



“Evolution and Concept of Judicial Review in India”

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ABSTRACT :

In democratic countries, the judiciary is given a place of great significance. Primarily, the courts constitute a dispute-resolving mechanism. The primary function of the courts is to settle disputes and dispense justice between one citizen and another. But courts also resolve disputes between the citizen and the state and the various organs of the state itself. Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if the Court arrives at the conclusion that the law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable

Keywords- Evolution & Concept of Judicial Review in India, History, Limitations, Process.

Introduction-

Unlike the U.S.A., the Constitution of India explicitly establishes the doctrine of judicial review in several Articles, such as, 13, 32, 131-136, 143 226 and 246. The doctrine of judicial review is thus firmly rooted in India, and has the explicit sanction of the Constitution. Underlining this aspect of the matter, the Supreme Court stated in *Madras V. Row* that the Constitution contains express provisions for judicial review of legislation as to its conformity with the Constitution and that the courts "face up to such important and none too easy task" not out of any desire "to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the constitution's As the Supreme Court emphasized in *Gopalan*: "In India it is the Constitution that is supreme" and that la statute law to be valid, must in all cases be in conformity with the Constitutional requirements and it is for the judiciary to decide whether any is constitutional or not" and if a legislature transgresses any enactment is constitutional court has to declare the law unconstitutional" for the court is bound by its oath to uphold the constitution." Therefore, the courts in India cannot be accused of usurping the function of constitutional adjudication; it is a function which has been imposed on them by the Constitution, It is a delicate task; the courts may even find it embarrassing at times to discharge it, but they cannot shirk their constitutional responsibility. The scope of judicial review in India is somewhat circumscribed as compared to that in the U.S.A. In India, the fundamental rights are not so broadly worded as in the U.S.A., and limitations thereon have been stated in the constitution itself and this task has not been left to the courts. Judicial review in India is a process by which the Supreme Court and the High Courts of India examine, determine and invalidate the Executive or Legislative actions inconsistent with the Constitution of India. The word judicial review finds no mention in the Constitution of India but The Constitution of India implicitly provides for judicial review through Articles 13, 32 and through 136, 142 and 226. Judicial review is one of the checks and balances in the separation of powers, the power of the judiciary to supervise the legislative and executive branches and ensure constitutional supremacy. The Supreme Court and the High Courts have the power to invalidate any law, ordinance, order, bye-law, rule, regulation, notification, custom or usage that has the force of law and is incompatible with the terms of the Constitution of India. Since *Kesavananda Bharati v. State of Kerala* (1970), the courts can invalidate any constitutional amendments if they infringe on the Basic Structure of the Constitution of India. Frequently, judicial review is used to protect and enforce the Fundamental Rights guaranteed in the Constitution. To a lesser extent, judicial review is used in matters concerning legislative competence concerning the center-state relations. Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if the Court arrives at the conclusion that the law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable. The doctrine of judicial review confers power on the courts to review and determine the validity and legitimacy of any action taken by the legislature, executive or judiciary. It is pertinent to note that arbitrary acts of any government or authority are not permissible in a democratic state under the rule of law. There exists no unfettered discretion or unaccountable action where the rule of law prevails. The judicial process is the heart and soul of a democracy that calls for the independence of judiciary free from any executive control. The amending power of the Constitution is vested in the Legislature. Different countries hold varying views with respect to judicial review of constitutional amendments. Some countries argue that being political in nature, it is outside the purview of judicial decisions. Whereas, others argue that even though it is a political question, it is the duty of the judiciary to exercise its constitutional responsibility.¹

EVOLUTION AND ORIGIN OF JUDICIAL REVIEW IN INDIA -

Indian Constitution has, since its inception, conferred judicial review power on the Apex Court as well as the High Courts. The Apex Court has time and again asserted that courts have the power to review constitutional amendments, which is opposed to the practice in the United States. Apex Court noted in *N.B. Khare v. State of Delhi* that the issue to be decided was whether or not the limitations imposed by the impugned legislation on the

