THE CONSTITUTIONAL ROLE OF THE JUDICIARY IN PROTECTING DEMOCRACY, CONSTITUTIONAL SUPREMACY, AND FUNDAMENTAL RIGHTS

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ABSTRACT

This paper dives into how the judiciary functions as the primary defender of democratic systems, the concept of constitutional supremacy, and our fundamental rights. Even though judicial review isn't explicitly spelled out in the foundational texts in the exact way courts use it today, it has naturally morphed into the most vital roadblock against majority overreach. By looking at the basic structure doctrine, the broadening interpretation of Article 21, and the massive shift brought on by public interest litigation, we can see exactly how Indian courts have stepped up when politicians dropped the ball. That being said, the paper doesn't ignore the valid pushback: handing this much interpretive power to unelected judges creates friction with democratic accountability, and the notorious delays in the justice system often undermine the very rights being protected. Ultimately, the argument here is that judicial review shouldn't be seen as an enemy of democracy, but rather as the safety net that makes democracy possible as long as courts remember their boundaries.

Keywords: judicial review, constitutional supremacy, basic structure doctrine, fundamental rights, judicial activism, separation of powers.

I. INTRODUCTION

At their core, constitutions are basically promises that a society makes to itself about how power will be handled and kept in check. [1]The obvious flaw with promises is that the people who make them are often the first to break them when the political climate gets hot. This exact dilemma is why the judiciary holds such a unique spot in any constitutional democracy. You need an independent referee standing outside the messy arena of daily politics to force the government to play by the rules established on day one.

This paper evaluates whether this setup actually works in practice. We are going to look at three interconnected concepts: constitutional supremacy (the rule that the constitution outranks everything, even the lawmakers); judicial review (the tool used to enforce that supremacy); and fundamental rights (the things that usually get trampled first when the system fails). India serves as the main case study here. Not only is its legal history incredibly rich, but it also birthed the basic structure doctrine one of the most creative judicial concepts globally.[2] However, we'll also draw quick comparisons to the US and other common law systems where it makes sense.

The layout is straightforward. Part II breaks down what constitutional supremacy actually entails versus parliamentary sovereignty. Part III looks at judicial review as the engine of that supremacy. Part IV shifts to how courts protect the bare mechanics of democracy, beyond just individual rights. Part V tracks how fundamental rights have exploded in scope. Part VI weighs the undeniable wins of judicial intervention against the very real risks of overreach and delays.

II. CONSTITUTIONAL SUPREMACY: THE FOUNDATION

Constitutional supremacy is exactly what it sounds like: the constitution sits at the absolute top of the legal food chain. If a standard law contradicts it, that law is essentially dead on arrival. India's founders didn't want to leave this to interpretation, so they wrote it directly into the text. Article 13 makes it crystal clear that laws infringing on fundamental rights simply don't exist as valid legislation.[3] This aggressive stance places India alongside countries like the US and post-apartheid South Africa.[4] It's a sharp left turn from the United Kingdom's traditional setup,

[1] Granville Austin, The Indian Constitution: Cornerstone of a Nation xiii–xvii (1966).
[2] See *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).
[3] India Const. art. 13, cl. 2.
[4] S. Afr. Const., 1996, § 2.

where Parliament remains the supreme boss and doesn't answer to a single written document.[5]

Why does this difference matter? Because it decides who holds the trump card when the elected government and the constitution inevitably clash. Under parliamentary sovereignty, lawmakers get the last word. Under constitutional supremacy, a different referee almost always the courts must have the authority to strike down bad laws. Chief Justice Marshall famously cemented this logic in the American case Marbury v. Madison. [6]He argued that if ordinary politicians can rewrite the constitution on a whim, then it isn't really a constitution. The Indian framers baked this reality into their system from the start, and local judges have spent the last seventy-plus years figuring out how to enforce it.[7]

III. THE MECHANICS OF JUDICIAL REVIEW

Talking about constitutional supremacy is pointless unless an institution actually has the teeth to enforce it against a stubborn government. Articles 32 and 226 provide those teeth, granting the Supreme Court and High Courts the power to issue orders protecting fundamental rights.**[8]**

