

ILE JUDICIAL AND LEGAL REVIEW



VOLUME 1 AND ISSUE 1 OF 2023
INSTITUTE OF LEGAL EDUCATION



ILE Judicial and Legal Review

(Free Publication and Open Access Journal)

Journal's Home Page – <https://jlr.iledu.in/>

Journal's Editorial Page – <https://jlr.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://jlr.iledu.in/category/volume-1-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://jlr.iledu.in/terms-and-condition/>

Judicial Review: An Overview of the Power and Limitations of the Courts

Author - Illamathi maran .P, Student at UPES , Dehradun

Best Citation - Illamathi maran .P, Judicial Review: An Overview of the Power and Limitations of the Courts, *ILE JUDICIAL AND LEGAL REVIEW*, 1 (1) of 2023, Pg. 06-08, ISBN - 978-81-961120-0-4.

Abstract

Judicial review is a fundamental aspect of the legal system in many countries around the world. It is the power of the courts to review the actions of the government and other bodies to ensure that they are lawful, and that they comply with the constitution or other applicable laws. In this article, we will provide an overview of what judicial review is, how it works, and the limitations of this power.

The constitution is the highest law of India, where the rule of law prevails. The Indian constitution is the supreme law of the land, and the Indian court has the authority to overturn any laws that are passed that go against its fundamental principles. Although the Indian Constitution does not use the term "judicial review," many of its sections do provide a clear understanding of it.¹²

The judiciary in India has the authority to review the decisions made by the legislative, executive, and administrative branches of the government and to ensure that they are in accordance with our constitution. The following clause shall be void if judged to be unlawful.

Judicial review has two crucial purposes:

- (1) Defending the constitution from attempts by the government to infringe upon it, and
- (2) Legitimising the activities of the government

What is Judicial Review

At its core, judicial review is the power of the courts to review the actions of the government and other bodies to ensure that they are lawful. This power is typically granted to the courts by the constitution or other applicable laws, and it allows the courts to strike down any actions that are found to be unconstitutional or unlawful.

Judicial review is an important aspect of the separation of powers, which is a principle that divides the powers of government between different branches to prevent any one branch from becoming too powerful. The court found that William Marbury's appointment as a district court justice by the outgoing president, as opposed to the newly elected president at the time and his secretary of state, John Madison, was improper in this case. The secretary of state was thus the target of a writ of mandamus that he filed. The Supreme Court was given jurisdiction by the Judicial Act of 1789, but the Marshall court declared that the legislation was an unconstitutional expansion of the judiciary. By allowing the courts to review the actions of the other branches of government, judicial review helps to ensure that each branch operates within the bounds of the law and the constitution.

How Does Judicial Review Work

In most countries that have judicial review, the power is vested in the highest court in the land. In the United States, for example, the power of judicial review is held by the Supreme Court. In other countries, such as the United Kingdom,¹³ the power is held by the highest court in the jurisdiction, which is the Supreme Court for

¹² This is taken in reference with the pdf referred on 11th of march , 2023
<https://www.drishtiias.com/pdf/1609942562-judicial-review-1.pdf>

¹³ This is made under the landmark judgment *Marbury vs Madison*, under the website <https://www.britannica.com/event/Marbury-v-Madison>

England and Wales, the Court of Session in Scotland, and the Court of Appeal in Northern Ireland.

When a case is brought before the court for judicial review, the court will examine the actions of the government or other body in question to determine whether they are lawful. This can involve examining the constitution or other applicable laws, as well as any relevant precedent or case law. If the court finds that the actions in question are unconstitutional or unlawful, it can strike them down and declare them void. Provision in the judicial review in India;

- **According to Article 13**, any law that violates one or more of the articles of the fundamental rights is invalid.
- A person has the right to appeal to the Supreme Court to have their fundamental rights upheld under **Article 32**, which guarantees the right to constitutional remedies.
- According to **Article 226**, the Supreme Court has the authority to issue directives, orders, or writs of quo warranto, certiorari, mandamus, and habeas corpus. These directives, orders, or writs may be issued for any reason, including the defence of basic rights.
- The highest court is granted advisory authority by **Article 143**. If the president believes it would be beneficial to get the supreme court's view on a legal issue or a matter of national concern, he may do so.
- According to **Article 372(1)**, all of the laws that were in effect on Indian territory as of the day the constitution took effect must remain in effect therein until revised, repealed, or amended by a competent legislative or an authority.
- **Articles 131 to 136** give courts the authority to decide conflicts between people, between people and the state, and between states and the union. However, courts may be asked to interpret the constitution's provisions, and the Supreme Court's interpretation

becomes the law.

- **According to Article 245**, the constitutional provisions must be followed by both the national and state legislatures. On that specific topic or if the law violates any fundamental rights, any legislation's legality may be contested in court.
- According to **Article 246(3)**, the Indian Constitution's provisions apply to both the powers of the national legislature and the state legislatures.

Limitations of Judicial Review

While judicial review is a powerful tool for ensuring that the government and other bodies operate within the bounds of the law, it is not without its limitations. One of the primary limitations of judicial review is that it can only be used to review the actions of the government and other bodies. It cannot be used to review the policies or decisions of these bodies, as long as they are within the bounds of the law.

Another limitation of judicial review is that it can be **difficult to enforce the decisions of the court**. While the court can strike down actions that are found to be unlawful, it cannot force the government or other bodies to take any specific action. This means that even if the court finds that a particular action is unconstitutional, the government or other body may still be able to continue the action in question.

Finally, judicial review can be limited by the political and social climate of the country. In some countries, the courts may be subject to political pressure, which can limit their ability to effectively exercise judicial review. Additionally, the courts may be limited by the attitudes and beliefs of the society in which they operate, which can make it difficult for them to strike down actions that are widely supported by the public.



Conclusion

Judicial review is a powerful tool that helps to ensure that the government and other bodies operate within the bounds of the law and the constitution. It is a key aspect of the separation of powers, and it helps to prevent any one branch of government from becoming too powerful. While there are limitations to the power of judicial review, it remains an essential component of the legal system in many countries around the world.