
JUDICIAL REVIEW: A TOOL FOR SOCIAL JUSTICE IN INDIA

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ABSTRACT

Judicial review serves as the primary constitutional mechanism with which courts ensure that legislative and executive actions remain subordinate to the supreme law of the land. In the Indian context, this is one of the most important powers of the Indian judiciary which allows courts to examine the laws and declare them invalid if they violate the Constitution of India. Social Justice means creating a society where law is fair to all the people, especially to the poor and marginalized to get equal protection under the law. In India, Judicial Review has played a very big role in protecting the rights and providing social justice to the ordinary citizens.

Through landmark judgements, the Supreme Court and High Courts have used judicial review to bring down unfair laws and protect the rights of people and thus making sure that the governments work within their constitutional limits.

This research paper critically examines the constitutional foundations of judicial review, its development through various cases and its impact on Indian democracy. It also discusses the challenges and criticisms of Judicial Review, like concerns of judicial overreach. This analysis concludes that even after all these criticisms, judicial review remains indispensable in order to ensure constitutional supremacy, ensuring fairness, equality, and “social justice” in Indian democracy.

Keywords: Judicial Review, Social Justice, Fundamental Rights, Judicial Activism, Constitutional Supremacy

I: INTRODUCTION

“Power must be controlled” goes back to ancient times and is not new to India. In ancient India, the king was expected to rule according to *Dharma* which means a moral and legal order that stood higher than personal will. This centuries old belief in Indian culture created the foundation for Judicial Review.

In the Arthashastra, written by Kautilya (Chanakya) around 3rd century BCE, it was clearly stated that the king must always act according to law and justice. The text explains if a ruler acts unfairly or ignores the established law, the system becomes weak. Courts and judges were expected to interpret and apply the law fairly and the king himself was subject to the rules and could not purely act according to personal desire.

Although ancient India did not have a written constitution like today, the principle that “law is above the ruler” existed in practice and philosophy. This idea later evolved into the modern constitutional principle of Judicial Review.

Post independence, India adopted a written constitution in the year 1950 and this constitution made the judiciary the guardian of fundamental rights. Under Articles - 13, 32 and 226 the courts were given the power to examine the laws and government actions. If any law violated the constitution, the Supreme Courts or High Courts can declare it void. This power is known as Judicial Review.

The doctrine was strongly affirmed in *Kesavananda Bharti v. State of Kerala*, where the Supreme Court held that even Parliament cannot destroy the basic structure of the Constitution. This decision confirmed that the constitutional supremacy is greater than parliamentary supremacy.

Judicial Review in India is not copied from the western countries. Its philosophical roots can be traced back to ancient Indian concepts of *Dharma* and rule of law. From India’s ancient moral restraints on kings to modern constitutional control over the legislature and executive, the journey reflects a continuous commitment to justice, accountability and fairness.

I.2 Research Problem

Judicial Review is very important in protecting fundamental rights and promoting social

justice. Yet, there are lots of debates going on about its proper use, scope and limits. The Indian Judiciary has often intervened to protect the rights of all sections of society, still the critics debate that excessive use of Judicial Review may lead to judicial overreach and interfere with functions of the legislature and executive. The research problem of this paper is to study whether Judicial Review has served as a tool for achieving social justice in India and to analyse its impact, scope and limitations in order to ensure fairness, equality and constitutional governance.

I.3 Literature Review

1- Judicial Review from a Judge's Perspective – Stephen Breyer (Oxford Journal of Legal Studies) <https://www.jstor.org/stable/20468266>

Stephen Breyer, in his work “Judicial Review: A Practicing Judge's Perspective” discusses the importance and challenges of Judicial Review in constitutional democracies. He examines the most common critics of Judicial Review like giving unelected judges the power to invalidate laws is undemocratic and subjective. Breyer explains that despite these concerns, Judicial Review is essential for maintaining the supremacy of the constitution and ensuring that the legislative and executive actions remain within constitutional limits.