¹ Indian Constitutional Law by M.P.Jain

exercise of the rights were reasonable or not and held that it had the right to evaluate the same. Till the current day, a few protected changes have been tested on meaningful grounds in India. The first Established Revision was challenged in Shankari Prasad case. The Applicant contended that even without any an express bar, protected alterations can't change the principal freedoms. The Hon'ble High Court controlled that, in the Constitution there was no such limitation. The Pinnacle Court made it clear in Golak Nath case, that sacred changes can be checked on as well as invalidated for unlawfulness. The Peak Court saw that a protected correction is a regulation according to Article 13 and consequently, the Court has the ability to practice legal survey. Further, it was decided that the Parliament doesn't have the power to change Part III of the Constitution in any capacity that would restrict or remove the crucial freedoms ensured in that. The choice delivered in Sankari Prasad case was toppled by the Court for the explanation that major privileges can't be adjusted by changing the Constitution, yet, curiously, it didn't strike down the first, fourth and seventeenth Protected Revision regardless of seeing that they shortened the extent of the key freedoms. After the Golaknath case, the public authority fervently responded and passed the 24th Protected Revision, which supplanted the judgment delivered in the said case and expanded the Parliament's changing power. In Kesavananda Bharati the previously mentioned Change Act alongside two others were tested. The fundamental design precept was propounded by the Pinnacle Court for this situation. Thus, there was an expansion in the Court's capacity for legal review. The Summit Court believed that one of the components on which our Constitution's arrangement of balanced governance is based is legal audit, which is explicitly given in Article 32 and Article 226 of the Indian Constitution. Consequently, protected understanding is an element of the legal executive. Since the Kesavananda Bharati case, it is an acknowledged principle that protected corrections are judicially reviewable on both meaningful and procedural grounds. Be that as it may, in 1976, the Parliament passed the 42nd Amendment for diminishing the force of the Pinnacle Court to audit protected changes. In *Minerva Mills* the conditions of the 42nd Amendment was cut since they were unintelligible with the Constitution's fundamental design. It was held that a fundamental principle of our sacred system is that each organ gets its power from the actual Constitution. Accordingly, it is basic that it capabilities inside the constraints of such power. The Legal executive has the force of legal survey to decide the legitimacy of any regulative or leader go about according to Articles 32 and 226 of the Constitution. The seeds of this regulation were planted by the normal regulation hypothesis propounded in *Dr. Bonham's case* in Britain while pronouncing a Demonstration of the Parliament, which had placed its seal on the Sanction of the Regal School of Physical science, as void. He stated that When a Demonstration of Parliament is against customary regulation right and reason, or disgusting, or difficult to be played out, the precedent-based regulation will control it and declare such Demonstration to be void, however the hypothetical underpinning of the course of legal audit, that. In the event of a contention between the Constitution and a regulative resolution, the Court will follow the previous, which is prevalent of the two regulations, and proclaim the last option to be illegal, was set somewhere near the judgment of Boss Equity Marshall of the US High Court in 1803, in *Marbury v. Madison*.²

HISTORY OF JUDICIAL REVIEW IN INDIA -

The idea of legal survey began in the US, where the High Court laid out its position to strike down regulations that were disregarding the US Constitution. In India, the idea of legal survey was acquired from the US Constitution, however fitting the Indian context was adjusted. US Constitution is one of the Wellsprings of Indian Constitution. The beginning of legal survey in India can be followed back to the impact of the U.S. Constitution. Be that as it may, India has adjusted this idea to accommodate its special protected and cultural texture. This verifiable excursion mirrors India's obligation to a dynamic and developing legal framework, fit for tending to the intricacies of a different and crowded majority rule government.

