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# JUDICIAL REVIEW AS A MECHANISM FOR POLITICAL ACCOUNTABILITY: CONSTITUTIONAL PERSPECTIVES IN INDIA

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## ABSTRACT

This paper examines judicial review in India as a constitutional mechanism that advances political accountability in a majoritarian parliamentary democracy. Although the Constitution does not use the phrase “judicial review,” it entrenches the power through Articles 13, 32, 226 and related jurisdictional provisions that authorize the Supreme Court and High Courts to test legislation, executive action, delegated legislation and constitutional amendments against constitutional limits. Tracing doctrinal development from early deference in *Shankari Prasad* and *Sajjan Singh*, through the rights-protective turn in *Golaknath*, to the settlement in *Kesavananda Bharati*, the paper shows how the basic structure doctrine reconciles parliamentary amendment power with constitutional supremacy. It further highlights how Emergency-era and post-Emergency decisions - *Indira Nehru Gandhi*, *Minerva Mills* and *L. Chandra Kumar* - operationalized accountability by resisting immunities, preserving free elections and protecting the courts’ writ jurisdiction as part of the Constitution’s basic structure. Normatively, the paper argues that judicial review performs both protective and corrective functions: it shields fundamental rights and enforces rule-of-law disciplines (reasoned decision-making, legality, proportionality and procedural fairness) that compel political branches to justify coercive choices. At the same time, it acknowledges persistent criticisms, counter-majoritarian concerns, institutional competence, delay and politicization, and suggests that calibrated standards of review and remedial restraint can preserve democratic space while maintaining constitutional guardrails. Overall, judicial review emerges as an indispensable accountability device that stabilizes India’s constitutional order by subordinating transient political majorities to enduring constitutional commitments. It also situates public interest litigation and continuing mandamus as pathways that translate constitutional promises into enforceable duties for the state.

**Keywords:** Judicial Review; Political Accountability; Constitution of India; Fundamental Rights; Article 13; Article 32; Article 226; Basic Structure

Doctrine; Separation of Powers; Rule of Law; Constitutional Amendments;  
Public Interest Litigation.

## Introduction

In India's constitutional framework, judicial review stands as a pivotal mechanism that upholds the supremacy of the Constitution while ensuring the accountability of legislative and executive actions. It empowers the judiciary, primarily the Supreme Court and High Courts, to examine the validity of laws, ordinances, administrative decisions and even constitutional amendments against the touchstone of the Constitution. This power is not merely incidental but forms an integral part of the constitutional design, safeguarding fundamental rights, federalism and the rule of law in a parliamentary democracy characterized by strong majoritarian impulses.

The concept of judicial review draws inspiration from American jurisprudence, notably Chief Justice John Marshall's seminal pronouncement in *Marbury v. Madison*,<sup>1</sup> which established the judiciary's authority to declare laws unconstitutional. In India, however, judicial review is explicitly embedded in the text of the Constitution rather than being purely implied. Key provisions such as Article 13 (declaring laws inconsistent with fundamental rights void), Article 32 (right to constitutional remedies via the Supreme Court), Article 226 (High Courts' power to issue writs) and others collectively institutionalize this authority. Unlike the U.S. model, where judicial review evolved through judicial interpretation, India's framers consciously incorporated it to prevent legislative absolutism and protect individual liberties in a post-colonial context marked by social and economic transformation.

Judicial review in India performs dual functions: protective (shielding fundamental rights from state overreach) and corrective (ensuring governmental actions remain within constitutional bounds). It thus serves as a vital instrument of political accountability, compelling elected branches to justify their decisions before an independent judiciary. This mechanism becomes particularly significant in a system where Parliament enjoys wide amending powers under Article 368, raising perennial questions about the limits of majoritarian will versus constitutional permanence.

