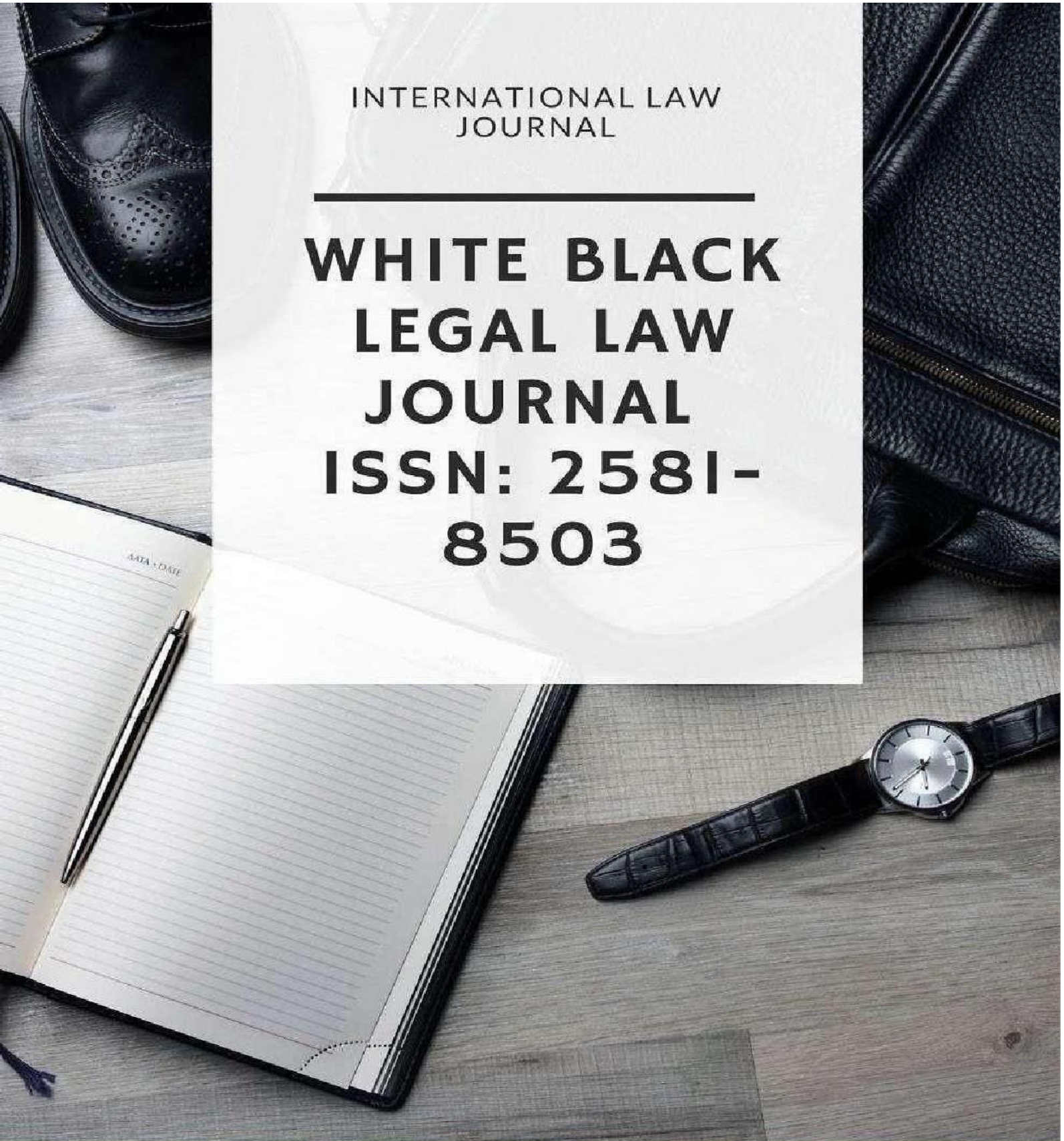




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THE SENTINEL ON THE WATCHTOWER: JUDICIAL REVIEW IN INDIA BETWEEN ACTIVISM AND RESTRAINT

AUTHORED BY - NAYELA RAIES

“I am of the view that if there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review and it is unquestionably, to my mind, part of the basic structure of the Constitution.”