The force of legal survey was first settled by the High Court on account of *Shankari Prasad v. Association of India* (1951), where it was held that the Constitution accommodated no impediment on the correcting force of the Parliament. Be that as it may, on account of *Kesavananda Bharati v. Territory of Kerala* (1973), the High Court held that there were restrictions on the changing force of the Parliament, and that the essential design of the Constitution couldn't be adjusted. Article 13 arrangements with the Regulations conflicting with the Central Privileges. The Constituent Get together discussed the Draft Article on the 25th, 26 and 29 November 1948 and embraced the corrected Draft Article on 29 November 1948. The chief and administrative bodies can't make any moves that encroach on the Privileges gave by Section 3 of the Constitution. assuming they do, the Courts can void piece of the regulative or chief activity that encroaches on the Freedoms.³

Constituent Assembly

Article 32

Article 32 ensures the option to move toward the High Court for Established Cures when their Principal Freedoms are disregarded. The Constituent Get together discussed and taken on the Draft Article for certain changes on 9 December 1948. The Constituent Gathering was consistent about the significance of the Article. Gammīdāla Durgabai, the main lady in the Board on the Principles of Methodology, said This is a right which is key to every one of the principal freedoms ensured under this Constitution. Madabhushi Ananthasayanam Ayyangar, Individual from the Warning Board on Principal Freedoms, Minorities and Ancestral and Barred Regions, said. The High Court as per me is the Preeminent watchman of the resident's privileges in any majority rules government. I would try and go further and say that it is the spirit of a vote-based system. The leader which appears for now is well-suited to mishandle its powers, and in this manner the High Court should be, areas of strength for their un-hampered constantly to day interests. B. R. Ambedkar, Executive of the Drafting Board of trustees, taking note of most of the people who talked on this article have understood the significance and importance, said, In the event that I was approached to name a specific article in this Constitution as the most significant - an article without which this Constitution would be a nullity — I was unable to allude to some other article with the exception of this one. It is the actual soul of

²<https://www.mondaq.com/india/constitutional--administrative-law/1362048/evolution-of-judicial-review-in-india-and-the-usa>

³<https://www.centurylawfirm.in/blog/judicial-review-in-india/#:~:text=Q%3A%20How%20did%20judicial%20review,defined%20in%20Kesavananda%20Bharati%20v>

the Constitution and its actual heart and I'm happy that the House has understood its significance. While the individuals have perceived the significance of Sacred Cures, B. R. Ambedkar noticed that in spite of the conversations on writs, individuals have not understood the significance of remembering the writs for this Article. After the reception of the Constitution, a straightforward greater part wouldn't have the option to remove the ability to give writs.⁴

Article 141

Article 141 expressed that the choices of the High Court were restricting on any remaining courts in India. The Constituent Get together discussed and taken on the Draft Article on 27 May 1949. During the discussion, B. R. Ambedkar explained that however the Article peruses all courts in India, it does exclude the High Court. The High Court would be allowed to adjust its perspective and take an alternate view from the one it had taken previously. Following the explanation, the Draft Article was embraced with practically no change.⁵

Article 142

Article 142 expressed that any pronouncement or request passed by the High Court to do finish equity was an enforceable all through the area of India. The Constituent Get together taken on the Draft Article on 27 May 1949.⁶

CONCEPT OF JUDICIAL REVIEW IN INDIA-

The concept of judicial review has been borrowed from the constitution of the USA. In the Indian Constitution, the power of judicial review with regards to the Supreme Court is stated in Articles 32 and 136 and in Article 226 and 227 with respect to High Court. According to the judicial review the court has the power to review the rules and laws, determine their constitutional validity and also invalidate them in case they violate the constitution. The idea of Legal survey can be perceived by examining the different general sets of laws of various nations, as for example in the Unified Realm which is a custom-based regulation country, there is Parliamentary Matchless quality, consequently Legal Audit of Authoritative Demonstrations isn't allowed. While in the US of America Protected Matchless quality wins and the equivalent goes with India, where the Teaching of Partition of Abilities has been held as the Fundamental Design of Constitution and Sacred Matchless quality laid out, which allows the survey of the administrative demonstrations.⁷

SCOPE OF JUDICIAL REVIEW IN INDIA-

The extent of legal audit in India is very expansive, and it covers the regulations passed by the governing body as well as the activities of the leader. The courts have the ability to strike down any regulation that is infringing upon the Constitution, and they can likewise give writs like Habeas Corpus, Mandamus, Denial, Certiorari, and Quo Warranto to safeguard the major freedoms of the residents.