The evolution of judicial review in India reflects a dynamic interplay between parliamentary sovereignty and judicial guardianship. Early post-independence jurisprudence leaned toward deference to Parliament, but successive landmark decisions progressively expanded and entrenched the judiciary's role, culminating in the doctrine of basic structure. This historical

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<sup>1</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

trajectory reveals the judiciary's adaptation to political challenges, including attempts during the Emergency (1975–1977) to subordinate constitutional norms to executive expediency. As an educational analysis, the following section traces this development through key phases and cases, highlighting how judicial review matured into a cornerstone of Indian constitutionalism.

### **Historical Evolution of Judicial Review in India**

The origins of judicial review in India predate independence, with faint echoes in colonial-era jurisprudence. Under the Government of India Act, 1935, courts exercised limited review over legislative competence in federal matters, though imperial oversight curtailed its scope. Postindependence, the framers of the Constitution explicitly provided for judicial review to counterbalance the potentially unchecked power of a sovereign Parliament in a newly independent nation aspiring to social justice and democracy.

The early phase (1950s) witnessed judicial restraint. In *Shankari Prasad v. Union of India* (1951), the Supreme Court upheld Parliament's power under Article 368 to amend fundamental rights, holding that constitutional amendments were not "law" within Article 13(2) and thus immune from challenge on grounds of violating Part III rights. This decision affirmed parliamentary supremacy in amending the Constitution, including fundamental rights, reflecting deference to the legislature's constituent power in the formative years of the Republic.<sup>2</sup>

This position was reaffirmed in *Sajjan Singh v. State of Rajasthan* (1965), where the Court again declined to subject amendments to fundamental rights scrutiny. However, dissenting opinions began questioning unlimited amending power, foreshadowing future shifts.<sup>3</sup>

A decisive turn occurred in *I.C. Golaknath v. State of Punjab* (1967), where an eleven-judge bench, by a narrow 6:5 majority, overruled *Shankari Prasad* and *Sajjan Singh*. The Court held that constitutional amendments constituted "law" under Article 13(2), rendering them void if they abridged fundamental rights. This judgment marked a bold assertion of judicial supremacy, treating fundamental rights as transcendental and immutable against parliamentary amendment. It introduced prospective overruling to mitigate disruption but signaled the judiciary's readiness to limit Parliament's amending authority.<sup>4</sup>

Parliament responded with the 24th, 25th and 29th Constitutional Amendments (1971), seeking

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<sup>2</sup> *Shankari Prasad v. Union of India*, AIR 1951 SC 458; (1951) SCR 89.

<sup>3</sup> *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845; (1965) 1 SCR 933.

<sup>4</sup> *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643; (1967) 2 SCR 762.

to restore amending power and protect certain laws from challenge. These were challenged in the landmark *Kesavananda Bharati v. State of Kerala* (1973), decided by a thirteen-judge bench in a 7:6 majority verdict. Overruling *Golaknath* on the point that amendments are not "law" under Article 13, the Court held that while Parliament possesses wide amending powers under Article 368, it cannot alter or destroy the "basic structure" or essential features of the Constitution. Elements such as supremacy of the Constitution, republican and democratic form of government, secularism, separation of powers, federalism and judicial review were identified (though not exhaustively) as part of this unamendable core. This "basic structure doctrine" emerged as a judicial innovation to reconcile parliamentary sovereignty with constitutional permanence, preventing the Constitution from being subverted under the guise of amendment.<sup>5</sup>

The doctrine's practical application came swiftly during the Emergency. In *Indira Nehru Gandhi v. Raj Narain* (1975), the Supreme Court invalidated clauses of the 39th Amendment that sought to immunize the Prime Minister's election from judicial scrutiny, holding free and fair elections, democracy and judicial review as basic features. This decision reinforced judicial review's role in checking executive overreach even amid national emergency.<sup>6</sup>

Subsequent cases solidified the doctrine. In *Minerva Mills v. Union of India* (1980), provisions of the 42nd Amendment attempting to exclude judicial review and prioritize Directive Principles over Fundamental Rights were struck down as violative of basic structure.<sup>7</sup> Later rulings, such as *L. Chandra Kumar v. Union of India* (1997), explicitly declared judicial review under Articles 32 and 226 as an integral part of the basic structure.<sup>8</sup>

Thus, the historical evolution of judicial review in India transitioned from initial deference to Parliament, through assertive protection of fundamental rights, to a balanced yet firm judicial guardianship via the basic structure doctrine. This trajectory underscores the judiciary's adaptive role in preserving constitutional democracy against transient political majorities.