- Justice P.N. Bhagwati¹

Abstract

Judicial review is one of the most important features of the Indian constitutional framework and serves as a vital mechanism for maintaining constitutional supremacy, protecting fundamental rights, and ensuring the rule of law. The Constitution expressly empowers the judiciary to review legislative and executive actions through provisions such as Articles 13, 32, and 226.

The evolution of judicial review in India has been marked by significant judicial interpretations and landmark decisions. Beginning with a limited and conservative approach in the early years of constitutional governance, the judiciary gradually expanded its role through cases such as *I.C. Golaknath v. State of Punjab*², *Kesavananda Bharati v. State of Kerala*³, and *Maneka Gandhi v. Union of India*⁴. The development of the Basic Structure Doctrine strengthened judicial review by restricting Parliament's power to alter the fundamental features of the Constitution. Furthermore, the growth of Public Interest Litigation enhanced access to justice and reinforced the judiciary's role as a protector of constitutional values.

The study also examines the major doctrines associated with judicial review, including the doctrines of severability, eclipse, waiver, colourable legislation, and pith and substance. These doctrines have provided important principles for constitutional interpretation and judicial

¹ *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

² AIR 1967 SC 1643.

³ AIR 1973 SC 1461.

⁴ (1978) 1 SCC 248.

intervention. At the same time, judicial review faces several contemporary challenges, such as judicial activism, judicial overreach, growing executive power, inconsistency in judicial standards, and delays caused by case backlogs.

The study concludes that judicial review remains indispensable to Indian democracy. Its effectiveness depends upon maintaining a balance between judicial independence and institutional restraint while ensuring that constitutional values, democratic governance, and fundamental rights continue to be protected in a rapidly changing society.

Keywords

Judicial Review, Constitution of India, Constitutional Supremacy, Fundamental Rights, Basic Structure Doctrine, Judicial Activism, Judicial Restraint, Separation of Powers, Rule of Law, Public Interest Litigation, Constitutional Governance, Supreme Court of India.

Introduction

'There is no better test of the excellence of a government than the efficiency and independence of its judicial system.' -James Bryce⁵

Judicial review is one of the most significant features of the Indian constitutional system. It refers to the power of the judiciary to examine the validity of legislative enactments and executive actions, and to declare them unconstitutional if they violate the provisions of the Constitution. This power acts as a safeguard against arbitrary use of authority and ensures that all organs of the state function within their constitutional limits.

The concept of judicial review in India is rooted in the Constitution itself. Articles 13, 32, and 226 form the backbone of this doctrine. Article 13 explicitly provides that any law inconsistent with fundamental rights shall be void, while Articles 32 and 226 empower the Supreme Court and High Courts to enforce these rights. Thus, judicial review serves as a mechanism to protect individual liberty and uphold the rule of law.

Although the concept was influenced by the American constitutional system, India has developed its own unique model of judicial review. Unlike the United States, where judicial review is based on judicial interpretation, in India it is expressly provided in the Constitution. Over time, the scope of judicial review has expanded significantly through judicial interpretation. Landmark judgments such as *Kesavananda Bharati v. State of Kerala*⁶

⁵ James Bryce, *I Modern Democracies* 272 (The Macmillan Company, New York, 1921).

⁶ AIR 1973 SC 1461.

established the Basic structure doctrine, which limits the amending power of Parliament and recognizes judicial review as a part of the basic structure of the Constitution.

The evolution of judicial review reflects the changing role of the judiciary from a passive interpreter to an active protector of constitutional values. Especially after the Emergency period, the judiciary adopted a more proactive approach in safeguarding fundamental rights and ensuring accountability of the government. The introduction of Public Interest Litigation further widened access to justice and strengthened the role of courts in addressing social issues. However, the increasing use of judicial review has also led to debates regarding judicial activism and overreach. While it is essential for maintaining constitutional balance, excessive interference by courts may disturb the separation of powers.

Thus, judicial review in India represents a dynamic and evolving concept that balances constitutional supremacy, individual rights, and democratic governance.