The Constitution accommodates five kinds of writs, which are:

- Habeas Corpus - a writ that is given to deliver an individual who has been confined unlawfully.
- Mandamus - a writ that is given to force a public authority to play out an obligation that they are expected to perform by regulation.
- Preclusion - a writ that is given to forestall a lower court or council from surpassing its purview.
- Certiorari - a writ that is given to suppress the request for a lower court or council.
- Quo Warranto - a writ that is given to ask into the lawfulness of an individual serving in a position of authority.⁸

LIMITATIONS OF JUDICIAL REVIEW IN INDIA-

While the extent of legal audit in India is very expansive, there are sure limits to this power. The Constitution accommodates specific insusceptibilities and honors for the President, Lead representatives, and Judges of the High Court and High Courts. The courts can't ask into the demonstrations of these people except if they have acted in their own ability. Moreover, the courts can't obstruct the approach choices of the chief except if they are disregarding the Constitution. The courts likewise can't scrutinize the insight or rightness of a strategy choice taken by the leader, for however long it is inside the system of the Constitution.⁹

⁴ https://en.wikipedia.org/wiki/Judicial_review_in_India#History

⁵ https://en.wikipedia.org/wiki/Judicial_review_in_India#History

⁶ https://en.wikipedia.org/wiki/Judicial_review_in_India#History

⁷ <https://www.legalserviceindia.com/legal/article-7332-a-comparative-study-on-judicial-review-in-india-and-usa.html>

⁹ <https://www.centurylawfirm.in/blog/judicial-review-in-india/#:~:text=Q%3A%20How%20did%20judicial%20review,defined%20in%20Kesavananda%20Bharati%20v>

PROCESS-

Started by an oppressed party's request, the legal survey process in India envelops starter examination, complete hearings, and a last judgment. This thorough method mirrors the legal executive's obligation to protecting established administration and residents' freedoms. The course of legal audit in India includes the accompanying advances:

- **Inception:** The course of legal survey is started when an individual or a gathering of people distressed by a regulation or chief activity records a request under the watchful eye of a courtroom.
- **Primer Investigation:** The court analyzes the request to decide if it is permissible or not. The court might dismiss the request at this stage on the off chance that it finds that the candidate doesn't have the essential remaining to challenge the law or chief activity being referred to.
- **Hearings:** Assuming the court observes that the appeal is acceptable, it will direct hearings to inspect the benefits of the case. During the hearings, the solicitor communicates contentions to help their perspective, and the public authority or the office liable for the law or leader activity protects it.
- **Judgment:** Subsequent to hearing the contentions, the court will convey its judgment. Assuming the court observes that the law or chief activity is illegal or past the powers allowed by the Constitution, it will strike it down. Assuming the court observes that the law or leader activity is protected and inside the powers conceded by the Constitution, it will maintain it.
- **Execution:** When the court has conveyed its judgment, the public authority or the office answerable for the law or chief activity is expected to conform to it. In the event that the court has struck down a regulation or chief activity, the public authority might be expected to change or cancelation the law, or to find alternate ways to guarantee consistence with the court's judgment.

It is essential to take note of that the course of legal survey in India can be a tedious and costly cycle. In any case, a vital component¹⁰ guarantees that the public authority capabilities inside the cutoff points set by the Constitution and regards the crucial privileges of residents.

