
A COMPREHENSIVE ANALYSIS OF JUDICIAL CUSTODIANSHIP WITH REGARD TO JUDICIAL REVIEW AND CONSTITUTIONALISM

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ABSTRACT

The Constitution of India, a symphony of chalice ideals which dwelled in the mind of our constitutional framers, encompasses civil, political, and economic rights in the form of fundamental rights and is a testament to the nation's aspiration in the form of the Directive principles of state policy. It is a grundnorm that provides consciousness to people. Each limb of the state has its primary functions in the democratic framework, where the constitutional courts play a pivotal role in balancing the powers of executive and legislative actions. The judiciary has an instrument of transformative constitutionalism to monitor and keep checks and balances on the exploitation of power. It envisages the notion of constitutional integrity and gives assurances for judicial independence. Whereas judicial review is a fragment of constitutionalism that forms the essence of the soundness of democratic notions and the decline in authoritarianism. Nonetheless, how extensive this power may be, the judicial body must exercise this power judiciously, adhering to principles of self-restraint and proportionality. This paper delves into the realm of the constitutional courts and how they use judicial review as a means of conserving the nexus and consistency of state actions with the spirit of the Constitution. It examines the philosophy of constitutionalism, the fragmentation of power, and the judiciary's role in ensuring the Rule of Law. The paper analyses the practicability in the implementation of this basic feature in landmark judgments and legal theories to preserve constitutional values and individual rights and, at the same time, seeks to elucidate the nuanced interplay between judicial power and democratic accountability.

Keywords: constitutionalism, constitutional courts, judicial activism, judicial review

1. INTRODUCTION

Over the years, the three limbs of the state have governed the country through cooperation and coordination under the spirit of the Constitution. Where the phrase ‘Constitutionalism’ plays a crucial role, given that it refers to the philosophy of administering and monitoring over exercise of the functions driven by the powers of the state. For the regulation of the actions by all three organs, there was a need for a higher authority that would govern on a fundamental basis. This higher authority can be established only by an act of all three organs and acquire a supreme position above all. Therefore, the constitutional framers have enforced the ideas, values, and terms through the Constitution of India. The most significant component of common law constitutionalism is the application of common law to preserve fundamental constitutional rights.¹

It is crucial to distinct the powers among the three pillars of democracy for preserving liberty and averting tyranny because the separation of powers is a basic feature of the Indian Constitution. The examination of validity regarding any implied limitation can only be processed by an independent organ, because if one organ makes a law and also certifies its validity, then it will cause authoritarianism. The primary function of government is to make and execute the law considering the facets of the constitution and with the support of the judicial body in interpretations of such legal spirits.

The main objective of constitutionalism is to thwart the abuse of power by any administrative action and to ensure its applicability in accordance with the doctrines. The rudimentary approach to the division of power is driven by the doctrine of separation of powers, where each organ manages its own affairs. It provides freedom in each sphere of society. The midst of Rule of law is also evidently manifested in the UN’s ICCPR, necessitating in abundant scenarios that government action is subject to regulation by law.² Therefore, this paper describes several notions of constitutionalism, especially judicial review, that necessitate the command of state powers to warrant that the substratum of democratic legal values should not be dismantled.

2. NEXUS BETWEEN JUDICIAL REVIEW AND CONSTITUTIONALISM

According to Hans Kelson's theory, the constitution emerges as a “grundnorm” that depicts the

¹ I.R. Coelho v. State of Tamil Nadu (2007) 2 SCC 1.

² International Covenant on Civil and Political Rights, 1966, art 14.

supremacy over all laws in a state. The Constitution of India has the characteristics of a democratic federal constitution, which derives the powers of the state and the manner of being exercised. The Indian Constitution acts as the fundamental legislation of the land, as all statutory legislation must correspond to the constitutional norms. It cultivates uniformity and consistency through cooperation and coordination among limbs of the state, irrespective of the implementation of the separation of powers in the Indian democratic framework. It is a paramount law that envisages the legal substratum for judicial review.