### **Constitutional Framework for Judicial Review**

The Constitution of India establishes a comprehensive framework for judicial review, even though the phrase "judicial review" does not explicitly appear in the constitutional text. Through a combination of provisions, the Constitution empowers the judiciary, particularly the

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<sup>5</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461; (1973) 4 SCC 225.

<sup>6</sup> *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299; (1975) Supp SCC 1.

<sup>7</sup> *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789; (1980) 3 SCC 625.

<sup>8</sup> *L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125; (1997) 3 SCC 261.

Supreme Court and the High Courts, to examine the constitutionality of legislative enactments, executive actions, ordinances, subordinate legislation and even constitutional amendments. This structure reflects the framers' conscious decision to adopt a written constitution as the supreme law of the land, with the judiciary acting as its guardian. In contrast to the United States, where judicial review emerged from judicial interpretation in *Marbury v. Madison*, the Indian constitutional design embeds judicial review within several explicit constitutional provisions.<sup>9</sup>

A central pillar of this framework is Article 13, which declares that any law inconsistent with or in derogation of the fundamental rights guaranteed in Part III of the Constitution shall be void to the extent of such inconsistency.<sup>10</sup> Clause (1) addresses laws that existed prior to the commencement of the Constitution, while Clause (2) prohibits the State from enacting laws that abridge or take away fundamental rights, rendering such laws void *ab initio*. This provision constitutes the primary textual foundation for judicial review of ordinary legislation. Courts have relied upon Article 13 to invalidate statutes, ordinances, rules and other forms of delegated legislation that infringe fundamental rights. The scope of the term "law" under Article 13 has been interpreted broadly, as illustrated in *State of West Bengal v. Anwar Ali Sarkar*, where the Supreme Court recognized that the provision extends beyond legislative enactments to include executive actions with statutory force.<sup>11</sup>

Another key component of the constitutional framework is Article 32, which guarantees the right to move the Supreme Court for the enforcement of fundamental rights. Dr. B.R. Ambedkar famously described this provision during the Constituent Assembly debates as the "heart and soul" of the Constitution.<sup>12</sup> Article 32(2) empowers the Supreme Court to issue appropriate directions, orders, or writs, including *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, to enforce fundamental rights. The provision establishes the Court's original jurisdiction in fundamental rights matters and ensures direct access to constitutional remedies. This mechanism reinforces the role of the judiciary as the ultimate protector of fundamental rights, a principle affirmed in *Romesh Thappar v. State of Madras*, where the Court underscored its duty to safeguard freedom of speech against arbitrary state interference.<sup>13</sup>

Complementing Article 32 is Article 226, which confers expansive writ jurisdiction upon the

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<sup>9</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

<sup>10</sup> INDIA CONST. art. 13.

<sup>11</sup> *State of W. Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

<sup>12</sup> CONSTITUENT ASSEMBLY DEBATES 953 (Dec. 9, 1948) (statement of Dr. B.R. Ambedkar).

<sup>13</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

High Courts.<sup>14</sup> Unlike Article 32, which is confined to the enforcement of fundamental rights, Article 226 authorizes High Courts to issue writs “for any other purpose.” This broader language extends judicial review beyond fundamental rights to encompass administrative actions, statutory interpretation and questions concerning legality and procedural fairness. Through Article 226, High Courts review executive and quasi-judicial decisions on grounds such as *ultra vires*, violation of natural justice, arbitrariness and proportionality. The concurrent operation of Articles 32 and 226 thus creates a dual system of constitutional remedies, with High Courts functioning as primary forums and the Supreme Court exercising supervisory and appellate jurisdiction.

