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Doctrine of Judicial Review and Its Applicability in Modern India

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ABSTRACT

Judicial Review in India is a fundamental principle that allows the judiciary to review the legislative and executive functions and ensures the executive and legislative actions align with the Constitution of India. This principle enables the judiciary to uphold citizens' fundamental rights and prevents arbitrary actions by the legislative and executive bodies. Judicial review also prevents any laws passed by the legislature that are not aligned with the Constitution or that violate individual rights. Judicial review has evolved in India through various landmark judgments, including the Keshavananda Bharathi case. This article outlines the evolution of judicial review in India and its application in various landmark judgments. The study highlights significant judgments that shaped the doctrine and address contemporary challenges and criticisms, focusing on its relevance in maintaining a balance of power within India's democratic framework. It also explores the role of judicial review in contemporary times.

KEYWORDS

Judicial Review, Fundamental Rights, Keshavananda Bharathi Case, Balance of Power, Constitutional Supremacy.

INTRODUCTION

In the absence of judicial review, the rule of law is at constant risk due to the unchecked exercise of power by government authorities. For instance, Part III of the Indian Constitution guarantees fundamental rights, including equality, freedom, and liberty. However, without Articles 32 and 226, these rights would merely exist on paper, with no effective means of enforcement. If

the legislature or executive were to infringe upon these rights, there would be no legal remedy without the provisions of Articles 32 and 226¹. Even if the Constitution stands as the supreme law of the land, establishing the principle of governance by law rather than by individual will, the absence of an independent judiciary with the power of judicial review would leave the government's arbitrary actions unchecked. Judicial review ensures that the judiciary can assess the legality of government actions based on constitutional principles, declaring them unconstitutional or void if necessary.

The American Constitution inspires judicial review in India. Although the U.S. Constitution does not explicitly grant the power of judicial review, it is implied in Articles III and VI. Specifically, Article VI, Section 2, often referred to as the Supremacy Clause, asserts that the U.S. Constitution, along with laws and treaties made under its authority, constitutes the supreme law of the land². Without judicial review, the unchecked power of government organs would frequently breach the rule of law. Similarly, without the enforcement mechanisms provided by Articles 32 and 226 of the Indian Constitution, fundamental rights would be reduced to mere declarations, with no means of legal redress³. Judicial review is vital for ensuring that government functions adhere to constitutional principles and for preventing violations of the Constitution through arbitrary actions.

LITERATURE REVIEW

- ***Devansh Tyagi, Judicial Review Cases in India, 6 Int'l J.L. Mgmt. & Human. 247 (2023)***

Tyagi examines several key cases that have influenced the implementation of judicial review in India. His analysis highlights the judiciary's function in monitoring the actions of the legislative and executive branches, reinforcing its vital role in protecting fundamental rights and upholding constitutional authority.

- ***Rahul Shamota, Judicial Review in India and Constitution, 5 INT'l J.L. MGMT. & HUMAN. 1082 (2022)***

Shamota investigates the conceptual underpinnings and practical effects of judicial review within India's constitutional context. His research offers a critical view of the tension

¹ Rahul Shamota, *Judicial Review in India and Constitution*, 5 INT'l J.L. MGMT. & HUMAN. 1082 (2022).

² id

³ id

between judicial activism and restraint, addressing current discussions regarding the judiciary's responsibilities in law interpretation and safeguarding individual rights.

- **Khadija Khan, *Judicial Review and Constitutional Supremacy in India*, 6 *Indian J.L. & Legal Rsch.* 1168 (2024)**

Khan's study explores the link between judicial review and the supremacy of the Constitution, advocating for its essential role in enforcing the rule of law. She highlights contemporary challenges that the judiciary faces, including political influences and their consequences for democratic governance.