1. Research Problem

Judicial review is considered one of the basic features of the Indian Constitution and serves as an important mechanism for protecting constitutional supremacy and fundamental rights. Over the years, the scope of judicial review in India has expanded significantly through judicial interpretation and landmark decisions of the Supreme Court. However, this expansion has also raised several concerns regarding judicial activism, judicial overreach, and interference in legislative and executive functions. In recent times, issues such as delay in judicial proceedings, inconsistency in judicial standards, increasing executive power, and challenges arising from technological developments have affected the effectiveness of judicial review. There is also a continuing debate regarding the proper balance between judicial independence and the principle of separation of powers. Therefore, the present study seeks to examine the evolution of judicial review in India and critically analyse the major constitutional, institutional, and contemporary challenges affecting its effective functioning in a democratic system.

2. Objectives of the Study

The primary objectives of this study are:

1. To examine the concept and constitutional basis of judicial review in India.
2. To analyse the evolution of judicial review through landmark judicial decisions.
3. To study the various doctrines developed by courts in the exercise of judicial review.
4. To identify the contemporary challenges affecting the effectiveness of judicial review.

5. To evaluate the role of judicial review in protecting fundamental rights and maintaining constitutional supremacy.

3. Research Questions

The present study seeks to examine the following research questions:

1. What is the concept and constitutional basis of judicial review in India?
2. How has judicial review evolved through landmark judgments of the Supreme Court?
3. What are the major doctrines developed by the judiciary in the exercise of judicial review?
4. What are the contemporary challenges affecting the effectiveness of judicial review in India?
5. How does judicial review help in protecting fundamental rights and maintaining constitutional supremacy?

4. Hypothesis

The study hypothesizes that judicial review is a fundamental feature of the Indian Constitution and an essential mechanism for preserving constitutional supremacy, protecting fundamental rights, and maintaining the balance of power among the organs of government. It is further assumed that the evolution of judicial review through constitutional interpretation and landmark judicial decisions has significantly strengthened the role of the judiciary as the guardian of the Constitution. At the same time, the increasing expansion of judicial review has given rise to challenges such as judicial activism, judicial overreach, delays in judicial proceedings, and conflicts between the judiciary, legislature, and executive. The study also assumes that contemporary developments, particularly in the technological and digital sphere, have created new constitutional issues that require a more dynamic and balanced approach to judicial review. Therefore, effective judicial review depends upon maintaining harmony between judicial independence, constitutional limitations, and democratic governance.

5. Literature review

The concept of judicial review has been extensively analysed by scholars and constitutional experts. James Bryce emphasizes the importance of an independent judiciary as a test of democratic governance. M. P. Jain and D. D. Basu provide a detailed examination of constitutional provisions and highlight judicial review as a mechanism to uphold fundamental

rights and constitutional supremacy. Similarly, H. M. Seervai critically analyses the scope and limitations of judicial review, while J. N. Pandey discusses its practical application in Indian constitutional law.

Recent journal articles, such as those published in *ILI Law Review* and *National Law School of India Review*, focus on contemporary developments like judicial activism, governance, and constitutional interpretation.

Despite extensive literature, limited attention has been given to emerging challenges such as judicial review in the digital age, inconsistency in judicial standards, and the balance between judicial activism and institutional restraint, which require further critical study.

6. Research Methodology

The present study is primarily doctrinal in nature and is based on analytical and descriptive methods of research. The research mainly relies on secondary sources such as books, journal articles, research papers, constitutional provisions, case laws, and online legal resources. Important judgments of the Supreme Court relating to judicial review have been analysed to understand the evolution and scope of the doctrine in India. The study also examines constitutional provisions and various judicial doctrines associated with judicial review. Relevant legal literature written by constitutional experts and scholars has been referred to for a better understanding of the subject. The research aims to critically analyse the challenges and significance of judicial review in the Indian constitutional framework.

7. Concept of Judicial Review in India

‘Judicial Review means the Supremacy of Law. It is the power of the Court to review the actions of the Legislature, the Executive and the Judiciary itself and to scrutinize the validity of any law or action.’ - Supreme Court of India⁷

Judicial review is a fundamental feature of the Indian Constitution which empowers the judiciary to examine the constitutionality of legislative and executive actions. It ensures that all authorities act within the limits prescribed by the Constitution and do not violate fundamental rights. The doctrine is based on the principle of constitutional supremacy, which means that the Constitution is the supreme law of the land.⁸

Cambridge Dictionary defined, ‘Judicial Review as the process in which decision made by a

⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) 10 SCC 1.