In the 'constitutionalism' concept, there are particular privileges and values that are too crucial for both people and the constitutional framers to amend. These rights and values enjoy a special status and are protected by the courts as their custodians. It should be treated as perpetual, unamendable, and sheltered because such principles are faithful to the constitutional system. If we consider the Germans' approach to their constitutional system, then they count on historical background and textual interpretation, whereas the Indian system is entrusted on history alone. The constitutional courts have to derive the values from their interpretation in such an approach. The other two organs are representative bodies that need continuous reminders from the third organ that they are restrained from any infringement of the rights and values. In the Indian legal system, where the Constitution of India provides fundamental rights, judicial review acts as a tool to protect those rights from infringement by the Legislature. It is the onus of constitutional courts to proclaim such laws as unconstitutional whenever they come under the purview of 'ultra vires'. The judicial review guarantees a reasonable procedure to be undertaken as a prerequisite for the acknowledgment of any constitutional changes.

The judicial control is a necessary element in a democratic framework to support the instrumentalities towards the supremacy of law. A judicial review is one of the constitutional courts' instrumentalities that reviews the acts and omissions of executive authorities, enactments of legislatures, or decisions of lower courts.³ America is the 'home of judicial review', as it was borrowed by the constitutional framers while drafting the Indian Constitution.⁴ It includes the wide interpretation of administrative actions in accordance with adherence and faithfulness to the values of the Constitution. The invalidation and inconsistency brought the question of unconstitutionality in exercising constitutionalism.

³ R V. Ramachandrasekhara Rao, "Bases of Judicial Review", *Journal of the Indian Law Institute* 3, 293 (1961).

⁴ *Ibid.*

Several scholars have a strong argument that the US Constitution does not grant courts the authority to execute judicial review, but concurrently, there is a textualist notion claiming judicial review is inferred from the Constitution.⁵ A judicial review emerged before Marbury's case. **Professor Sylvia Snowiss**, whose book *Judicial Review and the Law of the Constitution (1990)* constitutes the preeminent historical discourse of early judicial review, came across five cases between the beginning of the Federal Constitutional Convention and Marbury wherein courts denied applying legislation given that they were unconstitutional.⁶ Post such judgment, the doctrine gets widespread acceptance and application in several municipal laws.

The 'separation of power' doctrine as a fragment of constitutionalism strictly states that no organ of government shall interfere in the functions of another organ. If one organ has all the functions from making law and executing law to interpreting the law, it will lead to an infringement of the Rule of Law. There is no express provision for judicial review in the Indian Constitution. However, the judiciary has considered it as a basic feature in **L. Chandra Kumar v. Union of India**⁷, thus, its conferred powers can be enforced through Articles 13, 32, 131-136, 143, 226, 245, 246, 251, 254, and 372. Article 13 of the Constitution of India clearly states that any law found to abridge the rights or infringe upon Part III (i.e., Fundamental Rights) shall be declared void. It's not just the validity of enforced law but any legislative validation, administrative action, or amendment can also be challenged on the grounds of procedural irregularity. Whenever any authority adopts a procedure that is arbitrary and unreasonable to enforce any action, it can be struck down by the constitutional courts.

In the case of **Marbury vs Madison**⁸, Hamilton argued that judicial review did not mean judicial supremacy; the courts were just performing their normal reviewing function through interpretation. The parties were contradicted on the question of treating the constitution either as basic law or paramount law. However, Marshall has established judicial review from the concept of paramount law. The supremacy and terms of this paramount instrument are determined by the embodied spirits through several perpetual philosophies that reflect the importance of its practicability. It envisages the liberal essence in the functions of judicial

⁵ Saikrishna B. Prakash and John C. Yoo, "The Origins of Judicial Review", The University of Chicago Law Review 70, 887 (2003).

⁶ Hayburn's Case, 2 U.S. (2 Dall.) 409 (1792); Stidger v. Rogers, 2 Ky. (Sneed) 52 (1801); VanHorne's Lessee v. Dorrance, 2 U.S. (2 Dall.) 304 (1792); Bowman v. Middleton, 1 S.C.L. (1 Bay) 252 (1792); and Kamper v. Hawkins, 3 Va. (1 Va. Cas.) 20 (1793). She discusses a sixth case in which an equally divided court upheld a statute: Lindsay v. Commissioners, 2 S.C.L. (2 Bay) 38 (1796).