- ***Instruments of Judicial Control: Judicial Review & Judicial Activism and Need for Judicial Restraint in India,* 6 *Soc. Sci. & Human. J.* 2720 (2022)**

Judicial Review & Judicial Activism and Need for Judicial Restraint in India": This article examines the dual nature of judicial review—both activism and restraint—and underscores the necessity of striking a balance between the two. It stresses the importance of judicial oversight as a means to prevent arbitrary government actions, emphasizing the judiciary's responsibility to ensure accountability and transparency in governance.

- ***Shrishti Dutta & Devika Kishore, Political and Executive Dominance on Judicial Review: The Current Conflicts in India,* 4 *INT'l J.L. MGMT. & HUMAN.* 4058 (2021)**

This article explores the rising influence of political and executive forces on the judiciary, specifically in the context of judicial review. It highlights the conflicts between judicial independence and the increasing dominance of the political and executive branches, which have led to concerns about the impartiality and effectiveness of judicial review in safeguarding constitutional rights. The article's relevance to the doctrine of judicial review in modern India lies in its examination of how external pressures threaten the judiciary's ability to check other branches of government.

STATEMENT OF PROBLEM

Judicial review, the power of courts to assess laws and government actions for constitutionality, is a vital part of democracy. However, its application in modern India faces challenges. Courts might overstep their boundaries, interfering

with legislative and executive functions. This can cause political tension and weaken democratic processes. Also, inconsistent decisions and arbitrary actions can arise due to unclear guidelines for judicial review. The slow pace of judicial proceedings and a large number of unresolved cases can hinder the effective implementation of judicial review. Despite these issues, judicial review is crucial for preventing arbitrary government actions and upholding constitutional principles in India. It's important to balance judicial activism with restraint, ensuring that the judiciary operates within the constitutional framework and respects the democratic principle of separation of powers.

RESEARCH QUESTIONS

1. How has the doctrine of judicial review progressed in India since independence, and what elements have played a significant role in its evolution?
2. What influence does public sentiment have on the judiciary's handling of judicial review, and how does this relate to the notion of constitutional morality?
3. In what manner does judicial review act as a protector of fundamental rights in India, and what obstacles does it encounter in fulfilling this role effectively?

RESEARCH OBJECTIVES

The objectives of researching judicial review and its relevance in modern India are centered on examining its function as a constitutional safeguard and how it has progressed over the years. The key aim is to evaluate how effectively the judiciary protects fundamental rights through judicial review, particularly when addressing actions by the legislature and executive. Moreover, the study seeks to identify challenges such as judicial overreach, activism, and the influence of politics on the judiciary. Another objective is to assess the balance between judicial restraint and activism while exploring how judicial review maintains the separation of powers and ensures constitutional integrity.

RESEARCH METHODOLOGY:

The research methodology for exploring the doctrine of judicial review and its applicability in modern India adopts a qualitative framework, employing both doctrinal and non-doctrinal research techniques. This involves conducting a thorough literature review of primary sources, including the Indian Constitution and pivotal Supreme Court judgments, such as *Keshavananda Bharati v. State of Kerala*. Additionally, secondary sources—comprising academic articles, books, and legal commentaries—will offer

critical insights into contemporary challenges and debates surrounding judicial activism and restraint. This holistic approach aims to assess the efficacy of judicial review in maintaining constitutional principles and safeguarding fundamental rights within India's current legal context. Through this comprehensive analysis, the research seeks to contribute to the ongoing discourse on the role of the judiciary in a democratic society.

DATA COLLECTION

- ***Article 13, 32, 226 of the Constitution***

Article 13(2) of the Indian Constitution states that "the State shall not make any law which takes away or abridges the rights conferred by this part, and any law made in contravention of this clause shall, to the extent of the contravention, be void⁴." This provision places an obligation on the State to refrain from enacting laws that infringe upon fundamental rights. If a law violates these rights, it becomes invalid to the extent of its inconsistency. Under Articles 32 and 226, the judiciary is empowered with judicial review to assess whether fundamental rights have been violated.

Articles 32 and 226 grant the Supreme Court and High Courts, respectively, the authority to issue writs such as habeas corpus, mandamus, certiorari, quo warranto, and prohibition⁵. These writs can be used by the courts and other orders or directions to safeguard the fundamental rights guaranteed by Part III of the Constitution.

