**THE DOCTRINE OF JUDICIAL REVIEW IN INDIA**

# INTRODUCTION

Article 13 of the Indian Constitution states the compulsion of judicial review as described the fundamental rights in Part III. It has been laid down that neither the state nor the Union shall make any such rules that may take away or abridge the essential rights of the people of the country. Judicial Review is an asset recognized as a basic and vital requirement for the construction of a novel civilization in order to safeguard the liberty and rights of the individualsand it is vested significantly on the High Courts and the Supreme Courts of India. It is the power of Courts to pronounce upon the constitutionality of legislative and executive acts of the government which fall within their normal jurisdiction and any law made by the Parliament or the state legislature will be considered void if it contravenes the provisions of the article under the fundamental rights. One can understand judicial review can be as a court proceeding where the lawfulness of a decision or action is reviewed, usually held in the Administrative Court, by the Hon'ble Judge.

When the constitutional values are harmed by either the Legislative, Executive, or the Judiciary, and any right that been made definite to the inhabitants of the country by the Indian Constitution have been, judicial review plays a crucial role in providing relief and acts as a protector safeguarding the well justified rights of the citizens. Whether the laws have been correctly applied and whether the right procedures have been followed is the concern behind filing for a judicial review. Judicial Review is made available as remedy in cases where no effective means of challenge is left with the aggrieved party.

It is important to note that under Article 246 and Schedule 7 of the Constitution of India the working zone of the regulation construction between the state and the center has been marked which can be referred to in case any difficulty arises between the state and the center.

# EVOLUTION OF JUDICIAL REVIEW

For the first time ever the Doctrine of Judicial Review was propounded by the Supreme Court of America. Even though the Constitution of America did not expressly provide a provision regarding judicial review but the hon'ble Supreme Court of America assumed this doctrine in the case of **Marbury v Madison**.

In India the Doctrine of Judicial Review was being practiced even before the Constitution of India was implemented, thanks to the British Parliament which through the Government of India Act, 1935 introduced the Federal System in India gave both, the center and the state, separate plenary powers in there own territories. This Federal system was to function as an arbiter in the central and state relationship and to inspect any violation of the Constitutional guidance in the distribution of powers. Here, the doctrine of Judicial Review was not discussed explicitly but with the constitution being federal now the court was indirectly held liable with the function of interpreting the constitution and determining the constitutionality of various legislative acts passed.

This system was followed in India for a significant time and was able to uphold its dignity through various constitutional decisions dealt by the Federal Court of India and the High Courts. Later, this system was inherited by the Supreme Court from its predecessor because the wise constitution makers were of the view that the Supreme Court of India should be graced with the power of judicial review.

If one was to look over the evolution of judicial review from a broader perspective, this doctrine has evolved into three dimensions, which are:

* Protection of essential rights provided under Part III of the Constitution of India.
* Authorization of the disinterest of organizational achievements.
* Interrogating the interest of the public.

# JUDICIAL REVIEW IN INDIA

A very adaptable and healthy system of judicial review has been envisaged by the constitution of India where the duty to maintain the spirit is on the Indian Judges. The courts have been granted a wide range of power of judicial review by the statutory and constitutional provisions and these provision judicial review by the constitution and statutes are very different from each other and the court has the responsibility to practice these powers with great caution and self-control has to be practiced. Phasing out from the boundaries of appropriate influences of judicial assessment that has been laid down is not expected from the courts at any cost.

In the current democratic pattern in the country the courts are not expected to ask the aggrieved party to wait for the the opinion of the public against the tyranny of the legislative and take up a passive attitude, but it has been empowered by the constitution to perform a more active role and, if there's a violation of the constitution, declare the legislation void for being *ultra vires*.

In India the Doctrine of Judicial Review plays a very important role to assess in case either the legislature, executive, or the judiciary harms the values of the constitution of India or denies the rights of the citizens. Since, a Parliamentary form of government exists in the country, in the process of decision making and policy making every section of people are involved. The groundwork of social equity is the application of rules which is the primary duty of the court. Everyone who is invested in public duty can be held accountable and they are obligated to work within the democratuc provisions provided under the Constitution of India. Under Article 226 and 227, and Article 32 and 136 the influence of Judicial assessment has been laid down in case of a High Court or the Supreme Court, respectively.