⁷ (1997) 3 SCC 261.

⁸ 5 US (1 Cranch) 137 (1803).

construction as all statutes, including the constitution, are basically governed through the principles of interpretation. The notion in the philosophy of the constitution as a paramount law eliminates the regard for it as a mere statute.

In the context of India, the philosophy of judicial review has emerged in *Emperor vs Burah*⁹. The apex bodies of two organs, i.e., the Indian Parliament and the Supreme Court, have a long tradition of scuffling on the parameters of judicial review. The Supreme Court has declared that Parliament can amend any provision of the Constitution, but such amendments have to conform to the doctrine of basic structure.¹⁰ The rationale behind such an interpretation was prior rulings made in *Shankari Prasad v. Union of India*¹¹, *Sajjan Singh v. Union of India*¹², and *A.K. Gopalan v. State of Madras*¹³, as the apex court shifted from judicial positivism to judicial activism. The courts have to interpret the statutes rather than applying a mere literal rule to enforce the rights of citizens. After independence, the amendment acts passed by the legislature also tried to border the powers of the judiciary, especially through the 42nd Amendment Act of 1976, which inserted Article 368(4) and Article 368(5). However, the apex court struck it down in the *Minerva Mills v. Union of India*¹⁴ because it violated the 'Basic structure' of the Indian Constitution, i.e., judicial review.

Professor Suzana Sherry contends that the novel thought is that the legislation would be assessed for conformity with fundamental principles of natural law in addition to its uniformity with the constitutional text.¹⁵ The most renowned of these decisions is *Thomas Bonham's Case*¹⁶, in which Lord Coke noted that...

*"it appears in our books that in many cases, the common law will control Acts of Parliament and sometimes adjudge them to be utterly void: for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such Act to be void".*¹⁷

⁹ (1878) IL3 3 Cal 64; Secretary of State for India v. J. Moment, (1913) 15 BOMLR 27.

¹⁰ Kesavananda Bharati v. State of Kerala, AIR 1973 SC 543.

¹¹ AIR 1965 SC 538.

¹² AIR 1965 SC 845.

¹³ AIR 1950 SC 27.

¹⁴ AIR 1980 SC 1789.

¹⁵ Suzanna Sherry, "The Founders' Unwritten Constitution", The University of Chicago Law Review 54, 1127 (1987).

¹⁶ Thomas Bonham v. College of Physicians (1610) 8 Co Rep 114.

¹⁷ Ibid.

Several legal academicians have argued whether Bonham's Case could be interpreted as a proclamation of the legitimacy of judicial review or merely as a demonstration of a principle of legislative construction.¹⁸ The guardians of the Constitution are expositors of the Constitution, and they have the authority to determine the constitutional soundness of the law.

3. ROLE OF CUSTODIAN IN PROTECTING THE CONSTITUTION OF INDIA

The Indian Judicial System comprises a single integrated system of courts, where the constitutional framers have borrowed the features of several legal systems and adopted the adversarial system, not the inquisitorial. The Supreme Court of India is an apex body that has manifold jurisdictions like Original Jurisdiction (Article 32 & 131); Writ Jurisdiction (Article 32, part of original jurisdiction); Appellate Jurisdiction (Article 132 - 136), and Advisory jurisdiction (Article 143).

The well-known Golden Triangle comprises Art. 14, 19, and 21, which establish the foundational stone of judicial review. Even if it is being abolished by a constitutional amendment, the precedents shall prevail in the form of judicial review. During the two years of emergency rule in India, the constant struggles of 1975 to 1977 between the legislative and judicial branches were at a high peak. The parliamentarians suspended several essential constitutional provisions, which led to the realization by all political actors that there was an abuse of power. It led to the adoption by the constitutional courts of an unconstitutional constitutional amendment doctrine.¹⁹

3.1 Judicial Activism

The phrase originated somewhere in the twentieth century to define the practice of judicial legislation. The article in Fortune by *Arthur Schlesinger Jr.* popularised this phrase. Judicial activism is, therefore, the result of the virtual abdication of their roles by the executive and the legislature. Post *Maneka Gandhi's* judgment²⁰, courts have taken on an activist stance and come forward to the assistance of aggrieved citizens. The emergency of 1975 and its aftermath era in India epitomize defining occasions for judicial activism.