⁸ M.P. Jain, *Indian Constitutional Law* 177 (LexisNexis, New Delhi, 8th edn., 2018).

government department or other public organization is examined by a court of law to decide whether it was right or not.’⁹

D.D. Basu observes that judicial review acts as a check on arbitrary use of power and protects constitutional governance.¹⁰

The concept of judicial review in India is explicitly provided in the Constitution. Article 13 in fact provides for the ‘judicial review’ of all the legislation in India. The main objective of this Article is to secure the paramountcy of the Constitution especially with regard to fundamental rights.¹¹

Further, Articles 32 and 226 empower the Supreme Court and High Courts respectively to issue writs for the enforcement of fundamental rights. They can also declare a law unconstitutional if it is inconsistent with any of the provisions of Part III of the Constitution. These provisions make judicial review an effective mechanism for the protection of individual liberties and ensure access to justice.¹²

In *Minerva Mills Ltd. & Ors. v. Union of India & Ors.*,¹³ the Court reaffirmed that limited amending power and judicial review are integral to maintaining the balance of the Constitution. However, responsive judicial review envisages the separation of powers as a dynamic concept where the judiciary may step in to check specific functions of the legislature that were not traditionally understood to be functions that the judiciary checks. Indeed, even if the separation of powers is understood as a separation of functions, the checking of the exercise of these functions does not mean the usurpation of these functions. On the other hand, judicial review can serve as an effective deterrent of the abuse of power and promote better deliberation in Parliament.¹⁴

7.1. Historical Evolution of Judicial Review

The evolution of judicial review in India reflects the gradual expansion of the judiciary’s role in protecting the Constitution and fundamental rights. Although the concept was borrowed from the American system, it has developed uniquely in India through constitutional provisions and judicial interpretation.¹⁵

⁹ Information Technology Act 2000, India, available at: <https://dictionary.cambridge.org> (last visited on May 11, 2026).

¹⁰ D.D. Basu, *Introduction to the Constitution of India* 118 (LexisNexis, New Delhi, 23rd edn., 2015).

¹¹ Dr. J.N. Pandey, *Constitutional Law of India* 74 (Central Law Agency, Allahabad, 58th edn., 2021).

¹² *Ibid.*

¹³ *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

¹⁴ Jahnavi Sindhu, “A Responsive Theory of Judicial Review-A View from India” 34 *National Law School of India Review* 72 (2023).

¹⁵ *Supra* note 8 at 177.

7.1.1. Origin in the United States

The doctrine of judicial review traces its roots to the 1803 U.S. Supreme Court judgment in *Marbury v. Madison*¹⁶, where Chief Justice John Marshall held that it is the duty of the judiciary to declare any law void which conflicts with the Constitution. This established the judiciary as the final interpreter of constitutional meaning.

7.1.2. Development in England

In England, unlike the United States, historically rejected judicial review of primary legislation due to the doctrine of parliamentary supremacy. Judicial scrutiny was therefore limited to executive actions. The Human Rights Act, 1998 introduced a partial shift by empowering courts to assess the compatibility of statutes with Convention rights and issue “declarations of incompatibility.” Although such declarations do not invalidate legislation, they create a significant impetus for parliamentary reconsideration, marking a moderated form of judicial review within the UK constitutional framework.¹⁷

7.1.3. Introduction in India

India incorporated judicial review directly into its constitutional framework through explicit provisions. Articles 13, 32, 131-136, 226, and 227 collectively empower the judiciary to scrutinize the validity of legislative and executive actions.¹⁸

Consequently, judicial review in India emerged as a constitutionally entrenched guarantee, rather than a doctrine developed solely through judicial creativity.¹⁹

7.1.3.1. Early phase

In the initial years after the adoption of the Constitution, the Supreme Court followed a conservative approach. Judicial review was mainly confined to testing laws against fundamental rights. In *A.K. Gopalan v. State of Madras*,²⁰ the Court adopted a narrow interpretation of personal liberty under Article 21 and upheld preventive detention laws.

