



JUDICIAL REVIEW: EXPLORING THE ROLE OF THE JUDICIARY IN CONSTITUTIONAL INTERPRETATION UNDER ARTICLE 226 AND 32 OF INDIAN CONSTITUTION

JULI SATHIYAN KUMAR

LLB 3 YEARS 2ND SEMESTER 2023-2026
UNDER SUPERVISION OF PROF. MAMTHA



ABSTRACT :

Judicial review is a crucial component of constitutional governance, providing as a tool to ensure that governmental acts are consistent with the ideals stated in the constitution. Articles 226 and 32 of the Indian Constitution offer the judiciary the power of judicial review, allowing it to scrutinize the activities of the executive and legislative departments. This dissertation seeks to investigate the role of the judiciary in constitutional interpretation under these critical sections of the Indian Constitution. The study investigates the historical evolution of judicial review in India, beginning with the Constituent Assembly's foundational debates and progressing to subsequent court rulings. It looks into the broad extent and inherent constraints of judicial involvement, defining the boundaries within which the judiciary acts while exercising its constitutional jurisdiction. The research examines key cases and scholarly discourse to demonstrate the tremendous impact of judicial decisions on Indian democracy and government. This research focuses on the dynamic interaction between the judiciary and other parts of government, emphasizing the judiciary's critical role in maintaining constitutional values and protecting individuals' rights. The study illuminates the complex interplay between law, politics, and society in India's constitutional democracy by deconstructing significant judicial decisions and their repercussions. Furthermore, the study dives into the complex issues and debates surrounding judicial review in India. It critically examines judicial activity, the theory of separation of powers, and the delicate balance between individual rights and the common good. The paper seeks to provide insights into the changing environment of constitutional interpretation and its implications for Indian politics and society through a comprehensive examination of jurisprudential trends. In conclusion, this study tries to contribute to a better understanding of the complex dynamics involved in judicial review under Articles 226 and 32 of the Indian Constitution. It seeks to enrich scholarly discourse on the judiciary's role in creating the contours of Indian democracy by combining historical, legal, and political viewpoints.

Key points: Article 226, Article 32, Separation of powers, Citizens' rights, Role of judiciary.

TABLE OF CONTENT

1. INTRODUCTION
2. WHY WOULD YOU ASK?
3. HISTORY OF JUDICIAL REVIEW
4. WHY JUDICIAL REVIEW IS IMPORTANT
5. SCOPE OF JUDICIAL REVIEW
6. IMPORTANCE OF JUDICIAL REVIEW
7. ELEMENTS OF JUDICIAL REVIEW
8. ARTICLE 32 OF INDIAN CONSTITUTION
9. ARTICLE 226 OF INDIAN CONSTITUTION
10. FUNCTIONS OF JUDICIAL REVIEW
11. GROUNDS OF JUDICIAL REVIEW
12. TYPES OF JUDICIAL REVIEW
13. PROCEDURE FOR JUDICIAL REVIEW IN INDIA
14. LIMITATIONS OF JUDICIAL REVIEW
15. WHAT IS THE CURRENT SCENARIO OF JUDICIAL REVIEW IN INDIA
16. CONCLUSION

INTRODUCTION:

The judiciary in India is critical to democracy because it not only prohibits government officials from abusing their authority, but it also protects citizens' rights and the Indian Constitution. As a result, the Indian Constitution envisions a strong, independent, and well-organized judiciary. Articles 32 and 226 give the Supreme Court and High Courts the jurisdiction to sue a government organization if a citizen's rights and freedoms are violated. Article 226 of the Indian Constitution grants the High Court broad powers to issue orders and writs to any person or authority. Before a writ or order can be issued, the party requesting the court must demonstrate that his right is being violated or jeopardized unjustly. If the cause of action arises in part within its jurisdiction, the High Court has the authority to issue writs and directives to any government, authority, or person, regardless of where they are located. When it comes to factual issues, the High Court rarely uses its Article 226 authority. Similarly, when the petitioner has an alternative remedy, the courts will not entertain an Article 226 case. Furthermore, if there is an unacceptable delay in notifying the court, the court may refuse to grant relief under this Article. The Supreme Court is granted similar powers under Article 32 of the Constitution. The underlying purpose for assigning Article 226 powers to the High Court is to ensure that the rule of law prevails in society. When executive authorities overstep their jurisdiction and violate citizens' rights, they must be held accountable, as Article 226 provides. The Supreme Court has similar powers under Article 32 of the Constitution. The underlying purpose for granting the High Court powers under Article 226 is to ensure that the rule of law prevails in society. When executive authorities exceed their jurisdiction and violate citizens' rights, they must be held accountable, as Article 226 ensures.