¹⁸ William Michael Treanor, "Judicial Review before 'Marbury'", Stanford Law Review 58, 455 (2005).

¹⁹ Rivka Weill, "The New Commonwealth Model of Constitutionalism Notwithstanding: On Judicial Review and Constitution-Making", The American Journal of Comparative Law 62, 127 (2014).

²⁰ Maneka Gandhi v. Union of India AIR 1978 SC 597.

Whenever judicial review and judicial activism play pivotal roles in judicial proceedings, they act as exceptions to the doctrine of separation. It involves three ways in order to fulfill the objectives of fairness of executive actions, protection of Fundamental Rights, and the legislative competence between the Centre and the State. The notion of separation of powers has not been explicitly acknowledged in the Constitution in its absolute meticulousness, but the framers have methodically delineated the responsibilities among the three limbs. All three have to perform their functions within their own sphere, such that no limb is allowed to take on the responsibilities allocated to another. The written constitution prescribes the powers, independence, and even the implied limitations upon the organs for the proper functioning of democracy.

The people of India have shown their will by electing the Legislature and Executive because they have all the authority over finance in the country. However, the judicial body has no authority over the sword or the purse; nonetheless, it does have the capacity to validate that the aforementioned two principal limbs of the State should execute within the constitutional borders. It is the sentinel of democracy. The mounting dimensions of judicial review have integrated the notion of social and economic justice into the wrap. While the legislature and executive execute their powers that are obligated to judicial restraint, the only scrutiny on the judiciary execution of power is the self-imposed discipline of judicial restraint.²¹ However, the judicial body is bound by procedures established by law to function those powers.

The court has interpreted through a literal rule in order to determine what legal prescriptions the state can curtail the personal liberty of any individual under Article 21.²² The court has neglected to consider the principles of fairness, reasonableness, and non-discrimination for several years under the purview of Article 21, but the judgment of *Maneka Gandhi v. Union of India*²³ defined the term 'law' as it includes both *lex* (enacted law) and *jus* (natural justice). It reformed the constitutional interpretation of Article 21, as such procedure established by law is now backed by substantive due process of law. The apex court has interpreted both Part III (FRs) and Part IV (DPSPs) of the Indian Constitution harmoniously.²⁴ The harmonious construction is a cardinal rule of construction that supports the court's authority of interpretation to accomplish the objectives of the Preamble and social upbringing through the

²¹ Asif Hameed v. State of J&K, AIR 1989 SC 1899.

²² Supra Note 13.

²³ Supra Note 20.

²⁴ Supra Note 10.

welfare of the state. There are several landmark judgments that have established the broader scope of Article 21 throughout the past decades, like the right to livelihood, the right to education, the right to legal aid, and the right to a healthy environment.²⁵ The adoption of PIL was also one of the major innovative stages toward judicial activism by the constitutional courts.²⁶

3.2 Judicial Independence

The judiciary of India has an element of 'judicial independence' under the umbrella of the separation of powers, where its definition has its own implications for systems of judicial appointment. The judicial body is a non-elected body at both national and transnational levels, where judges require independence in appointment from the other offices of political actors, political ideology or public pressure, and individual judges need autonomy from superiors in the judicial hierarchy so that they can settle each matter on their best comprehension of what the law validates.

4. CONSTITUTIONAL APPROACH OF SOVEREIGN STATES

The sovereign states have adopted judicial review as a fragment in their constitutionalism to ensure that its moniker will fulfill the idea itself from the congenital as a judicial tool. Hence, we will discuss approaches toward transformative constitutionalism in municipal arenas -

4.1 United Kingdom

The key facets of the British and American constitutions stem from parliamentary supremacy and judicial supremacy respectively. In its jurisdictions, the dogma of parliamentary sovereignty implies that the law prohibits judicial review of primary legislation (laws passed by the UK Legislature), except in rare matters where primary legislation violates European Union law. An individual who is aggrieved by an Act of Parliament can, consequently, seek judicial review in certain matters.