The real headache for Indian judges wasn't figuring out if they could review standard laws everyone agreed they could. The real fight was whether they could review constitutional amendments. If lawmakers have the votes to amend the Constitution, and that new text becomes the Constitution, what exactly is the court supposed to evaluate it against? In the early **Golak Nath case**, the Court clumsily ruled that fundamental rights were completely untouchable.[9] Lawmakers hated this and immediately fired back. A few years later, a razor-thin majority in **Kesavananda Bharati** found a much smarter compromise.[10] They ruled that while Parliament can amend the document, it cannot destroy its "basic structure." [11]The Court intentionally left the definition of "basic structure" vague, eventually throwing in concepts like federalism, secularism, and free elections as the years went on.

Interestingly, in **Minerva Mills**, the Court decided that judicial review itself is part of that basic structure. [12]Critics love to point out how circular this is the court using its own power to declare

[5] A.V. Dicey, Introduction to the Study of the Law of the Constitution 39–40 (10th ed. 1959).
[6] *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176–78 (1803).
[7] M.P. Jain, Indian Constitutional Law 8–12 (8th ed. 2018).
[8] India Const. arts. 32, 226.
[9] *I.C. Golak Nath v. State of Punjab*, AIR 1967 SC 1643, 1668–72 (India).
[10] *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, 305–10 (India).
[11] *Id.* at 315.
[12] *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625, 642–45 (India).

its power untouchable. But defenders argue that any institution tasked with keeping politicians in check needs a way to stop those same politicians from just deleting the court's authority entirely.[13]

IV. PROTECTING THE DEMOCRATIC MACHINE

While civil rights cases get all the media attention, the courts do a lot of heavy lifting to keep the actual machinery of democracy from being hijacked. The **Indira Nehru Gandhi v. Raj Narain** case is the perfect example.[14] Slapped down right in the middle of the Emergency, the Court invalidated an amendment that was custom-built to protect the Prime Minister's legally messy election win. By declaring that fair elections are a basic feature of the Constitution, the Court refused to back down from a massive political fight, and many view it as the judiciary's finest moment.

You see a similar vibe in **S.R. Bommai**. For decades, [15]the central government routinely abused Article 356 to fire state governments run by rival political parties. By ruling that these dismissals had to be proven on the assembly floor not just decided in backrooms the Court shut down a major loophole used to bully local democracies. Both of these landmark cases share the same DNA: they aren't about one person's rights, but about stopping the people currently in power from rigging the game so they never lose it.

V. THE EXPLOSION OF FUNDAMENTAL RIGHTS

If you look at the history of fundamental rights in India, it's mostly a story of judges abandoning a very strict, literal reading of the text in favor of something much more expansive. Right after independence, in **A.K. Gopalan**, the Court treated Articles 14, 19, and 21 as completely separate boxes.[16] This meant a law allowing someone to be locked up without trial only had to pass the narrow procedural hurdles of Article 21. It took nearly thirty years for **Maneka Gandhi** to blow that logic up. [17]The Court finally admitted these rights are deeply connected, and any law stripping someone of their freedom must actually be fair and just not merely passed by a legislature.

[13] See *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261, 300–02 (India).
[14] *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1, 87–92 (India).
[15] *S.R. Bommai v. Union of India*, (1994) 3 SCC 1, 109–12 (India).
[16] *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27, 34–38 (India).
[17] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 280–84 (India).

That decision changed everything. Article 21 suddenly transformed into a giant sponge, absorbing all kinds of unwritten rights. Over the years, the Court has used it to guarantee the right to a speedy trial[18], formally recognize a right to privacy[19], and ultimately strike down Section 377 to decriminalize consensual same-sex relationships.[20] Free speech got a similar boost in **Shreya Singhal**,[21] where the Court trashed vague laws punishing online speech right as other countries were clamping down on the internet. And when politicians completely ignored issues like workplace sexual harassment, the Court didn't sit around waiting; they drafted the **Vishaka guidelines** to fill the gap themselves.[22]