- ***Evolution of Judicial Review***

The Constitution of India has evolved since its adoption in 1949, undergoing amendments to meet the changing needs of the people. However, the power to amend the Constitution is not absolute, as the Supreme Court has the authority to review amendments for their constitutionality. This raised the question of whether Part III of the Constitution, which deals with Fundamental Rights, could be amended under Article 368.

The first case to address this issue was *Shankari Prasad v. Union of India* (1951)⁶, where the validity of the First Constitutional Amendment Act, of 1951, was challenged. The argument was that Article 13 prohibits laws infringing

⁴ id

⁵ id

⁶ *Shankari Prasad Singh Deo v. Union of India*, 1951 SCC 966

Fundamental Rights and that constitutional amendments should be included under the term "law" in Article 13. The Supreme Court rejected this, ruling that constitutional amendments made under Article 368 are not considered "laws" under Article 13 and can amend Fundamental Rights.

In *Sajjan Singh v. State of Rajasthan (1965)*⁷, the Supreme Court reaffirmed this position, holding that Parliament has the authority under Article 368 to amend the Constitution, including Fundamental Rights, and that Article 13 applies only to ordinary laws, not constitutional amendments.

However, in *I.C. Golaknath v. State of Punjab (1967)*⁸, the Supreme Court reversed its earlier rulings, holding that Parliament cannot amend Fundamental Rights. The Court decided, by a 6-5 majority, that a constitutional amendment is a "law" under Article 13, meaning Parliament cannot pass an amendment that violates Fundamental Rights.

Finally, in *Kesavananda Bharati v. State of Kerala (1973)*⁹, also known as the Fundamental Rights Case, a 13-judge bench of the Supreme Court ruled by a 7-6 majority that while Parliament has the power to amend the Constitution under Article 368, it cannot alter the "basic structure" of the Constitution. This decision introduced the Basic Structure Doctrine, ensuring that core constitutional principles, including Fundamental Rights, cannot be amended or removed by Parliament.

• **Application of Judicial Review**

In the landmark case of *I.R. Coelho v. State of Tamil Nadu*¹⁰, the Supreme Court significantly expanded the doctrine of the basic structure of the Constitution. The Court held that judicial review is not only an essential aspect of the Constitution but also a fundamental feature that cannot be abrogated or diminished by any constitutional amendment. The ruling reaffirmed the critical role of judicial review in protecting the supremacy of the Constitution and ensuring that laws passed by the legislature do not violate the essential tenets of the Constitution, including fundamental rights¹¹. By emphasizing that even amendments placed in the Ninth

⁷ *Sajjan Singh v. State of Rajasthan*, (1965) 1 SCR 933

⁸ *Golak Nath v. State of Punjab*, 1967 SCC OnLine SC 14

⁹ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225

¹⁰ *2 IR Coelho v. State of Tamil Nadu*, (1999) 7 SCC 580

¹¹ Khadija Khan, *Judicial Review and Constitutional Supremacy in India*, 6 *Indian J.L. & Legal Rsch.* 1168 (2024), <https://doi.org/10.17613/vz12-ha98>.

Schedule are subject to judicial scrutiny if they infringe on basic constitutional principles, the Court reinforced the judiciary's role as the ultimate protector of constitutional values and the rights of citizens¹². This decision marked a milestone in solidifying the judiciary's authority to strike down laws that threaten the core structure of the Constitution.

The concept of judicial review, though not explicitly mentioned in the Indian Constitution, is firmly grounded in Article 13, which gives the judiciary the power to review the constitutionality of legislative actions. Despite this, there have been instances where the judiciary's autonomy was constrained or subject to political influence. A critical case in affirming judicial review as an integral constitutional feature was *L. Chandra Kumar v. Union of India*¹³. In this case, the Supreme Court highlighted the significance of judicial review, stating that the concept developed in American constitutional law is applicable mainly in India. The Court explained that judicial review in India encompasses legislative actions, judicial decisions, and administrative measures.