The doctrine of Parliamentary sovereignty restricts judicial review in English law to the public institutions and delegated legislation remarks upon whom conventional common law reliefs

²⁵ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; *M C Mehta v. Union of India*, (1996) 4 SCC 750; *Unnikrishnan, JP v. State of Andhra Pradesh* (1993) 1 SCC 645.

²⁶ *People's Union for Democratic Rights v. Union of India*, 1983 SCR (1) 456.

and special 'prerogative orders' may be obtained in specific instances. The doctrine of ultra vires has long subjugated the philosophy of judicial review, under which remarks of a public authority can only be set aside if they transcend the powers allocated to it by Parliament. The functions of the judiciary were perceived as executing the 'will of Parliament' pursuant to the Parliamentary sovereignty. Nevertheless, the doctrine has been extensively construed to encompass errors of law and of fact, and the constitutional courts have also ruled that the Royal Prerogative rulings are acquiescent to judicial review. Hence, the constitutional framework of judicial review in the modern era is shaped by the requirement to avert the executive exercised abuse of power in addition to stepping towards protecting the rights of individuals.

In the United Kingdom, the judicial review functions by stating a declaration of incompatibility.²⁷ It provides that if the court is satisfied that the said provision is incompatible with a Convention right, it may make a declaration of incompatibility. The court determines that the provision is incompatible with a Convention right and, notwithstanding any possibility of revocation, the concerned primary legislation thwarts exclusion of the incompatibility, it may issue a proclamation of that incompatibility. A proclamation of incompatibility, however, is not binding on the parties to the proceedings in which it is issued and has no impact on the legality, enforcement, or actual operation of the relevant provision.

4.2 India

The legislation's authority of judicial review has passed on to the judiciary under both political theories and textual interpretation of the Constitution. The Parliament is not paramount in the textual Constitution of India and its functions are limited in two aspects. Firstly, powers are split between the Union and the states, and Parliament is competent to enact laws with respect to those subjects that are guaranteed to the citizens against every system of legislative infringement. Secondly, the apex court is the custodian of Fundamental Rights and the arbiter of constitutional disputes between the centre and the state regarding the apportionment of powers between them. It holds an exceptional role where it is competent enough to function the responsibilities of examining legislative enactments of Indian legislatures.

²⁷ Human Rights ACT 1998, s 4.

In *SP Sampath Kumar v Union of India*²⁸, CJ Bhagwati opined that...

"the basic and essential feature of judicial review cannot be dispensed with, but it would be within the competence of Parliament to amend the Constitution so as to substitute in place of the High Court, another alternative institutional mechanism or arrangement for judicial review, provided it is not less efficacious than the High Court".

In *P Sambamurthy v State of Andhra Pradesh*²⁹, the Hon'ble Court held that it is a fundamental principle of the Rule of Law that whenever the executive or other governing body functions, their powers must be in compliance with the law and subject to the Constitution. The paramount law has conferred the authority of judicial review with the sight of guaranteeing that the executive and other authorities must strictly adhere and be obedient to the prerequisite of laws.

There is a concept of the Finality clause, which has been implemented in certain legislation such that the decision will be considered final, which eliminates the purview of judicial review. However, the decision can be tested through judicial review only on the grounds of beyond jurisdiction in infringement of a provision conferring powers on the authority. Concurrently, mala fides undermined such a decision, or it is a colorable recourse of power determined by superfluous variables, or there is a violation of natural justice. Under the Finality clause, there might be a restriction of appeals, but the scope of judicial review on some grounds is still prevalent.³⁰

4.3 America

In American colonies, judicial review was sparingly used by the previous council to review the administrative disallowance whenever the colonists objected to the disallowance of colonial laws by the king in the Council. It declares the legislation null and void in a judicial proceeding through a judicial process that solely relies upon the charter or the terms of the Governor's Commission.