In India, there are three branches of government: the legislature, the executive, and the judiciary. The Legislature creates laws, the Executive executes/implements the laws, and the Judiciary monitors both of the above organs to ensure that the laws being created and executed do not violate the Indian Constitution. Our constitution includes a provision for Separation of Powers to ensure that these organs operate within their designated limitations. Article 50 of the Indian Constitution discusses the separation of powers.

This concept is not strictly maintained in the same way that it was accepted in the United States. The concept of judicial review was inherited from the American constitution. If the judiciary intervenes in India's Constitution, it has the authority to overturn any law approved by parliament. Any measure approved by the legislature that violates the Constitution may be declared null and void by the judiciary. According to Article 13(2) of the Indian Constitution, any law passed by the parliament that restricts the rights granted to the people under Part 3 of the constitution is void ab initio. The Judiciary has the power to fully interpret India's Constitution. It protects the Indian Constitution. Many provisions, including 13, 32, 131-136, 143, 226, 145, 246, 251, 254, and 372, grant judicial review authority.

Article 372(1) refers to judicial review of pre-constitutional laws in force prior to the start of the Indian Constitution.

Article 13(2) further states that any measure passed by the parliament after the constitution's inception will be ruled null and unconstitutional by the Court.

According to Articles 251 and 254, if there is a conflict between union and state law, the union law takes precedence and the state statute is declared void.

WHY WOULD YOU ASK ?

This is due to the concept of separation of powers. Separation of powers, often known as the system of checks and balances, is a constitutional idea that keeps the three departments of government, namely the executive, legislative, and judicial, separate. As a result, each branch has different powers and is typically not permitted to use the powers of the other branch. So, if the court cannot fill the void left by the government or legislative, it must not do so.

From the *L. Chandra Kumar vs. Union of India* (1997)¹ case to the *Indira Nehru Gandhi vs. Shri Raj Narain & Anr* (1975)² case, from the *Golaknath vs. State of Punjab* (1967) to the *Minerva Mills Ltd. vs. Union of India* (1980)³, the doctrine of judicial review has been an integral part of the Indian legal system, particularly in cases where the law-making authorities have acted contrary to the supreme. The Supreme Court's judgment allowing a floor test in the Maharashtra Assembly has brought judicial review to the forefront of public attention. In this case, the question of "whether the court can have the authority to review the decision of the Governor?" was raised, and senior advocate Dr. A.M. Singhvi contended that the court has the authority to exercise its judicial review power to determine the Governor's satisfaction while commanding a floor test. Another example of judicial review is the recent decision by the United States Supreme Court in *Dobbs v. Jackson Women's Health*⁴, which overturned *Roe v. Wade* (1973)⁵ regarding abortion legislation.

HISTORY OF JUDICIAL REVIEW:

The term "judicial review" first appeared before the court in the Dr. Bonham case. In this case, the Royal College of Physicians forbade Dr. Bonham from practicing in London because he lacked the necessary license. This case is also notable for violating the Principles of Natural Justice, as there is a monetary bias. Dr. Bonham's fine for not having a license would be split between the king and the college itself.

¹ <https://indiankanoon.org/doc/1152518/>

² <https://indiankanoon.org/doc/936707/>

³ <https://indiankanoon.org/doc/120358/>

⁴ <https://constitutioncenter.org/the-constitution/supreme-court-case-library/dobbs-v-jackson-womens-health-organization>

⁵ <https://www.history.com/topics/womens-history/roe-v-wade>

The term judicial review was later summarized in *Marbury v. Madison* (1803). In this example, President Adam's term as a federalist ended, and Jefferson, an anti-federalist, rose to power. On his final day, Adam selected members of the federal party as judges. However, when Jefferson came to power, he opposed this. So he prevented Madison, the Secretary of State, from submitting the appointment letter to the judges. Marbury, one of the judges, petitioned the Supreme Court for a writ of mandamus. The court refused to hear the plea and instead opposed the order of the legislature, i.e. Congress, and thus the US Supreme Court founded the idea of judicial review.

WHY JUDICIAL REVIEW IS IMPORTANT?

Judicial review is crucial for the reasons stated below:

- It prevents the tyranny of CEOs.
- It protects the fundamental rights of citizens.
- It is critical for maintaining the independence of the judiciary.
- It is absolutely necessary to safeguard the Constitution's supremacy.
- It also aids in detecting abuse of authority by the legislature and the executive.
- It helps to preserve the balance between the center and the states, resulting in a federal balance.