SIGNIFICANCE OF JUDICIAL REVIEW-

- It ensures the Protection of Fundamental Rights Guaranteed by the Constitution,
- It maintains the supremacy of the Constitution,
- It also regulates the Center-State matters and their relations by Art. 246 of the constitution, by providing the 3 constitutional lists.
- It safeguards the Independence of Judiciary,
- It guarantees Impartiality and Fairness in the actions of the Legislature and Executive,
- It protects the basic structure of the constitution as well.¹¹

CRITICISM OF JUDICIAL REVIEW -

While legal survey is a fundamental part of the Indian Constitution, it has likewise been dependent upon analysis from different quarters. A portion of the normal reactions of legal survey in India are:

Empowers strike down regulations instituted by the chosen agents of individuals. Pundits contend that these sabotages the vote-based cycle and prompts what is happening where a little gathering of judges can reject the choices of the chosen delegates.

Legal Excess: One more analysis of legal audit is that it can prompt legal impropriety, where the legal executive beginnings infringing upon the area of the authoritative and leader parts of the public authority. **Pundits** contend that this can prompt an unevenness in the partition of abilities and lead to a circumstance where the legal executive turns out to be excessively strong.

Postponement and Cost: Pundits likewise contend that the course of legal audit can be tedious and costly, which can bring about deferred equity for the residents. This can be especially tricky in situations where the public authority is attempting to execute pressing approach measures.

Absence of Responsibility: Pundits contend that the legal executive isn't responsible to individuals similarly as the chosen agents of individuals. They contend that since the adjudicators are designated through a collegium framework, they are not responsible to the residents, and their choices won't be quickly tested.

Restricted Aptitude: Pundits contend that judges might not have the vital ability to pursue choices in specific complex strategy regions, like financial matters or science. This can result in less-than-ideal arrangement results and can restrict the public authority's capacity to carry out powerful approaches.¹²

LANDMARK CASES OF JUDICIAL REVIEW IN INDIA

Indian judicial history is replete with landmark cases where judicial review has played a pivotal role. From the assertion of the Parliament's amendment power in 'Shankari Prasad v. Union of India' to the seminal 'Kesavananda Bharati v. State of Kerala' case, which established

<https://www.centurylawfirm.in/blog/judicial-review-in-india/#:~:text=Q%3A%20How%20did%20judicial%20review,defined%20in%20Kesavananda%20Bharati%20v>

¹¹<https://www.legalserviceindia.com/legal/article-9158-judicial-review-in-india.html>

<https://www.centurylawfirm.in/blog/judicial-review-in-india/#:~:text=Q%3A%20How%20did%20judicial%20review,defined%20in%20Kesavananda%20Bharati%20v>

the 'Basic Structure' doctrine, these cases exemplify judicial review's transformative impact. Over the years, there have been several landmark cases where the Indian judiciary has exercised its power of judicial review to strike down laws that were in violation of the Constitution. Some of these cases are:

- **Golaknath v. State of Punjab (1967):** 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.
- **Kesavananda Bharati v. State of Kerala (1973):** 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.
- **Maneka Gandhi v. Union of India (1978):** 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.¹³

CONCLUSION-

All in all, legal survey is a fundamental element of the Indian Constitution that guarantees that the regulations passed by the lawmaking body and the activities of the leader are in accordance with the Constitution. The courts have the ability to strike down any regulation that is infringing upon the Constitution, and they can likewise give writs to safeguard the crucial privileges of the residents. While the extent of legal survey is very wide, there are sure limits to this power, which are important to keep a harmony between the three organs of the state - the lawmaking body, the leader, and the legal executive. Legal survey is an essential part of the Indian Constitution that permits the legal executive to go about as a mind the regulative and chief part of the public authority. It guarantees that the public authority capabilities inside the cutoff points set by the Constitution and that the freedoms of the residents are secured. While the extent of legal survey is very wide, there are sure impediments to this power, which are important to keep a harmony between the three organs of the state - the governing body, the leader, and the legal executive. Legal survey plays had a critical impact in forming the Indian overall set of laws and safeguarding the freedoms of its residents.

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¹³Ibid