²⁸ AIR 1987 SC 386

²⁹ AIR 1987 SC 663

³⁰ Shri Kihota Hollohon v. Mr. Zachilhu, AIR 1993 SC 412

In America, the expression ‘due process of law’ prevailed since the enforcement of the 5th Amendment, 1791³¹, and the 14th Amendment, 1868³², which widens the powers of the judiciary, not just limited to the Bill of Rights, but also with regard to federal provisions. It involved the primary function of the judiciary, i.e., constitutional interpretation, by not just confining them to the written draft but also acting in a more lenient manner. The judiciary, being a guardian of the Constitution, acts as an arbitrator between the state and the citizens to facilitate the Rule of Law. It prevails over the conceptual application of the separation of powers in the management of political and economic affairs.

Transformative constitutionalism widens the power of judicial review, which directs the court to act in judicial activism. It is a dynamic revolutionary process as *Chief Justice Marshall* laid down the conceptual spectrum of judicial review to uphold the status of paramount law and federal structure and to preserve the rights of citizens.³³ Article 3³⁴ of the US Constitution grants judicial powers to the courts, whereas Article 6³⁵ of the US Constitution states the supremacy clause, which means the supremacy of the Constitution over any other statute. In America, the predominance of legal spirits as a facet of the Rule of Law prevails; as such, the court can even make the law after its declaration of ultra vires.

5. LEGAL FOUNDATIONS OF JUDICIAL REVIEW

There are several doctrines developed through judgments that are enumerated under the theory of Judicial Review, where the judicial officers have applied their judicial mind to sustain the spirit and values of constitutional integrity, which are discussed below –

5.1 Doctrine of Severability

The principle is established under Article 13 of the Indian Constitution, which states that whichever particular law made by the State that infringes the fundamental rights or any other law will be deemed void to the extent of such contravention. The court has the supremacy to declare such a provision as unconstitutional under the statute without disturbing the purpose of the enacted Act. It can also declare the whole law as void if both valid and invalid parts are

³¹ U.S. Const. amend. 5.

³² U.S. Const. amend. 14.

³³ Supra note 8.

³⁴ U.S. Const. art. 3.

³⁵ U.S. Const. art 6.

entangled. In *AK Gopalan v. State of Madras*³⁶ case, the Hon'ble court held that section 14 of the Preventive Detention Act, 1950 should be solely void without interrupting the validity of other provisions of the Act.

5.2 Doctrine of Eclipse

This principle is also established under Article 13(1) of the Constitution, where the court makes use of the power of judicial review to put any law in force prior to the commencement of the Constitution that is inconsistent with fundamental rights or any other law into a dormant condition. The law becomes inoperative partially or wholly in the eyes of the law. The doctrine was laid down in the judgment of *Bhikaji Narain Dharkar v. State of Madhya Pradesh*.³⁷ It also applies to determining the validity of subordinate legislation.³⁸ If any amendment took place post-commencement of the Constitution, any dormant law would become operative again if it is consistent and reasonable with the terms of the Constitution.

5.3 Doctrine of Waiver

This principle illustrates that fundamental rights are guaranteed by our grundnorm and it cannot be waived by any individual. It is not applicable as fundamental rights provide consciousness of people and are subject to public policy. In *Basheshwar Nath v. I.T. Commissioner*³⁹, Justice Bhagwati and Justice Subba Rao enunciated that any citizen of India doesn't have the power to waive his or her fundamental right, which is constructed in Part III of the Constitution.

5.4 Doctrine of Prospective Overruling

This doctrine emerged in *IC Golaknath v. State of Punjab*⁴⁰, wherein the apex court ruled that the particular law should be enforced prospectively without shifting the position of prior precedents. It was drawn from American jurisprudence, where it is known as the 'Sunburst Doctrine' to avoid chaos, and the court can declare any law in prospective effect under Articles 32 and 142 of the Constitution of India. It affects past transactions by overruling the precedents or law, considering the merits of facts and circumstances in the case.

³⁶ Supra Note 13.

³⁷ (1955) 2 SCR 589

³⁸ *Muhammadbhai Khudabux Chhipa v. State of Gujarat*, AIR 1962 SC 1517.

³⁹ AIR 1959 SC 149.