However, in *State of Madras v. Champakam Dorairajan*,²¹ the Court emphasized the supremacy of fundamental rights over Directive Principles, thereby strengthening judicial review.

7.1.3.2. Conflict phase

This phase witnessed a direct conflict between Parliament and the judiciary regarding the

¹⁶ 5 U.S. 137 (1803).

¹⁷ Dr. Sanjay Ambekar, “The Doctrine of Judicial Review: A Critical Examination” 9 *IRE Journals* 414 (2025).

¹⁸ *Supra* note 17 at 414.

¹⁹ *Id.* at 415.

²⁰ AIR 1950 SC 27.

²¹ AIR 1951 SC 226.

power to amend fundamental rights. In *I.C. Golaknath v. State of Punjab*,²² the Supreme Court held that Parliament could not amend fundamental rights, thereby expanding the scope of judicial review.

7.1.3.3. Basic structure phase

A major turning point came with *Kesavananda Bharati v. State of Kerala*²³, where the Supreme Court evolved the Basic Structure Doctrine. The Court held that while Parliament has the power to amend the Constitution, it cannot alter its basic structure, and judicial review is part of that structure.

This doctrine was further strengthened in *Minerva Mills Ltd. & Ors. v. Union of India & Ors.*,²⁴ where the Court held that limited amending power and judicial review are essential features of the Constitution.

7.1.3.4. Expansion phase

After the Emergency period, the judiciary adopted an activist role. The scope of judicial review expanded through Public Interest Litigation (PIL), making justice accessible to the weaker sections. In *Maneka Gandhi v. Union of India*,²⁵ the Court broadened the interpretation of Article 21, linking it with Articles 14 and 19.

7.1.3.5. Contemporary phase

In recent times, judicial review has been used to address complex constitutional issues. In *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*,²⁶ the Supreme Court recognized the right to privacy as a fundamental right, reaffirming the importance of judicial review.

Thus, the evolution of judicial review in India shows a shift from a limited role to an active guardian of the Constitution.

7.2. Constitutional Provisions related to Judicial Review

Judicial review in India is not merely a judicial innovation but is expressly provided in the Constitution. It ensures that all laws and actions of the government conform to constitutional principles. The constitutional framework clearly empowers the judiciary to act as the guardian of the Constitution and protector of fundamental rights.²⁷

²² AIR 1967 SC 1643.

²³ AIR 1973 SC 1461.

²⁴ *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

²⁵ (1978) 1 SCC 248.

²⁶ *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) 10 SCC 1.

²⁷ H.M. Seervai, *Constitutional Law of India* 133 (Universal Law Publishing, Nagpur, 4th edn., 2015).

7.2.1. Article 13

“All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.”²⁸

This provision operates as the cornerstone of judicial review in India, as it confers explicit constitutional authority upon the judiciary to scrutinize and invalidate legislative enactments that infringe upon fundamental rights.²⁹

7.2.2. Article 32

“The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”³⁰

Dr. B.R. Ambedkar described Article 32 as the ‘heart and soul’ of the Constitution, emphasizing its importance in ensuring judicial review.³¹

7.2.3. Article 226

“Notwithstanding anything in article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”³²

Article 226 grants wide powers to High Courts to issue writs not only for the enforcement of fundamental rights but also for other legal rights. This makes the scope of judicial review at the High Court level broader than that of the Supreme Court.³³

7.2.4. Other provisions

Article 372 (1) of the Constitution establishes the judicial review of the pre-constitution legislation.

Articles 251 & 254 provides that in case of inconsistency between Union and State Laws; the State Law shall be void.

Article 246 (3) of Indian Constitution ensures the State Legislature’s exclusive powers on

²⁸ The Constitution of India, art. 13(1).

²⁹ Information Technology Act 2000, India, *available at*: scribd.com (last visited on May 11, 2026).

³⁰ The Constitution of India, art. 32(2).

³¹ Justice Dr. B S Chauhan, “Judicial Review” *available at*: <https://nja.gov.in> (last visited on May 11, 2026).

³² The Constitution of India, art. 226(1).

³³ K. Shiv Sidharth, “Judicial Governance in India and its implications for Social Justice, Change and Development” 3 *CLR* 87 (2022).

matters pertaining to the State List.