The Supreme Court’s broader appellate and discretionary powers also reinforce the system of judicial review. Article 136 confers a wide discretionary authority on the Court to grant special leave to appeal from any judgment, decree, or order of any court or tribunal in India.<sup>15</sup> This extraordinary jurisdiction enables the Supreme Court to review decisions involving substantial questions of constitutional law or grave injustice. In addition, Articles 131–134 establish the Court’s original and appellate jurisdiction in matters involving federal disputes and constitutional interpretation. Further, Article 143 empowers the President to seek the advisory opinion of the Supreme Court on questions of law or fact of public importance. Although advisory opinions are not binding, they provide authoritative constitutional guidance and contribute to the development of constitutional jurisprudence.<sup>16</sup>

Judicial review also plays a critical role in maintaining the federal balance established by the Constitution. Article 246, read with the Seventh Schedule, distributes legislative competence between the Union and the States. Courts ensure that legislatures operate within their respective spheres of authority and invalidate laws that encroach upon the domain of another level of government. For instance, in *State of Rajasthan v. G. Chawla*, the Supreme Court examined the limits of legislative competence under the constitutional distribution of powers.<sup>17</sup>

Beyond reviewing legislation, the judiciary has extended judicial review to administrative and executive actions through the expansion of constitutional principles. In *Maneka Gandhi v. Union of India*, the Supreme Court interpreted Articles 14, 19 and 21 together to establish that any procedure depriving a person of life or personal liberty must be “fair, just and

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<sup>14</sup> INDIA CONST. art. 226.

<sup>15</sup> INDIA CONST. art. 136.

<sup>16</sup> INDIA CONST. art. 143.

<sup>17</sup> *State of Rajasthan v. G. Chawla*, AIR 1959 SC 544.

reasonable.”<sup>18</sup> This landmark decision significantly broadened the scope of judicial review by introducing substantive due process into Indian constitutional law.

Furthermore, judicial review extends to constitutional amendments through the basic structure doctrine, articulated in *Kesavananda Bharati v. State of Kerala*.<sup>19</sup> In this historic judgment, the Supreme Court held that although Parliament possesses broad amending powers under Article 368, it cannot alter the “basic structure” of the Constitution. The Court subsequently affirmed that judicial review itself forms part of this basic structure, thereby rendering it immune from constitutional amendment. This principle was reaffirmed in *L. Chandra Kumar v. Union of India*, where the Court emphasized that the power of judicial review vested in the Supreme Court and High Courts is an essential feature of the constitutional system.<sup>20</sup>

### **Judicial Review as a Tool for Political Accountability**

Judicial review plays a crucial role in promoting political accountability within constitutional democracies. By empowering courts to examine the legality and constitutionality of governmental actions, judicial review ensures that public authorities exercise power within the limits prescribed by the constitution. In democratic systems, political accountability is typically maintained through electoral processes and legislative oversight; however, these mechanisms may be insufficient to prevent abuses of power or the violation of constitutional rights. Judicial review therefore serves as an additional institutional safeguard by subjecting legislative and executive actions to constitutional scrutiny.<sup>21</sup>

At its core, judicial review operates as a mechanism that holds political actors accountable to constitutional norms. Legislatures and executives derive their authority from the constitution and must act within the boundaries established by it. When courts review governmental actions, they ensure that political decisions comply with constitutional provisions, thereby reinforcing the rule of law and preventing arbitrary governance.<sup>22</sup> Through this process, courts function as guardians of the constitution and protectors of fundamental rights, ensuring that political

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<sup>18</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>19</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

<sup>20</sup> *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

<sup>21</sup> Y. Dotan, *Judicial Review and Political Accountability: The Case of the High Court of Justice in Israel*, 32 *Israel L. Rev.* 448 (1998). <https://www.cambridge.org/core/journals/israel-law-review/article/judicial-review-and-politicalaccountability-the-case-of-the-high-court-of-justice-in-israel/A05FA059D63A63F708191A2945A6D06C>