One may say the concept of Separation of Power and Rule of Law is Judicial review itself in India.

In India, the fundamental subjects of Judicial review relate to

1. Violation of fundamental rights.
2. Violation of various other constitutional restrictions embodied in the constitution.
3. Enactment of legislative act in violation of constitutional mandates regarding distribution of powers.
4. Delegation of essential legislative power by the legislature to the executive or any other body.
5. Violation of implied limitations and restrictions.

# MECHANISM OF JUDICIAL REVIEW IN INDIA

Three aspects are covered by judicial review in India.

1. The Judicial review of Legislative actions.
2. The Judicial review of Judicial actions
3. The Judicial review of Administrative Actions.

In the case of **L. Chandra Kumar v. Union of India** ((1997) 3 SCC 261), the Supreme Court discussed these facets of judicial review and stated that the legislation have to be interpreted by the High Courts to the limit that the Constitutional values are not disrupted, and in order to achieve this end the Judges need to keep in mind that equilibrium of control, which has been specified in the Constitution of India, should not be disturbed.

# ARTICLE 13 OF THE CONSTITUTION OF INDIA

An express provision for Judicial Review has been provided under Article 13 of the Constitution of India. It provides for the judicial review of legislations of India and is applicable in a retrospective manner as well. It confers the right on the High Court and Supreme Court of India to declare any legislation unconstitutional if it is held inconsistent with any provision of Part III of the Constitution. It entitles the court to strike down or declare any law void under Article 13(2) if it abridges any fundamental right.

In the case of **A. K. Gopalan v. State of Madras** (AIR 1950 SC 27), the court held that all laws must be in conformity with the constitution and it is on the judiciary to decide whether any enactment is constitutional or not, and a similar idea was held in the case of **State of Madras v. V. G. Row** (AIR 1952 SC 196), as well.

# SOME IMPORTANT JUDICIAL PRONOUNCEMENTS TO FOLLOW

In the case of **Shankari Prasad v Union of India** (AIR 1951 SC 458), it was held by the six judge bench out of which five judges did not agree to amending the essential rights provided in the Indian Constitution, however, in the case of **Keshavananda Bharati v State of Kerala** (AIR 1973 SC 1461)overruling the **Golaknath v. State of Punjab** case, six out of seven judges held that modifying influence the Parliament has and all portions of the Constitution can be amended. The Supreme Court held that the essential rights cannot be modified.

After taking inference from cases like **Keshavananda Bharati v. State of Kerala**, **Minerva Mills Ltd. and ors. v. Union of India** (AIR 1980 SC 1789)**, Indira Gandhi v. Raj Narain** (1975), **and Chandra Kumar v. Union of India and Ors.** (AIR 1997 SC 1125)**, in R. Coelho v. State of Tamil Nadu** (AIR 2007 SC 861), it was held that Judicial Review is an integral part of the constitution.

Some other landmark cases which further illustrate the importance of Judicial Review are: **Brij Bhurshan v. State of Delhi (**AIR 1950 SC 129), **Ramesh Thapper v. State of Madras** (AIR 1950 SC 124), **Sajjan Singh vs State of Rajasthan** (AIR 1965 SC 845), **ADM Jabalpur v. Shivakant Shukla** (AIR 1976 SC 1207), **S.P Sampat Kumar v. Union of India** (AIR 1987 SC 386), **Shayara Bano v. Union Of India** (W.P.No. 118 of 2016), **Joseph Shine v. Union of India (**AIR 2018), **Anuradha Bhasin v. Union of India** (2020 SC), and **P.U.C.L v. U. O. I** (AIR 1997 SC 568).

To conclude, over the years judicial review has presumed a permanent status by the means of judicial decisions and is a part of the basic structure of the constitution of India, thus, it cannot be done away with but has to be understood as a very important in maintaining a harmony and keeping a restrain on the actions of the executive, legislative, and judicial government bodies.

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