He further highlights that judicial decision making is not merely based on personal opinions but follows legal reasoning, constitutional principles and practical considerations. He argues that courts play a crucial role in balancing majority rule with constitutional values and minority rights.

2- Myth of Judicial Overreach - Siddharth Sharma (Economic and Political Weekly) <https://www.jstor.org/stable/40277222>

In this article, the writer argues that the judiciary has a constitutional duty to intervene when the rule of law is threatened and cannot remain silent in executive or legislative inaction. Judicial Activism becomes necessary when other organs of the government fail to perform their constitutional duties. The author highlights that the constitution requires each organ of the state must function within its limits.

The author further discusses that criticism of judicial overreach often arises when courts interpret laws broadly to ensure justice. He explains that the judiciary's proactive role, specially

through Public Interest Litigation (PIL) and constitutional interpretation has strengthened democracy by safeguarding individual rights and promoting accountability.

3- Judicial Review in India: Maxims and Limitations - Vibhuti Singh Shekhawat (The Indian Journal of Political Science) <https://www.jstor.org/stable/41858807>

Vibhuti Singh Shekhawat in this article points out that the parliament has the authority to amend the constitution, such amendments must not violate the basic structure of the constitution thereby preserving constitutional supremacy. He further elaborates that Judicial Review operates within a structured legal framework shaped by several doctrinal principles or maxims. These doctrines guide courts in determining the constitutional validity of a legislation and help maintain a balance between judicial authority and legislative power.

4- Bases of Judicial Review - R. V. Ramachandrasekhara Rao (Journal of the Indian Law Institute) <https://www.jstor.org/stable/43949713>

In this article R. V. Ramachandrasekhara Rao compares the systems of England and the United States, noting that while England follows parliamentary supremacy, the American system introduced the concept of judicial review over legislative action. He points out that India adopted a system closer to the American model where courts have authority to review both legislative and administrative actions.

I.4 Scope of Study

This research paper focuses on the role of Judicial Review as a tool for achieving social justice in India. It examines constitutional provisions that empower the judiciary to review legislative and executive actions. The study covers important Supreme Court judgements, case laws, key constitutional doctrines and scholarly opinions related to Judicial Review. The scope of this research is limited to the Indian legal system and relies on relevant and authentic sources such as constitutional provisions, landmark case laws and articles published in reputed journals.

I.5 Objective of Study

The objectives of this research paper are:

1. To examine the concept and constitutional basis of Judicial Review in India

2. To analyze how judicial review acts as a tool for achieving social justice
3. To evaluate the scope, importance and limitations of Judicial Review in India

I.6 Research Question

- 1- How does judicial review function as a tool for promoting social justice in India?
- 2- What are the scope and limitations of judicial review ensuring constitutional governance and protection of fundamental rights in India?

I.7 Hypothesis

Judicial Review serves as an effective tool for promoting social justice in India by protecting fundamental rights and ensuring that legislative and executive actions remain checked. Through its power of constitutional scrutiny, the judiciary plays a very important role in maintaining equality, fairness and the rule of law in society. However, expanding use of Judicial Review may also arise concerns regarding judicial overreach and the possible imbalance among three organs of the government - the Legislature (which makes laws), the Executive (which implements laws) and the judiciary (which interprets laws).

I.8 Research Methodology

This research paper has a descriptive and critical approach to examine Judicial Review as a tool for social justice in India. The research is based on secondary sources of data, including constitutional provisions, landmark case laws, research articles, books and reliable online legal sources. The descriptive method explains the concept, development and scope of Judicial Review, while a critical analysis method is applied to evaluate its limitations, effectiveness, and impact on social justice. Various legal scenarios and judicial decisions have been analysed to understand how Judicial Review operates in practice and how it contributes to maintaining constitutional governance and fundamental rights in India.

II.I Concept and Constitutional basis of Judicial Review in India

Judicial Review is the power of the judiciary to examine that the legislative and executive actions follow the law and declare them invalid if they violate the provisions of the constitution. Judicial Review is not explicitly defined in a single provision of the constitution, yet its

foundations are firmly embedded in various constitution articles.