SCOPE OF JUDICIAL REVIEW :

Judicial review is not absolute, as particular scenarios must be met in order to demur against any statute before the Supreme Court or the high courts, i.e., a law can be challenged only if:

- The law breaches the fundamental rights guaranteed by the Constitution.
- The law violates the provisions specified in the Constitution.
- The passed law exceeds the capability or authority of the official(s) in charge.

IMPORTANCE OF JUDICIAL REVIEW:

Judicial review is necessary because it protects citizens' and residents' fundamental rights as outlined in Part III of the Indian Constitution, thereby preserving the Constitution's supremacy and preventing the legislature and executive from abusing their vested powers. Judicial review includes the judiciary's power to assess executive actions and legislative enactments. The significance of judicial review can be explained in the following ways:

- Judicial review serves to distribute authority between the Union and the states.
- It ensures that the court is independent since it operates independently, while also clearly defining the tasks of each branch of government.
- It preserves citizens' fundamental rights under the Indian Constitution.

ELEMENTS OF JUDICIAL REVIEW:

The Supreme Court and the high courts have the authority to exercise judicial review under Articles 32 and 226, respectively. While Article 32 stipulates that a person may seek the Supreme Court for any violation or infringement of his or her fundamental rights, Article 226 expressly states that a person may contact high courts on the same basis. Laws enacted by both the state and the center can be subject to judicial review.

ARTICLE 32 OF INDIAN CONSTITUTION:

Article 32 of the Indian Constitution offers individuals the right to constitutional remedy, which allows them to approach the Supreme Court of India for justice in circumstances when they have been denied their granted fundamental rights. The Supreme Court has the authority to issue orders that will help enforce and restore denied rights. Article 32 of the Indian Constitution is so acknowledged as the guardian and guarantor of fundamental rights.

It is important to remember that the Indian Constitution allows the courts to issue five different sorts of writs in response to a petition filed under Article 32. They are the writs of habeas corpus, mandamus, certiorari, quo warranto, and prohibition. Constitutional remedies offer citizens with effective means of regaining their infringed rights. It is important to emphasize that the Constitution vests writ jurisdiction with prerogative powers that, while discretionary, are boundless in their scope. Based on this, it is apparent that the constitutional structure does not allow for the existence of arbitrary powers. As a result, any conclusion the Apex Court makes in response to Article 32 must be supported by sound reasoning.

ARTICLE 226 OF INDIAN CONSTITUTION:

Article 226 differs from Article 32 in that it can address legal issues in addition to fundamental rights violations. Although the high courts' exercise of their constitutional jurisdiction under Article 226 is discretionary, it requires strong judicial reasoning. It is also important to note that when high courts exercise their authority under the aforementioned article, the court is required to consider the fact that the petitioner who contacted them had no other remedy to pursue than the one granted by Article 226.

While deciding the case of *LNJ Power Ventures Ltd. v. Rajasthan Electricity Regulatory Commission and Ors (2022)*⁶, the Rajasthan High Court correctly observed that the power of judicial review vested in high courts under Article 226 of the Indian Constitution is one of the fundamental features of such Constitution, and no legislation can override such vested jurisdiction from the high courts.

FUNCTIONS OF JUDICIAL REVIEW:

The primary aim of judicial review is to interpret laws enacted by the legislature. The judicial review guarantees that the laws passed do not violate any provisions of the Indian Constitution. It examines the law passed by the legislative and executive branches of government. Judicial review also provides justice to all people of a country, thereby serving as the Constitution's guardian.

GROUNDINGS OF JUDICIAL REVIEW:

The grounds for judicial review are:

- Jurisdictional Error - This occurs when a complaint is incorrectly addressed by the court. The court lacks authority to do so. This error can be corrected by issuing a "*Writ of Certiorari*"⁷.
- Irrationality is frequently referred to as "*Wednesbury unreasonableness*"⁸. In this case, no decision maker makes the same decision. They overlook important issues.
- Procedural Impropriety refers to a failure to follow established processes. It truly comprises of two areas: failure to follow the regulations and failing to adhere to the fundamental norm of fairness.

TYPES OF JUDICIAL REVIEW:

Judicial reviews are divided into three types:

- Legislative decision - Judicial investigation of legislative decisions means that any law issued by the government's legislative body must adhere to the provisions of the Constitution. It should not violate or disregard any sections of the Constitution.
- Administrative decision - Judicial review of administrative decisions means that the court can evaluate legislative and executive actions. If their activities are proven to be in contravention of any of the Constitution's provisions, they will be deemed void. As a result, their acts should be consistent with constitutional provisions.
- Judicial decision - Judicial review of judicial decisions means that higher courts review the subordinate courts' decisions without interfering with their operation. The Indian judiciary requires the same to function properly.