<sup>22</sup> David S. Law, *A Theory of Judicial Power and Judicial Review*, 97 *Geo. L.J.* 723 (2008). <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=1112613>

authorities remain accountable not only to voters but also to constitutional principles.<sup>23</sup>

One of the primary ways in which judicial review enhances political accountability is by limiting the exercise of majoritarian power. In democratic systems, elected representatives may enact policies that reflect the will of the majority but undermine the rights of minorities or violate constitutional safeguards. Judicial review acts as a corrective mechanism by invalidating laws and policies that infringe constitutional rights or exceed governmental authority.<sup>24</sup> In this sense, judicial review promotes what scholars describe as “constitutional democracy,” where democratic governance operates within the framework of entrenched constitutional limitations.<sup>25</sup>

Judicial review also promotes transparency and reasoned decision-making within the political branches of government. When political actors know that their actions may be subject to judicial scrutiny, they are more likely to justify their decisions through lawful procedures and rational reasoning. Courts often require governments to provide explanations for their actions and demonstrate that policies are consistent with constitutional requirements. This process fosters deliberation and accountability in public decision-making, thereby strengthening democratic governance.<sup>26</sup>

Furthermore, judicial review contributes to political accountability by providing citizens with an institutional forum to challenge governmental actions. Individuals and groups can approach courts to contest laws, policies, or administrative decisions that violate constitutional guarantees. Through this process, courts serve as venues where grievances against the state can be addressed, ensuring that governmental power remains responsive to legal and constitutional constraints.<sup>27</sup> This judicial oversight becomes particularly important in situations where political institutions fail to adequately represent minority interests or where electoral accountability proves ineffective.

Another significant aspect of judicial review is its role in maintaining the balance of power among the branches of government. Constitutional systems typically rely on the doctrine of separation of powers to prevent the concentration of authority in a single branch. Judicial

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<sup>23</sup> Stephen Freeman, *Constitutional Democracy and the Legitimacy of Judicial Review*, 9 *Law & Phil.* 327 (1990). <https://link.springer.com/article/10.1007/BF00212703>

<sup>24</sup> Mark Tushnet, *Judicial Review and Contemporary Democratic Theory* (2017).

<sup>25</sup> Murray Wesson Langford, *Why Judicial Review?*, *Oslo L. Rev.* (2017). <https://www.scup.com/doi/abs/10.5617/oslaw2351>

<sup>26</sup> Georg Vanberg, *Constitutional Courts in Comparative Perspective: A Theoretical Assessment*, 18 *Ann. Rev. Pol. Sci.* 167 (2015). <https://www.annualreviews.org/content/journals/10.1146/annurev-polisci-040113-161150>

<sup>27</sup> Rebecca L. Brown, *Accountability, Liberty and the Constitution*, in *Bills of Rights* (2017).

review allows courts to check legislative and executive actions that exceed constitutional limits, thereby preserving institutional equilibrium.<sup>28</sup> By enforcing constitutional boundaries, courts ensure that no branch of government exercises power in an arbitrary or unconstitutional manner.

Despite these benefits, the role of judicial review in promoting political accountability remains subject to debate. Critics argue that judicial review may undermine democratic governance by allowing unelected judges to override the decisions of elected representatives. This concern is often described as the “counter-majoritarian difficulty,” which highlights the tension between judicial authority and democratic legitimacy.<sup>29</sup> However, many scholars contend that judicial review ultimately strengthens democracy by protecting constitutional values and preventing the abuse of political power.<sup>30</sup> Rather than undermining democratic accountability, judicial review complements electoral mechanisms by ensuring that political decisions conform to constitutional norms.

In modern constitutional systems, judicial review has become an essential component of democratic governance. Courts not only interpret constitutional provisions but also ensure that political institutions operate within the framework of the rule of law. By reviewing legislation, executive actions and administrative decisions, courts reinforce constitutional supremacy and promote accountability in government. As a result, judicial review functions as both a legal doctrine and a democratic safeguard that protects the integrity of constitutional governance.