⁴⁰ 1967 SCR (2) 762.

6. CHALLENGES WITH THE CONSTITUTIONALISM FRAGMENTS

Who has the authority to execute the power of judicial review? The paramount law has given this authority to the judiciary to control such power, which will conserve the counter-majoritarian safeguards provided in the Constitution of India. One of the major obstacles is that the judiciary doesn't hold accountability towards the people of India through any institutional mechanism. On the other hand, the substantive texts of the written constitution present the will of the framers. However, it's not mandatory that the intention of the framers resembles the majoritarian will at any particular point in time.

The difference in opinions of the judicial officers in a judicial proceeding plays a crucial part in the doctrine of judicial review. The judgment is always carried forward by the majority decision of the constitutional court. The dissenting opinions of such judicial officers sometimes become the reason behind the majority opinion in future overruling judgments. It highly depends upon the judicial intellect and its dynamic application to both constitutional and statutory texts. Whenever the administration acts against the backdrop of prior judicial interpretations of the Constitution, judges must refer to those related precedents during the continuance of judicial proceedings, analyze the historical trend, which varies in frequency, and execute the power of judicial review.

The appointment of judges in some countries is determined by political actors, which curtails the freedom of the judiciary. The judges are sparking the ordeals through judicial overreach, where they interfere with the powers of the other two organs in the democratic framework. There is still a requirement for a change in judges' ideologies in order to adapt to the flexible technological environment. For example, the right to privacy finally became a component of Article 21 of the Constitution of India in the judgment of *Justice K.S. Puttaswamy v. Union of India*⁴¹ after several considerations and overruling of precedents. The era is changing rapidly, even in a modern context, through new ideas, thoughts, and values, which also need a balance between the relationship of the state and its citizens.

The framers have intentionally crafted the Constitution in written form and adopted the federal approach to govern and secure the separation of powers. The written constitution outlines and restricts the powers of the limbs of the state, stating the reason for exploitation. Thus, it is

⁴¹ (2017) 10 SCC 1.

marked as a perpetual and requisite feature of the federal system. It is pertinent to note that the judicial review should never be exercised in doubtful matters of nonconformity with the notion of the Constitution. Therefore, the actions of the legislative and executive should be invalidated only if it has been instituted that it is unconstitutional beyond discourse. The judiciary has a wide approach to judicial review, not just limited to unconstitutionality but it signifies a sensitivity to apprehensions of process and structure.⁴² It acts as an instrument of the judiciary to perform judicial activism. The remedy is an essential ingredient post such declaration of ultra vires, where the courts grant relief to the aggrieved party.

It is categorically the obligation of the judicial body to answer the question of what the law is. The particular judicial authority that applies the principle to any particular case must, of necessity, illustrate and construe the principle. If two legal spirits are in dispute with each other, the Court must resolve the operation of each, considering the Constitution as paramount to any conventional act of the legislature. The matters where both apply shall also be governed by the Constitution and not such a general act.

7. CONCLUDING REMARKS

The people of India can knock on the gates of constitutional courts anytime through constitutional remedies for the enforcement of conferred fundamental rights if they are infringed upon by the actions of the state. The judiciary is a guardian of the Constitution; as such, it is the duty of every sitting judicial officer to uphold the ideals of the preamble, i.e., Equality, Liberty, Justice, and Fraternity in order to meet the ends of justice. It wields a powerful weapon named Constitutionalism, which advocates upholding the 'Basic Structure Doctrine' of the Constitution of India. The weapon imposes obligations upon all three organs to perform their functions in an equitable manner. The study revolved around judicial review as a powerful component of constitutionalism that provides corrective justice in a structural landscape of democracy. The legal theories and landmark judgments have shifted the patterns in the modern era from constitutionalism to transformative constitutionalism in order to transform society into an ideal society. The judiciary, while exercising its wide interpretations, must value the pristine of the Constitution in the future to attain its objectives that are enshrined in the preamble. Therefore, people, irrespective of caste, gender, religion, race, or any other

⁴² Supra Note 18.

basis, have the right to be bestowed in such a favourable environment where they should have social, political, and economic opportunities.