour of the citizens.
- **Article 131:** Under this article, if there is any dispute between the centre and the state, then the case goes directly to the Supreme Court.
- **Article 132:** The Supreme Court has the power to change the decision of some lower court if the decision is against the beliefs of the constitution. If the high court decides on any constitutional case, the case can be appealed to the Supreme Court by the aggrieved party.
- **Article 133:** This article entitles the Supreme Court with an extraordinary power of appellate jurisdiction. Civil cases like cases of land, divorce, etc., come under this article.
- **Article 134:** The power of appellate jurisdiction is granted to the Supreme court in criminal cases.
- **Article 134-a:** The High court issues a certificate of appeal to the aggrieved parties to go to the Supreme court. Under this article, if any subordinate court grants bail to a party and the High Court announces a 10-year jail or sentence to death to the accused, the case will automatically go to the Supreme Court. This article reduces the chances of clash as the Supreme Court would give the final decision.
- **Article 135:** Earlier the area of jurisdiction under any pre-constitutional law was given to the federal court. Now the power has shifted to the Supreme Court.
- **Article 136:** The Supreme Court has a special power under this article. The Supreme Court can choose to give leave to appeal a specific case. By this article, the Supreme Court can take the case under its jurisdiction. The cases under this article are those which need to be solved to the earliest. However, it does not take cases of a military tribunal and court martial.

- Article 143: Advisory or the Consultative jurisdiction of the Supreme Court.
- Article 226: Under this article, writ jurisdiction is provided to the High courts. The High Court and Supreme Court can take action against the illegal acts of the legislative and the executive. The writ jurisdiction of the High Court is more complete as compared to the Supreme court. The High court can issue writs on all fields and cases while the Supreme court can only take legal actions if there is a case of violation of fundamental rights
- Article 227: High court can state any subordinate court if it is not working correctly.
- Article 245: This article defines the field under which the laws made by the centre and the state are applicable. The scheduled areas have a specific legislature that might differ from the state or centre legislation. Hence, the Supreme Court comes into play here.
- Article 246: It includes the subject matter of laws made by centre and state legislations. This article involves the policies and bills of union, state and concurrent list. If there is any dispute on a matter of subjects in this list, it becomes a case of dispute between centre and state, so the Supreme Court comes into play.
- Article 251: If there is a conflict between a law made by the centre and a law made by the state, then the law made by the centre would have more consideration if the centre law is not made under any state list.
- Article 372: Validates the pre-constitutional treaties. This power is also given to the Supreme Court.

Importance of the Judicial Review

- The fundamental rights of the citizens are not violated under judicial review.
- It gives the judiciary a free hand to give justice to every citizen of the country.
- It balances the federal system of the country.
- It allows the judiciary to check whether the executive and the legislature are functioning properly and due to this recheck, an equilibrium is maintained.