Article 245 provides that the powers of Parliament and State legislatures are subject to the constitution's provisions.

Articles 131 to 136 of the Constitution entrusts the court with the power to adjudicate disputes between individuals, between individuals and the state, between the states and the union, but the court may be required to interpret the provisions of the constitution and the interpretation given by the Supreme Court becomes the law honoured by all courts of the land.

Article 137 gives a special power to the Supreme Court to review any judgment pronounced or order made by it. An order passed in a criminal case can be reviewed and set aside only if there are errors apparent on the record.

These provisions collectively empower the judiciary to uphold constitutional supremacy, protect fundamental rights, and ensure that all branches of government function within their limits.

7.3. Doctrines of Judicial Review

Judicial review in India has been strengthened and expanded through various doctrines developed by the judiciary. These doctrines help courts in interpreting the Constitution and ensuring that legislative and executive actions remain within constitutional limits.³⁴

7.3.1. Doctrine of Severability

Article 13 of the constitution incorporates this doctrine. The word 'to the extent of contravention' are the basis of doctrine of severability. This doctrine enumerates that the court can separate the offending part unconstitutional of the impugned legislation from the rest of its legislation. Other parts of the legislation shall remain operative, if that is possible. This doctrine has been considerations of equality and prudence. If the valid and invalid parts are so inextricably mixed up that they cannot be separated then the entire provision is declared to be void. This is known as 'doctrine of severability'.³⁵

In *A.K. Gopalan v. State of Madras*,³⁶ Section 14 of prevention Detention Act was founded out to be in violation of Article 14 of the constitution. It was also held that it is section 14 of the Act which is to be struck down not the act as a whole. It was also held that the omission of section 14 of the Act will not change the object of the Act and hence it is severable.

³⁴ M.P. Jain, *Indian Constitutional Law* 180 (LexisNexis, New Delhi, 8th edn., 2018).

³⁵ Dr. Banamali Barik, "Judicial Review in India: An analysis of the Constitutionality of Laws" available at: voiceoflaw.in (last visited on May 11, 2026).

³⁶ AIR 1950 SC 27.

7.3.2. Doctrine of Eclipse

The doctrine of eclipse is based on the principle that a law which violates Fundamental Rights is not nullity or void ab initio but becomes only unenforceable. 'It is over-shadowed by the fundamental rights and remained dormant, but it is not dead.'³⁷

7.3.3. Doctrine of Waiver

The doctrine of waiver has no application to the provision of law enshrined in Part III of the Constitution. It is not open to a citizen to waive any of the fundamental rights.³⁸

7.3.4. Doctrine of Lifting the Veil

An individual when in a corporation if does a fraud or a scam then he thinks of hiding behind the real beneficiaries of the company, but he can't because the corporate veil can be lifted by the government by bringing in the doctrine of lifting the veil.³⁹

7.3.5. Doctrine of Colourable Legislation

This doctrine means that what cannot be done directly cannot be done indirectly. If the legislature tries to bypass constitutional limitations in a disguised manner, the court can invalidate such laws.⁴⁰

7.3.6. Doctrine of Pith and Substance

This doctrine is used to determine the true nature of legislation when there is a conflict between Union and State laws. If the law substantially falls within the powers of the legislature, it is valid even if it incidentally affects another field.⁴¹

These doctrines collectively strengthen judicial review by providing clear principles for constitutional interpretation.

7.4. Landmark Cases of Judicial Review

There have been several landmark judicial review cases in India that have shaped the evolution and significance of this legal doctrine. Here are some of the most significant cases:

1. *Kesavananda Bharati v. State of Kerala*⁴²

This case is one of the most important judicial review cases in India. The Supreme Court held that the Constitution of India contains a 'basic structure' that cannot be amended by the Parliament. This case reinforced the importance of judicial review in protecting the

³⁷ *Bhikaji Narayan v. State of M.P.*, AIR 1955 SC 781.

³⁸ *Muthiah M. Ct. v. Commissioner of Income Tax*, AIR 1955 SC 146.

³⁹ Shubhangi Upmanyu and Gautam Badlani, "Article 13 of the Indian Constitution" available at: <https://blog.ipleaders.in> (last visited on May 12, 2026).

⁴⁰ *K.C. Gajapati Narayan Deo v. State of Orissa*, AIR 1953 SC 375.