Article 13¹ declares that any law inconsistent with or in violation of fundamental rights shall be void. This law empowers courts to examine laws passed by the legislature and strike them if they infringe constitutional guarantees.

Article 32 grants the Supreme Court the authority to enforce fundamental rights while Article 226 empowers High Courts to issue writs for protection of rights and for any other purpose. These provisions collectively establish a strong mechanism through which citizens can approach the judiciary against unconstitutional actions of the state².

Judicial Review is closely associated with the constitutional idea of separation of powers in India, where the legislature makes the laws, the executive implements them and the judiciary interprets and ensures their constitutional validity. These laws and doctrines checks and prevents concentration of powers in any single organ of government and promotes accountability in governance. When courts examine legislative and administrative actions, they help to ensure that Indian democracy goes beyond formal procedures and also be substantive based on justice, equality and protection of human dignity³.

II.2 Historical Evolution of Judicial Review in India

Over time, the Judicial Review in India has taken shape through constitutional developments and court interpretations. The idea that rulers must act according to law can be traced to ancient Indian traditions where the principle of Dharma emphasised that the king was subject to moral and legal order. This belief that law is supreme laid an early philosophical foundation for modern constitutional principles.

After India adopted its Constitution in the year 1950, Judicial Review emerged as a key component of the legal system. The constitution established the judiciary as the guardian of fundamental rights and empowered it. In the early years of independence, conflicts arose between parliament and the judiciary regarding the extent of parliament's power to amend the constitution, particularly in relation to fundamental rights and constitutional supremacy.

¹ The Constitution of India, art. 13

² The Constitution of India, arts. 32 & 226

³ M.P. Jain, *Indian Constitutional Law* (8th ed., LexisNexis 2018)

This conflict was decisively addressed in the landmark case of **Kesavananda Bharati v. State of Kerala**⁴, where the Supreme Court propounded the basic structure doctrine. The court held that although parliament possessed wide power to amend the constitution, it cannot alter or destroy its basic structure. Judicial Review was recognised as an essential feature of the constitution ensuring constitutional supremacy over parliamentary supremacy.

The scope of Judicial Review was further strengthened in **S.R. Bommai v. Union of India**⁵ where the Supreme Court ruled that the proclamation of President's rule under article 356 is subject to Judicial Review. Thus judgement prevented arbitrary dismissal of state governments and reinforced democratic and federal principles.

II.3 Judicial Review and Social Justice

Judicial Review has played a very big role in advancing social justice by expanding the scope of fundamental rights. The judiciary has interpreted the constitution as the most important document that must respond to changing social realities and protect the dignity of all people.

A major shift in the interpretation of fundamental rights came with the judgement in **Maneka Gandhi vs Union of India**⁶, where the Supreme Court expanded the interpretation of Article 21. The court held that the right to life and personal liberty does not merely mean physical existence but includes the right to live with freedom and dignity. This judgement transformed the understanding of fundamental rights and enabled courts to review the actions that were arbitrary or unfair.

In **K.S. Puttaswamy v. Union of India**⁷ case the scope of personal liberty was further strengthened where the Supreme Court recognised the right to privacy as a fundamental right. By doing so, the judiciary ensured protection of individual autonomy and dignity in the modern digital era¹.

Judicial review has also been instrumental in promoting gender justice and protecting vulnerable groups. In **Vishaka v. State of Rajasthan**⁸, the Supreme Court laid down guidelines

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

⁵ S.R. Bommai v. Union of India, (1994) 3 SCC 1.

⁶ Maneka Gandhi vs Union of India, (1978) 1 SCC 248.

⁷ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

⁸ Vishaka v. State of Rajasthan, (1997) 6 SCC 241

to prevent sexual harassment at workplace in the absence of specific legislation. This decision showed how Judicial Review can fill legislative gaps to ensure justice and equality for women.

Similarly in **Navtej Singh Johar v. Union of India**⁹, the court decriminalized consensual same-sex relations by striking down parts of Section 377 of the Indian Penal Code. The judgement displayed constitutional morality, human dignity and equality thereby strengthening the rights of LGBTQ+ community.

