

# Judicial Review in India

**Judicial Review** is the power of the judiciary to examine the constitutionality of legislative acts and executive actions. It ensures that all laws and government actions comply with the Constitution of India, protecting citizens' rights and maintaining the balance of power among government branches. Judicial review is a fundamental principle in India's democratic framework.

## 1. What is Judicial Review?

- Judicial review is a process where the judiciary examines if laws or executive actions are consistent with the Constitution.
- It can invalidate or nullify any law or government action found to violate constitutional principles.
- This power upholds the **supremacy of the Constitution** and the **rule of law** in India.

## 2. Constitutional Basis of Judicial Review

The Constitution of India does not explicitly mention "judicial review," but various articles implicitly grant this power to the judiciary:

- **Article 13:** Declares that any law contravening the Fundamental Rights is void, giving the judiciary the power to strike down such laws.
- **Article 32:** Provides the right to approach the Supreme Court for enforcement of Fundamental Rights.
- **Article 226:** Grants High Courts the power to issue writs for the enforcement of rights.
- **Article 136, Article 143, and Article 226:** Also imply judicial review by empowering the Supreme Court and High Courts to handle constitutional issues.

## 3. Scope of Judicial Review in India

Judicial review in India covers three primary areas:

### a) Legislative Actions

- The judiciary reviews laws passed by Parliament and state legislatures to ensure they align with the Constitution.
- Laws violating Fundamental Rights or exceeding legislative powers can be struck down.

### b) Executive Actions

- The judiciary can review actions by the executive (government officials, agencies, and ministers).
- This ensures executive actions do not violate citizens' rights or exceed the authority granted by law.

### c) Judicial Decisions

- In rare cases, the judiciary can review decisions of lower courts to check if constitutional provisions were appropriately applied.

## 4. Types of Judicial Review

### a) Constitutional Review

- Examines whether laws or executive actions comply with constitutional provisions.
- Ensures that any amendments or changes to the Constitution are within permissible limits (e.g., cannot alter the basic structure).

### b) Statutory Review

- The judiciary examines if a statute (law passed by the legislature) aligns with the Constitution or higher laws.
- Statutory review checks if laws respect citizens' rights and follow due process.

### c) Administrative Review

- Reviews the actions, rules, and decisions of administrative bodies (government departments and agencies).
- Ensures that government agencies follow the rule of law, act within their powers, and treat citizens fairly.

## 5. Doctrine of Basic Structure

- Introduced in the **Kesavananda Bharati Case (1973)**, the basic structure doctrine limits Parliament's power to amend the Constitution.
- The Supreme Court ruled that certain principles, like **fundamental rights, separation of powers, and secularism**, form the basic structure of the Constitution and cannot be altered.
- This doctrine provides a strong foundation for judicial review, ensuring that amendments do not undermine essential constitutional values.

## 6. Landmark Cases on Judicial Review

Several Supreme Court cases have established judicial review as a cornerstone of Indian democracy:

- **A.K. Gopalan Case (1950):** Established that the judiciary could interpret laws in relation to fundamental rights.
- **Shankari Prasad Case (1951):** Upheld the power of Parliament to amend Fundamental Rights, but this view was later modified.
- **Golak Nath Case (1967):** Restricted Parliament's power to amend Fundamental Rights, declaring that these rights were beyond amendment.
- **Kesavananda Bharati Case (1973):** Introduced the doctrine of basic structure, limiting Parliament's amendment power.
- **Minerva Mills Case (1980):** Reaffirmed the basic structure doctrine and protected the balance between Fundamental Rights and Directive Principles.

## 7. Importance of Judicial Review

Judicial review is essential for various reasons:

- **Protects Fundamental Rights:** Ensures that citizens' rights are upheld and protected from arbitrary laws.
- **Maintains Constitutional Supremacy:** Confirms that all government actions adhere to the Constitution.
- **Promotes Checks and Balances:** Acts as a check on the legislative and executive branches, preventing misuse of power.
- **Ensures Rule of Law:** Maintains that everyone, including the government, is subject to the law.
- **Preserves Democratic Values:** Ensures that laws and actions respect democratic principles, such as equality, justice, and liberty.

## 8. Limitations of Judicial Review

Despite its importance, judicial review has some limitations:

- **Doctrine of Separation of Powers:** Courts cannot encroach on the functions of the legislature and executive.
- **Judicial Overreach:** Excessive intervention by the judiciary in policy matters is viewed as judicial overreach, potentially disrupting governance.

- **Constitutional Amendments:** Parliament can amend the Constitution to limit judicial review powers, although such amendments must not violate the basic structure.
- **Judicial Restraint:** The judiciary often exercises restraint, only intervening when there is a clear violation of the Constitution.

## 9. Judicial Review vs. Judicial Activism

Judicial review differs from judicial activism, though both involve the judiciary influencing governance:

- **Judicial Review:** Limited to assessing the constitutionality of laws and actions. It does not make or implement policies but only ensures constitutional compliance.
- **Judicial Activism:** Goes beyond review, with judges taking an active role in policy issues, often influencing governance and addressing social issues through Public Interest Litigations (PILs).