A. The Role of Public Interest Litigation (PIL)

None of this aggressive expansion would have happened if the courts hadn't changed who was allowed to file a lawsuit. Traditionally, you could only sue if you were the direct victim. The **S.P. Gupta** case threw those rules out the window,[23] allowing concerned citizens to sue on behalf of people who were too poor or marginalized to fight for themselves. This birthed Public Interest Litigation, paving the way for sweeping environmental regulations,[24] prison overhauls, and forced labor interventions.[25]

VI. A CRITICAL LOOK AT THE RECORD

A. THE UPSIDE

We shouldn't downplay what the judiciary has accomplished. By striking down self-serving amendments, stopping the bullying of state governments, and writing rules to protect vulnerable workers, the courts have stepped up when the political system completely failed. Marginalized groups who don't have the cash to lobby or the numbers to win elections have secured protections through the courts that politicians would never have given them.

[18] *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81, 89–91 (India).
[19] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, 112–15 (India).
[20] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, 75–80 (India).
[21] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, 45–48 (India).
[22] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, 252–54 (India).
[23] *S.P. Gupta v. Union of India*, AIR 1982 SC 149, 188–92 (India).
[24] *M.C. Mehta v. Union of India*, (1987) 1 SCC 395, 405–08 (India).
[25] Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4-5 Third World Legal Stud. 107, 114–18 (1985).

B. THE DOWNSIDE

That said, we can't just ignore the valid complaints. Handing this much power to unelected judges is dangerous. Serious scholars argue that the basic structure doctrine is just a blank check for judges to expand their power whenever they feel like it.[26] Some warn we are drifting into "judicial sovereignty," where major policy debates are settled in courtrooms rather than through voting.[27] A glaring example is when the Court struck down the National Judicial Appointments Commission to protect a system where judges basically hire each other.[28]

PILs have their own baggage. Relaxing the rules for filing lawsuits has unfortunately opened the floodgates for politicians and attention-seekers to clog the system with frivolous cases. And finally, there's the nightmare of delays. A constitutional right isn't worth the paper it's printed on if it takes fifteen years to enforce. The massive backlog of cases is a deeply ingrained structural failure, not just a temporary hiccup.[29]

C. MAKING SENSE OF THE CONTRADICTION

The truth is that both sides are right. Judicial intervention is an absolute lifesaver when democracy stalls, but it gets annoying and overbearing when judges start replacing the legitimate decisions of a functioning legislature with their own personal opinions. The tension isn't actually a contradiction; it just depends on the situation. The courts are most legitimate when the political gears are jammed, and least legitimate when they interfere just because they have the power to do so. The tricky part is that it's notoriously hard for judges to tell the difference in the heat of the moment.

VII. A QUICK GLOBAL COMPARISON

While India's specific basic structure doctrine is unique, the underlying tug-of-war is normal anywhere constitutional supremacy exists. American courts have been fighting this battle since Marbury v. Madison.[30] South Africa's Constitutional Court had to navigate the same landmines while tearing down apartheid.[31] What makes India stand out isn't the problem itself, but the

[26] H.M. Seervai, Constitutional Law of India 3110–15 (4th ed. 1991).
[27] Pratap Bhanu Mehta, *The Rise of Judicial Sovereignty*, 18 J. Democracy 70, 72–75 (2007).
[28] *Supreme Court Advocates-on-Record Ass'n v. Union of India*, (2016) 5 SCC 1, 210–15 (India).
[29] Nick Robinson, *Interpreting the Constitution: Supreme Court Constitution Benches Since Independence*, 45 Econ. & Pol. Wkly. 27, 29–31 (2010).
[30] 5 U.S. (1 Cranch) at 177.
[31] See S. Afr. Const., 1996, § 167.

massive scale and absolute confidence with which Indian judges have claimed the authority to fix it.

VIII. CONCLUSION

A constitution is only as supreme as the people enforcing it. In India, that job has fallen to an incredibly assertive judiciary. Overall, the record shows that this assertiveness has protected democracy much more than it has hurt it. Elections have been shielded from tampering, the balance of power has been maintained, and human rights have expanded drastically. But an unelected institution can only push its luck so far before people start questioning its authority. Every time the court expands its power, it borrows against its future legitimacy. The best way to view the judiciary, then, isn't as an untouchable overlord of politics, but as an emergency brake brilliantly effective when the system is crashing, but best left alone when the car is driving smoothly.

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