⁴¹ *State of Bombay v. F.N. Balsara*, AIR 1951 SC 318.

⁴² AIR 1973 SC 1461.

fundamental principles of the Constitution.

2. *Maneka Gandhi v. Union of India*⁴³

In this case, the Supreme Court held that the right to travel abroad is a fundamental right under the Indian Constitution. The Court held that any law that restricts this right must satisfy the test of reasonableness, and if it fails to do so, it would be struck down.

3. *Vishakha v. State of Rajasthan*⁴⁴

This case is significant as it recognized sexual harassment in the workplace as a violation of a woman's fundamental rights. The Supreme Court held that employers have a duty to prevent sexual harassment at the workplace and to provide a safe working environment for women.

4. *S. R. Bommai v. Union of India*⁴⁵

In this case, the Supreme Court held that the imposition of President's rule in a state must be based on objective material, and the courts have the power to review the decision to impose President's rule. This case reaffirmed the importance of judicial review in upholding the federal structure of the Indian Constitution.

5. *Navtej Singh Johar v. Union of India*⁴⁶

This case is significant as it decriminalized homosexuality in India. The Supreme Court held that Section 377 of the Indian Penal Code, which criminalized consensual homosexual acts, was declared unconstitutional and violative of the fundamental rights of LGBT individuals.

These cases demonstrate the importance of judicial review in India, and how it has been used to protect fundamental rights, uphold the federal structure of the Constitution, and promote social justice.

7.5 Contemporary Challenges to Judicial Review

Judicial review is an essential feature of the Indian Constitution, but its exercise is not free from challenges. Over time, several legal, political, and institutional issues have emerged which affect its effectiveness and legitimacy.

7.5.1. Growing executive power

The increasing centralization and expansion of executive authority in recent decades has posed significant challenges to the efficacy of judicial review in maintaining constitutional checks and balances. As the executive's influence over governance, policymaking, and administrative

⁴³ (1978) 1 SCC 248.

⁴⁴ (1997) 6 SCC 241.

⁴⁵ (1994) 2 SCR 644.

⁴⁶ AIR 2018 SC 4321.

structures grows, the judiciary is often required to intervene to ensure that executive action remains within constitutional limits.⁴⁷

Indian courts have addressed this concern in several landmark cases. In *ADM Jabalpur v. Shivakant Shukla*,⁴⁸ the Supreme Court was widely criticized for upholding excessive executive power during the Emergency, a decision later acknowledged as a failure of judicial oversight. Conversely, in *Maneka Gandhi v. Union of India*,⁴⁹ the Court adopted a rights-expansive approach, holding that executive restrictions on personal liberty must meet standards of fairness, reasonableness, and due process. More recently, in *Central Vista Project Case* (2021)⁵⁰ and *Anuradha Bhasin v. Union of India*,⁵¹ the Court was called upon to scrutinize major executive decisions involving large-scale public projects and restrictions on civil liberties, reflecting the ongoing tension between judicial scrutiny and executive discretion.

7.5.2. Legislative pushback

At times, Parliament has expressed concern over what it perceives as excessive judicial intervention in legislative and policy matters. In response, certain constitutional amendments and executive ordinances have been enacted with the apparent objective of limiting judicial scrutiny. Notable examples include attempts to curtail judicial review of constitutional amendments, such as provisions in the 42nd Amendment, and legislative measures affecting the composition and functioning of judicial bodies, exemplified by the NJAC Act.⁵²

7.5.3. Technological and Digital Age Challenges

The advent of the technological and digital era has introduced novel constitutional and legal questions, including data protection, surveillance, digital governance, and regulation of artificial intelligence. These developments necessitate the evolution of judicial standards and a re-examination of traditional principles of constitutional interpretation to ensure that fundamental rights are adequately protected in the rapidly changing socio-technical landscape.⁵³

7.5.4. Backlog and Delays

The effectiveness of judicial review is significantly undermined by the persistent backlog of cases before Indian courts. Prolonged pendency leads to delayed adjudication, thereby weakening the timely enforcement of constitutional rights and diluting the remedial purpose of

⁴⁷ Dr. Sanjay Ambekar, "The Doctrine of Judicial Review: A Critical Examination" 9 *IRE Journals* 416 (2025).