Crucially, the Court in *L. Chandra Kumar* ruled that the power of judicial review vested in the High Courts under Article 226 and the Supreme Court under Article 32 forms an essential part of the Constitution's basic structure, which cannot be removed or altered by legislation. The independence of the superior judiciary in exercising this power, particularly in interpreting the Constitution, was emphasized as critical. Subordinate judicial bodies and tribunals, created through ordinary legislation, do not enjoy the same constitutional safeguards and, therefore, cannot be seen as complete substitutes for the higher judiciary in matters of constitutional interpretation.

The judiciary's role in upholding constitutional morality, as opposed to popular morality, was further reinforced by Chief Justice DY Chandrachud in the 2023 Hindustan Times Leadership Summit. He emphasized that the judiciary must apply constitutional principles designed to reflect the values society ought to uphold rather than merely following prevailing public opinion or popular morality. In sum, judicial review remains a cornerstone of India's constitutional framework, ensuring that legislative and executive actions align with constitutional values, with the judiciary serving as the ultimate safeguard against unconstitutional overreach.

¹² id

¹³ *L. Chandrakumar v. UOI*, (1997) SC 1125.

In the case of Central Public Information Officer, *Supreme Court of India v. Subhash Chandra Agarwal*¹⁴, Justice Chandrachud, along with other members of the Constitution Bench, stressed the importance of maintaining absolute judicial independence, recognizing it as a fundamental element of the Constitution. He argued that this principle must coexist with the fundamental right to freedom of expression. The court ruled that disclosing file notings related to the appointment process within the judiciary would compromise this independence, potentially exposing it to external influence and undermining the integrity of the judicial system.

- **Constitutionality of Article 13**

In *State of Punjab v. Dalbir Singh*¹⁵, the Court emphatically reiterated that Parliament does not have the authority to enact legislation that infringes upon the Fundamental Rights guaranteed under Part III of the Indian Constitution. The Court underscored that any law which contravenes these rights is rendered void by virtue of Article 13. Article 13 plays a pivotal role in ensuring that the supremacy of the Constitution is upheld and acts as a safeguard against arbitrary legislative actions. If any statute, whether passed by Parliament or State Legislatures, conflicts with the fundamental rights, it stands nullified to the extent of its inconsistency. This judgment reinforces the principle of constitutional supremacy and the judiciary's critical role in upholding the rule of law through judicial review.

Furthermore, the Court observed that the judiciary possesses the authority to declare any law that violates the provisions of Part III of the Constitution as void. This judicial power ensures that fundamental rights remain inviolable, even in the face of legislative actions. The Court further held that the power of judicial review is an essential feature of the Constitution, integral to preserving the balance between the different branches of government and ensuring that laws do not transgress constitutional boundaries¹⁶. Judicial review serves as the guardian of constitutional supremacy, providing a critical check on the actions of the legislature and executive.

In the SC Advocates-on-Record Case¹⁷, the Supreme Court underscored the pivotal role of judicial independence within a democratic framework, identifying it as an essential element of the Constitution's basic structure. The Court emphasized that

¹⁴ *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

¹⁵ *State of Punjab v. Dalbir Singh*, (2012) 3 SCC 346

¹⁶ *Id*

¹⁷ *Supreme Court Advocates on Record Association v. UOI*, (1993) 2 SCR 659

the independence of the judiciary is indispensable to the rule of law and the protection of fundamental rights. In the Shishir Patil case, the Supreme Court reiterated this view, stating that in a democracy governed by a written constitution and the rule of law, the judiciary must serve as a vigilant guardian of justice, ensuring fairness between citizens and the state, as well as between states¹⁸.

The Court further observed that the principles of the rule of law and judicial review are cornerstones of the Constitution's basic structure. For these principles to function effectively, judicial independence must be maintained. The judiciary, free from any external pressures or influences, is vital to upholding constitutional integrity and justice. The Constitution, through its provisions, guarantees this independence, ensuring that the judiciary remains a neutral and impartial arbitrator, immune from political or external interference¹⁹.