PROCEDURE FOR JUDICIAL REVIEW IN INDIA:

The word "*procedure established by law*"⁹, as contained in Article 21 of the Indian Constitution, governs the concept of judicial review. This principle states that the law established by the legislature is valid or has legal force only if the proper procedure is followed. The law must pass a constitutionality test before it can be considered enforceable.

LIMITATIONS OF JUDICIAL REVIEW:

Judicial review applies solely to higher courts such as the Supreme Court and high courts, not lesser courts. Judicial review cannot halt any political or policy discussions. Judicial review simply examines previously enacted legislation. It does not make or implement legislation; this authority is delegated to other branches of government. It also hinders the government's ability to function.

WHAT IS THE CURRENT SCENARIO OF JUDICIAL REVIEW IN INDIA:

The current sequence of cases before Indian courts, in which they are being urged to exercise the power of judicial review, has witnessed a trend in the courts to back away from the same, in order to avoid judicial invasion. The Himachal Pradesh High Court, in the case of *Santosh Nanta vs State of H.P. & Ors. (2023)*¹⁰, stated that judicial review, if used to overturn any decision made by expert domains of a selection committee for a reasoned selection process to be carried out, would be tantamount to treading on a thin sheet of ice, and thus judicial interference should be avoided.

Furthermore, in the case of *Nallacheruvu Obulesu v. State of Andhra Pradesh & ors (2023)*¹¹, the Andhra Pradesh High Court stated that courts' jurisdiction to undertake judicial review in disputes arising from tender invitation conditions is limited. This is because the tender's terms and

⁶ <https://indiankanoon.org/doc/163454223/>

⁷ <https://lawcorner.in/writ-of-mandamus-and-certiorari-under-constitution-of-india-explain/>

⁸ <https://legal-wires.com/lex-o-pedia/study-notes-what-is-wednesbury-principle/>

⁹ <https://blog.ipleaders.in/procedure-established-by-law/>

¹⁰ <https://indiankanoon.org/doc/83717159/?type=print>

¹¹ <https://indiankanoon.org/doc/117867767/>

conditions are directed by the government, which makes a deliberate and reasoned decision when prescribing them. The authority that calls for tender is deemed to be the appropriate judge in the matter, and the court's questioning of his decision is ipso facto unnecessary interference with his functioning. Thus, it is not up to the courts to decide whether the tender's conditions are good or harmful.

CONCLUSION:

The Indian Constitution provides senior courts with the most significant and powerful tool: judicial review. It monitors the other branches of government to ensure that they run smoothly and without undue influence. Thus, judicial review has been a requirement since time immemorial and is considered to be the fundamental structure of the Indian Constitution. The provisions of Articles 226 and 32 of the Indian Constitution give the judiciary extensive judicial review powers, allowing them to enforce constitutional principles and protect fundamental rights. The judiciary uses these provisions to interpret the Constitution and ensure its correct execution. Article 226 authorizes High Courts to issue writs for the enforcement of fundamental rights and for any other purpose, but Article 32 allows the right to petition the Supreme Court directly for the enforcement of basic rights. These laws provide critical avenues for citizens to seek justice and hold the state accountable for any infringement of constitutional rights. The judiciary's role in constitutional interpretation under Articles 226 and 32 is critical to maintaining the supremacy of the Constitution and supporting the rule of law in India. It checks the operations of the executive and legislative branches, ensuring that they follow the constitutional framework. Overall, Articles 226 and 32 allow the court to preserve individual rights and safeguard the Constitution, reinforcing the democratic ideals that underpin the Indian Republic.

REFERENCE:

- <https://blog.ipleaders.in/all-about-judicial-review/>
1. <https://blog.ipleaders.in/judicial-review-under-the-indian-constitution/>
 2. <https://indiankanoon.org/doc/117867767/>
 3. <https://indiankanoon.org/doc/83717159/?type=print>
 4. <https://blog.ipleaders.in/procedure-established-by-law/>
 5. <https://lawcorner.in/writ-of-mandamus-and-certiorari-under-constitution-of-india-explain/>
 6. <https://legal-wires.com/lex-o-pedia/study-notes-what-is-wednesbury-principle/>
 7. <https://indiankanoon.org/doc/1152518>
 8. <https://constitutioncenter.org/the-constitution/supreme-court-case-library/dobbs-v-jackson-womens-health-organization>
 9. <https://www.history.com/topics/womens-history/roe-v-wade>