### **Landmark Cases Illustrating Accountability Through Judicial Review**

Judicial review has played a pivotal role in enforcing political accountability by ensuring that legislative and executive actions conform to constitutional principles. Courts, through landmark judgments, have demonstrated their capacity to restrain governmental overreach, protect fundamental rights and maintain the balance of power among state institutions. Several significant judicial decisions across constitutional democracies illustrate how judicial review functions as a mechanism for holding political authorities accountable to the rule of law.

One of the earliest and most influential examples of judicial review is *Marbury v. Madison* (1803), decided by the United States Supreme Court. In this case, Chief Justice John Marshall

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<sup>28</sup> J.H. Choper, *Judicial Review and the National Political Process: A Functional Reconsideration of the Role of the Supreme Court* (2013).

<sup>29</sup> Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (1962).

<sup>30</sup> A. Lever, *Democracy and Judicial Review: Are They Really Incompatible?*, 7 *Persps. on Pol.* 805 (2009).  
<https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=2500254>

established the principle that it is the duty of the judiciary to interpret the Constitution and invalidate laws that conflict with it.<sup>31</sup> The decision asserted the supremacy of the Constitution over ordinary legislation and established the judiciary as the final authority on constitutional interpretation. By doing so, the Court ensured that governmental actions would remain subject to constitutional limits, thereby reinforcing political accountability within the American constitutional framework.

In the Indian constitutional context, *Romesh Thappar v. State of Madras* (1950) represents an early assertion of judicial review in defense of fundamental rights.<sup>32</sup> The Supreme Court invalidated a

state government order banning the circulation of a journal on the grounds that it violated the constitutional guarantee of freedom of speech and expression under Article 19(1)(a). The Court emphasized that freedom of expression is essential for democratic governance and that arbitrary restrictions imposed by the executive cannot be sustained. This decision demonstrated the Court's willingness to hold the executive accountable for actions that undermine civil liberties.

Another landmark case illustrating the role of judicial review in maintaining constitutional accountability is *Kesavananda Bharati v. State of Kerala* (1973).<sup>33</sup> In this historic judgment, the Supreme Court of India articulated the basic structure doctrine, holding that while Parliament has the authority to amend the Constitution under Article 368, it cannot alter the fundamental features of the Constitution. The Court identified elements such as the supremacy of the Constitution, separation of powers and judicial review itself as part of the basic structure. By placing substantive limits on the amending power of Parliament, the Court ensured that even constitutional amendments remain subject to judicial scrutiny, thereby reinforcing accountability at the highest level of governmental authority.

The principle of accountability through judicial review was further strengthened in *Maneka Gandhi v. Union of India* (1978).<sup>34</sup> In this case, the Supreme Court expanded the interpretation of Article 21 of the Constitution by holding that any procedure depriving a person of life or personal liberty must be "fair, just and reasonable." The Court linked Articles 14, 19 and 21 to establish that arbitrary state action cannot be justified merely by adherence to formal procedures. This decision significantly broadened the scope of judicial review over

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<sup>31</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

<sup>32</sup> *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>33</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

<sup>34</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

administrative actions and reinforced the judiciary's role in protecting individual rights against arbitrary governmental power.

Judicial review has also been instrumental in preserving the independence and authority of the judiciary itself. In *L. Chandra Kumar v. Union of India* (1997), the Supreme Court examined constitutional amendments that sought to limit the jurisdiction of High Courts in matters involving administrative tribunals.<sup>35</sup> The Court held that the power of judicial review vested in the Supreme Court under Article 32 and in the High Courts under Article 226 forms part of the basic structure of the Constitution and therefore cannot be curtailed by constitutional amendment. This decision reaffirmed that judicial review is an essential feature of the constitutional system and a crucial mechanism for ensuring governmental accountability.