In addition to protecting individual rights, Judicial Review has been used to ensure accountability in public safety and welfare. In **Union Carbide Corporation v. Union of India**¹⁰, the Supreme Court intervened to provide compensation and relief to the victims of Bhopal Gas Tragedy, highlighting the role of judiciary in addressing industrial and environmental justices. Through such interventions, Judicial Review has emerged as a powerful mechanism for achieving social justice by ensuring governance is conducted in a reasonable, fair and compliant manner.

II.4 Judicial Review in Current India

In present day India, Judicial Review continues to influence governance and public administration in many important ways. With the fast expansion of administrative powers and increasing complexity of social and economic issues, the judiciary has become an important forum for addressing grievances against arbitrary state action. The people of India depend on courts to ensure transparency, accountability and justice in decision making. Judicial Review thus functions not only as a constitutional safeguard but also as a practical tool for maintaining balance between state authority and individual rights in modern India.

Its relevance today can be observed in various court interventions related to digital privacy, environmental concerns, electoral integrity and civil liberties. Courts have addressed matters involving surveillance, data protection and misuse of administrative powers thereby ensuring that technological and administrative advancements remain consistent with constitutional values. Through such interventions, Judicial Review has adapted to the new challenges that it faces in this rapidly evolving world.

⁹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

¹⁰ Union Carbide vs Union of India, (1991) 4 SCC 584.

At the same time, the expanding role of the judiciary has led to debates regarding the limits of judicial intervention. While many view judicial activism as necessary for protecting citizens against abuse of power, others express concern that excessive intervention may blur boundaries between the judiciary, legislature and the executive. This debate reflects the need to maintain a careful balance so that Judicial Review strengthens democracy without undermining functions of other organs of the government.

II.5 Critical Analysis

Judicial Review has played a huge role in making constitutional governance stronger and promoting social justice in India. At the same time, the increasing use of judicial review has given rise to debates regarding judicial activism and judicial overreach. Critics argue that frequent judicial intervention in policy matters and administrative decisions may disturb the balance among three organs of the government. Since judges are not elected representatives, concerns are sometimes raised about democratic legitimacy of judicial decisions and significantly influence public policy. Such criticisms showcase the need for the judiciary to exercise its powers with caution and restraint while still fulfilling its constitutional duty.

Another challenge associated with Judicial Review is the issue of judicial delay and backlog of cases. Although the judiciary actively protects the rights through Judicial Review, the effectiveness of this mechanism can be affected by delays in the delivery of justice. In addition, the misuse of Public Interest Litigation in certain cases has led to concerns that the judicial time and resources may be diverted from genuine issues of social justice. These challenges underline the importance of maintaining efficiency, transparency and discipline in the exercise of judicial law.

It can be argued that if the reliance on judicial review keeps growing, it can show the strength of the constitution and at the same time the institutional gaps within legislative and administration. This makes judicial review both a safeguard as well as a subject of constitutional debate.

III. Conclusion

Judicial Review has evolved as the most important feature of the Indian constitutional framework and serves as an effective tool for promoting social justice. By empowering the

judiciary to examine the validity of legislative and administrative actions the Constitution ensures that governance remains within constitutional limits and the fundamental rights of the citizens are protected. Over the years, the judiciary has used this power to expand the scope of rights, uphold equality and maintain the rule of law in society.

Indian courts through various landmark judgements, have helped in safeguarding personal liberty, gender equality, environmental protection and democratic governance. It has strengthened constitutional supremacy and ensured accountability of state authorities. While Judicial Review has made lives better of ordinary citizens, the concerns regarding judicial overreach and need for institutional balance highlight the importance of exercising this power with caution and responsibility. Despite these challenges, Judicial Review continues to be a cornerstone of Indian democracy. It reinforces the supremacy of the Constitution and ensures that justice, equality and dignity remain central to governance. As Indian constitutional democracy continues to grow and evolve, judicial review will be an essential tool for protecting rights and achieving social justice for all its citizens.

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