In *Sunil Batra v. Delhi Administration*²⁰, the Constitution Bench made a significant observation, holding that the protection against cruel and unusual punishment, enshrined in the Eighth Amendment of the U.S. Constitution, is implicitly part of India's constitutional guarantee. The Court underscored that the concept of "due process of law," coupled with the safeguard against inhumane treatment, is now interwoven into the fabric of India's constitutional principles. It emphasized that it is the judiciary's duty to uphold these protections, particularly when any statute seeks, even prima facie, to infringe upon these fundamental rights. This judicial responsibility aligns with the mandate under Article 13(2) of the Constitution, which prohibits the enactment of laws that abridge or violate the rights provided under Part III. Thus, this case reinforced the broader role of judicial review in safeguarding human dignity and constitutional rights against legislative overreach.

The values, principles, and ideologies enshrined in the Indian Constitution must be adapted to the ever-evolving social and economic scenarios, which shift and develop over time. The primary role of the judiciary is to maintain harmony between these periodic changes and the foundational constitutional values without compromising the integrity of those principles²¹. Meanwhile, the executive branch has the

¹⁸ "Instruments of Judicial Control: Judicial Review & Judicial Activism and Need for Judicial Restraint in India," 6 *Soc. Sci. & Human. J.* 2720 (2022), <http://www.sshjournal.com/index.php/sshj/article/view/799>.

¹⁹ id

²⁰ *Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494

²¹ Shrishti Dutta & Devika Kishore, *Political and Executive Dominance on*

responsibility to implement laws passed by the legislature and follow the judiciary's rulings as the supreme authority. When the executive fails to fulfill its legal obligations, the judiciary has the power to intervene and compel the executive to act lawfully.

Emerging concerns have been raised about the judiciary's role, particularly when political powers attempt to evade accountability by misusing executive machinery. In such cases, the judiciary's role becomes even more critical, as it must take action against the executive to protect public interests²². By issuing appropriate orders, the judiciary ensures that the executive performs its duties in accordance with constitutional principles. Political parties and civil servants responsible for policy-making and implementation should never act contrary to the values inscribed in the Constitution²³. It is essential that the three pillars of the state—legislature, executive, and judiciary—collaborate, as they all derive their authority from the Constitution. None of these institutions should be considered superior to the others; instead, they should function in harmony to uphold constitutional governance.

CONCLUSION

Judicial review is a vital pillar of the Indian Constitution and serves as a crucial tool for the judiciary to maintain checks and balances on the legislative, executive, and administrative branches of government. By empowering the judiciary to declare laws and actions void if they violate the Constitution, judicial review protects the supremacy of the Constitution and safeguards citizens' fundamental rights²⁴. It ensures that the powers of government functionaries are exercised within constitutional limits, preventing arbitrary or unconstitutional actions.

The doctrine of judicial review also reinforces the independence of the judiciary, which is essential for upholding the rule of law and the separation of powers. This separation ensures that each branch of government operates independently, but under a system of checks to prevent overreach. Judicial review has been recognized as part of the basic structure of the Indian Constitution, meaning that it cannot be amended or removed by

Judicial

Review: The Current Conflicts in India, 4 INT'L J.L. MGMT. & HUMAN. 4058 (2021).

²² id

²³ id

²⁴ T. Sita Kumari & M. Sreekar, An Outlook of Judicial Review in India, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

Parliament. However, concerns arise when judicial overreach occurs under the guise of judicial activism, potentially disrupting the balance between the judiciary and other branches of government. While judicial review is essential for constitutional adjudication and preserving constitutional values, it must be exercised responsibly to maintain the integrity of the separation of powers²⁵. In summary, judicial review remains a fundamental element of the Indian legal framework, vital for ensuring constitutional compliance, safeguarding fundamental rights, and maintaining a balance of power between the three organs of government²⁶.

²⁵ id

²⁶ id