

5. *Explain the significance and analyze the scope of judicial review in India.*

Approach:

- Explain the concept of judicial review in the introduction.
- Bring out the significance of judicial review in India.
- Analyse the scope of judicial review in India.

Answer:

Judicial Review is the power of the Supreme Court and High Courts to examine the constitutionality of a law or executive orders of both the Centre and State governments. 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. Though the term 'Judicial Review' is nowhere mentioned in the constitution, the principle of judicial review is encompassed in Article 13. The Article provides that the law to be made should be in consonance with the norms laid down in the Constitution of India.

Significance of Judicial Review in India:

- **Upholds the supremacy of the Constitution:** In India, it is the Constitution that is supreme. The law to be valid, must be in conformity with the Constitutional provisions. Thus, judicial review controls arbitrary or unjust acts taken on behalf of the Executive and the Legislature.
- **Protects the Fundamental Rights of the citizens:** The power of judicial review guarantees that the rights accorded by the Constitution are not contravened.
- **Maintains federal equilibrium:** The power of judicial review allows the Judiciary to invalidate a law if it is inconsistent with the distribution of powers laid down by the Constitution.
- **Provides checks and balance:** Judicial review is a tool to keep a check on the public bodies and render their accountability if their decisions go beyond their Constitutional authority.
- **Upholds Rule of Law:** Judicial review upholds the rule of law. It ensures that the administrative decisions are taken rationally, in accordance with a fair procedure and within the powers conferred by the Parliament.

Scope of Judicial Review in India:

The Constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court or the High Courts on the following grounds:

- If it infringes the Fundamental Rights of citizens.
- If it is outside the competence of the authority which has framed it.
- If it is repugnant to the provisions of the Constitution.

The Indian Constitution provides for the 'procedure established by law' and not 'due process of law' as in the USA. Under the '**procedure established by law**', the Supreme Court, while determining the constitutionality of a law, examines only whether the law has been validly enacted. It is not expected to go into its **reasonability, suitability on policy implications etc.** as followed under 'due process of law'.

However, the scope of judicial review was expanded in the Maneka Gandhi case (1978), where the Supreme Court observed that 'procedure established by law' does not mean any arbitrary procedure laid down by the Parliament, but must be interpreted in the lines of the 'due process'.

In this context, it can be said that India has attempted to strike a balance between judicial and Parliamentary supremacy.

6. *What are the foundational principles on which our Constitution is based? Why do you think it was important to codify them in form of a written document?*

Approach:

- Briefly define the Constitution and mention the foundational principles of the Indian constitution.
- Analyse the reasons that necessitated the codification of the Constitution in the form of a written document.