Similarly, *Minerva Mills v. Union of India* (1980) reaffirmed the limitations on Parliament's amending power.<sup>36</sup> The Supreme Court struck down certain provisions of the Forty-Second Constitutional Amendment that sought to give Parliament unlimited power to amend the Constitution and restrict judicial review. The Court emphasized that the Constitution is founded upon a balance between fundamental rights and directive principles and that destroying this balance would undermine the constitutional order. By invalidating the amendment, the Court reaffirmed the judiciary's role in preventing the concentration of political power and preserving constitutional governance.

Collectively, these landmark cases demonstrate how judicial review functions as an effective mechanism for enforcing political accountability. Through their decisions, courts ensure that governmental actions remain consistent with constitutional norms and that no branch of government exercises unchecked authority. By protecting fundamental rights, maintaining institutional balance and safeguarding the supremacy of the Constitution, judicial review continues to serve as a critical instrument for promoting accountability and preserving the rule of law in democratic societies.

### **Challenges and Criticisms**

Despite its significant role in maintaining constitutional governance, judicial review has been subject to considerable criticism and debate within constitutional theory. While many scholars regard it as an essential safeguard against governmental abuse of power, critics argue that judicial review may create tensions with democratic principles, institutional balance and

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<sup>35</sup> *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

<sup>36</sup> *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

judicial legitimacy.

One of the most prominent criticisms is the counter-majoritarian difficulty, a concept articulated by Alexander Bickel. This critique suggests that judicial review allows unelected judges to overturn laws enacted by democratically elected representatives, thereby undermining the principle of majority rule.<sup>37</sup> Since judges are not directly accountable to the electorate, critics argue that their ability to invalidate legislation raises questions about democratic legitimacy and political accountability. In this view, excessive judicial intervention may substitute judicial preferences for the policy choices of elected officials.

Another major concern relates to judicial activism and overreach. Critics argue that courts sometimes expand the scope of judicial review beyond constitutional interpretation into areas of policymaking that traditionally belong to the legislative or executive branches.<sup>38</sup> When courts adopt expansive interpretations of constitutional provisions, they may effectively shape public policy without democratic deliberation. This phenomenon is often described as judicial activism and is viewed by some scholars as a threat to the separation of powers.

A further challenge concerns the institutional competence of courts. Unlike legislatures and administrative agencies, courts may lack the technical expertise and resources necessary to address complex social, economic and policy issues.<sup>39</sup> When courts intervene in matters involving public administration, economic regulation, or national security, they may face difficulties in assessing policy implications or balancing competing interests. Consequently, critics argue that excessive reliance on judicial review may lead to decisions that are insufficiently informed by policy expertise.

Judicial review may also raise concerns about politicization of the judiciary. When courts frequently adjudicate politically sensitive issues, they may become perceived as political actors rather than neutral arbiters of the law.<sup>40</sup> This perception can undermine public confidence in the judiciary and erode its institutional legitimacy. In some constitutional systems, the increasing involvement of courts in political controversies has intensified debates about the appropriate limits of judicial authority.

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<sup>37</sup> Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (1962).

<sup>38</sup> David S. Law, *A Theory of Judicial Power and Judicial Review*, 97 *Geo. L.J.* 723 (2008).

<https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=1112613>

<sup>39</sup> Mark Tushnet, *Judicial Review and Contemporary Democratic Theory: Power, Domination and the Courts* (2017).

<sup>40</sup> Georg Vanberg, *Constitutional Courts in Comparative Perspective: A Theoretical Assessment*, 18 *Ann. Rev. Pol. Sci.* 167 (2015). <https://www.annualreviews.org/content/journals/10.1146/annurev-polisci-040113-161150>

Another criticism relates to the uneven accessibility of judicial remedies. Although judicial review provides citizens with a mechanism to challenge governmental actions, access to courts may be limited by procedural barriers, financial constraints and delays in the judicial process.<sup>41</sup> In many jurisdictions, lengthy litigation and high legal costs can prevent individuals from effectively exercising their right to seek judicial review, thereby limiting its potential as a tool for ensuring accountability.

Despite these criticisms, many scholars argue that the limitations of judicial review do not diminish its importance within constitutional democracies. Instead, they highlight the need for a balanced approach in which courts exercise judicial review with restraint while continuing to safeguard constitutional principles and individual rights.