⁴⁸ AIR 1976 SC 1207.

⁴⁹ (1978) 1 SCC 248.

⁵⁰ *Rajeev Suri v. Delhi Development Authority* (2021) SCC Online SC 7.

⁵¹ AIR 2020 SC 1308.

⁵² *Supra* note 47 at 416.

⁵³ *Ibid.*

judicial review.⁵⁴

Judicial delays significantly affect the effectiveness of judicial review. Constitutional challenges often take years to be resolved, reducing the practical value of judicial remedies. This delay weakens public confidence in the judicial system.⁵⁵

7.5.5. Lack of Clear Standards

Another challenge is the absence of clear and consistent standards in judicial review. Courts sometimes adopt different approaches in similar cases, leading to uncertainty. The doctrine of proportionality and reasonableness is often applied inconsistently, making judicial outcomes unpredictable.⁵⁶

8. Self-analysis & suggestions

The study of judicial review in India reveals that it is one of the most essential mechanisms for maintaining constitutional governance and protecting individual rights. The judiciary has played a transformative role by expanding the scope of judicial review through progressive interpretation, especially after the Emergency period. Landmark judgments such as *Kesavananda Bharati*⁵⁷ and *Maneka Gandhi*⁵⁸ demonstrate how the courts have ensured that the Constitution remains a living document.

However, the study also highlights certain limitations. Judicial review, though powerful, is often criticized for leading to judicial activism and overreach. In some instances, courts have intervened in policy matters, raising concerns regarding violation of the principle of separation of powers. Additionally, issues such as delay in judicial proceedings, lack of uniform standards, and growing case backlog reduce the effectiveness of judicial review. Another significant observation is that the increasing complexity of governance, especially in the digital era, has created new challenges for courts. Issues related to data privacy, surveillance, and technology require specialized judicial understanding and updated legal frameworks.

To strengthen judicial review, a balanced approach is necessary. The judiciary must exercise restraint while ensuring accountability of other organs. There is also a need to develop clear and consistent standards for judicial intervention. Further, improving judicial infrastructure and reducing case backlog will enhance efficiency.

Capacity building of judges in emerging areas of law and greater coordination between

⁵⁴ *Id.* at 417.

⁵⁵ M. Asad Malik, "Changing Dimensions of Federalism in India: An Appraisal" 2 *ILI Law Review* 89 (2019).

⁵⁶ D.D. Basu, *Introduction to the Constitution of India* 122 (LexisNexis, New Delhi, 23rd edn., 2015).

⁵⁷ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁵⁸ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

institutions can also contribute to better outcomes. Thus, judicial review should function as a tool of constitutional balance rather than dominance, ensuring that democracy and rule of law are effectively preserved. A strong, independent, and responsible judiciary is vital for upholding the rule of law and ensuring that justice is not only done but also seen to be done in a constitutional democracy.

9. Conclusion

“Power tends to corrupt, and absolute power corrupts absolutely.” - Lord Acton⁵⁹

Judicial review stands as a cornerstone of the Indian constitutional framework, ensuring that all organs of the state function within the limits prescribed by the Constitution. It reflects the principle of constitutional supremacy and acts as a safeguard against arbitrary exercise of power by the legislature and the executive. Over time, the judiciary has expanded the scope of judicial review through dynamic interpretation, thereby strengthening the protection of fundamental rights and promoting social justice. The evolution of judicial review in India demonstrates a shift from a limited and conservative approach to an active and progressive role. Through doctrines such as the Basic Structure Doctrine and the development of Public Interest Litigation, the judiciary has emerged as a guardian of constitutional values. At the same time, the increasing use of judicial review has raised concerns regarding judicial overreach, delay in justice delivery, and institutional limitations.

Despite these challenges, judicial review continues to play a crucial role in maintaining the balance of power and ensuring accountability in governance. It is essential that the judiciary maintains a balance between activism and restraint to preserve democratic principles and institutional harmony.

Ultimately, the effectiveness of judicial review depends on cooperation among all branches of government and respect for constitutional boundaries.

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⁵⁹ Information Technology Act 2000, India, available at: <https://www.acton.org> (last visited on May 12, 2026).

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