### Conclusion

Judicial review has emerged as one of the most significant mechanisms for maintaining constitutional governance and political accountability in modern democratic systems. By empowering courts to examine the constitutionality of legislative and executive actions, judicial review ensures that governmental authority is exercised within the framework of the Constitution and the rule of law. Through this process, courts act as guardians of constitutional supremacy and protectors of fundamental rights.

The constitutional framework supporting judicial review—particularly in systems such as India, demonstrates the deliberate effort to establish institutional checks and balances among the branches of government. Provisions such as Articles 13, 32 and 226 enable courts to review laws and administrative actions, while landmark judicial decisions have expanded the scope of judicial oversight to include constitutional amendments and administrative procedures. Through doctrines such as the basic structure principle, the judiciary has reinforced the idea that even the highest political authorities remain subject to constitutional limitations.

Landmark judgments, including *Marbury v. Madison*, *Kesavananda Bharati v. State of Kerala* and *Maneka Gandhi v. Union of India*, illustrate how judicial review functions as a powerful tool for holding governments accountable and protecting democratic values. These decisions demonstrate the judiciary's capacity to prevent the misuse of political power and uphold the rights and liberties guaranteed by the Constitution.

At the same time, the practice of judicial review must be exercised with caution and respect for

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<sup>41</sup> Rebecca L. Brown, *Accountability, Liberty and the Constitution*, in *Bills of Rights* (2017).

democratic processes. Concerns regarding judicial activism, institutional competence and democratic legitimacy highlight the need for courts to maintain a careful balance between enforcing constitutional norms and respecting the roles of other branches of government.

Ultimately, judicial review remains a fundamental pillar of constitutional democracy. By ensuring that public power is exercised in accordance with constitutional principles, it promotes accountability, protects individual freedoms and preserves the integrity of democratic governance. When exercised responsibly, judicial review strengthens rather than weakens democracy by ensuring that political authority remains subordinate to the rule of law.

## References

1. Bickel, Alexander M. *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. Indianapolis: Bobbs-Merrill, 1962.
2. Brown, Rebecca L. "Accountability, Liberty and the Constitution." In *Bills of Rights*, edited by Mark Tushnet and Thomas Fleiner. London: Routledge, 2017.
3. Choper, Jesse H. *Judicial Review and the National Political Process: A Functional Reconsideration of the Role of the Supreme Court*. Chicago: University of Chicago Press, 1980.
4. Dixon, Rosalind. *Responsive Judicial Review: Democracy and Dysfunction in the Modern Age*. Oxford: Oxford University Press, 2023.
5. Dotan, Yoav. "Judicial Review and Political Accountability: The Case of the High Court of Justice in Israel." *Israel Law Review* 32 (1998): 448–475. <https://www.cambridge.org/core/journals/israel-law-review/article/judicial-review-and-political-accountability-the-case-of-the-high-court-of-justice-in-israel/A05FA059D63A63F708191A2945A6D06C>
6. Freeman, Samuel. "Constitutional Democracy and the Legitimacy of Judicial Review." *Law and Philosophy* 9, no. 3 (1990): 327–370. <https://link.springer.com/article/10.1007/BF00212703>
7. Langford, Malcolm. "Why Judicial Review?" *Oslo Law Review* (2017). <https://www.scup.com/doi/abs/10.5617/oslaw2351>
8. Law, David S. "A Theory of Judicial Power and Judicial Review." *Georgetown Law Journal* 97 (2008): 723–801., <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=1112613>
9. Lever, Annabelle. "Democracy and Judicial Review: Are They Really Incompatible?" *Perspectives on Politics* 7, no. 4 (2009): 805–822. <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=2500254>
10. Vanberg, Georg. "Constitutional Courts in Comparative Perspective: A Theoretical Assessment." *Annual Review of Political Science* 18 (2015): 167–185. <https://www.annualreviews.org/content/journals/10.1146/annurev-polisci-040113-161150>