

Judicial Review as a Tool for the Protection of Fundamental Rights

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Abstract—Judicial review constitutes a foundational pillar of Indian constitutionalism and serves as a vital mechanism for the protection of fundamental rights. Although not expressly articulated in the Constitution, the power of judicial review is firmly embedded through Articles 13, 32, 226, and 227, enabling constitutional courts to scrutinize legislative and executive actions for conformity with constitutional mandates. Over the years, the Supreme Court and High Courts of India have transformed judicial review from a narrow procedural safeguard into a dynamic instrument for advancing substantive justice. Through landmark judgments such as *Kesavananda Bharati*, *Maneka Gandhi*, and Justice K.S. Puttaswamy, the judiciary has reinforced constitutional supremacy, expanded the scope of fundamental rights, and upheld the doctrine of basic structure. The evolution of Public Interest Litigation has further strengthened judicial review by enhancing access to justice for marginalized groups and addressing systemic rights violations. While judicial review must operate within the limits of separation of powers to avoid judicial overreach, its role remains indispensable in preventing arbitrariness and safeguarding liberty, dignity, and equality. In the face of emerging governance challenges and technological advancements, judicial review continues to ensure that fundamental rights remain enforceable, adaptive, and central to India’s constitutional democracy.

Index Terms—Judicial Review, Fundamental Rights, Indian Constitution, Constitutional Supremacy

I. Introduction

Judicial review is one of the most significant contributions of constitutionalism to modern governance. It functions as a mechanism through which constitutional courts examine the legality and constitutionality of legislative and executive actions. In India, judicial review occupies a central position in the constitutional framework and has evolved as a powerful tool for the protection of fundamental rights guaranteed under Part III of the Constitution. The framers of the Indian Constitution envisaged an independent judiciary that would act as the sentinel on the qui vive, ensuring that the State does not transgress constitutional limitations. Over the decades, the Indian Supreme Court and High Courts have expanded the scope of judicial review to effectively safeguard individual liberties, thereby reinforcing the rule of law and constitutional supremacy.

II. Constitutional Basis of Judicial Review in India

Unlike some constitutions where judicial review is expressly stated, the Indian Constitution implies the power of judicial review through several provisions. Articles 13, 32, 226, and 227 collectively provide the constitutional foundation for judicial review.

Article 13 declares that any law inconsistent with or in derogation of fundamental rights shall be void to the extent of such inconsistency. This provision clearly empowers courts to review the validity of laws vis-à-vis fundamental rights. Article 32, described by Dr. B.R. Ambedkar as the “heart and soul of the Constitution,” guarantees the right to constitutional remedies, enabling individuals to directly approach the Supreme Court for enforcement of fundamental rights. Similarly,

Article 226 empowers High Courts to issue writs not only for fundamental rights but also “for any other purpose,” making judicial review accessible at the state level.

Thus, judicial review is constitutionally entrenched as an essential instrument for the protection of fundamental rights and cannot be diluted without damaging the basic structure of the Constitution.

III. Judicial Review and the Doctrine of Constitutional Supremacy

Judicial review reinforces the principle of constitutional supremacy by ensuring that all organs of the State operate within constitutional boundaries. In a democratic polity governed by a written Constitution, legislative supremacy is subordinate to constitutional supremacy. The judiciary, through judicial review, acts as the interpreter and guardian of the Constitution.

The Supreme Court in *Kesavananda Bharati v. State of Kerala* affirmed that judicial review is an integral part of the basic structure of the Constitution. Any attempt to curtail or exclude judicial review would be unconstitutional. This landmark decision cemented the role of the judiciary as the ultimate arbiter in matters concerning fundamental rights and constitutional limitations.

By exercising judicial review, courts prevent the legislature and executive from enacting arbitrary or oppressive laws that infringe upon individual freedoms. This ensures that democracy does not degenerate into majoritarianism, where the rights of minorities and dissenters are trampled by the will of the majority.

IV. Judicial Review as a Protector of Fundamental Rights

The most significant contribution of judicial review lies in its role as a protector of fundamental rights. Indian courts have consistently used judicial review to strike down laws, executive orders, and administrative actions that violate fundamental rights.

In *A.K. Gopalan v. State of Madras*, the Supreme Court initially adopted a narrow interpretation of fundamental rights. However, this approach was later overruled in *Maneka Gandhi v. Union of India*, where the Court expanded the scope of Article 21 by interpreting “procedure established by law” to mean a procedure that is just, fair, and reasonable. This transformative interpretation marked a new era in judicial review, enabling courts to scrutinize not only the existence of a law but also its fairness and reasonableness.

Judicial review has also played a crucial role in protecting freedoms under Article 19. Laws imposing unreasonable restrictions on freedom of speech, assembly, movement, and profession have been invalidated through judicial scrutiny. For instance, courts have consistently balanced State interests with individual liberties, ensuring that restrictions are proportionate and constitutionally justified.

V. Expansion of Fundamental Rights through Judicial Review

One of the most remarkable aspects of Indian judicial review is the creative expansion of fundamental rights through judicial interpretation. The Supreme Court has read several unenumerated rights into Article 21, including the right to dignity, privacy, health, education, livelihood, clean environment, and legal aid.

In *Justice K.S. Puttaswamy v. Union of India*, the Court recognized the right to privacy as a fundamental right intrinsic to life and personal liberty. This judgment exemplifies how judicial review adapts constitutional principles to changing societal needs, protecting citizens against excessive State surveillance and data misuse.

Similarly, environmental jurisprudence in India owes much to judicial review. Through Public Interest Litigation (PIL), courts have enforced the right to a healthy environment as part of Article 21, holding the State accountable for environmental degradation that threatens fundamental rights.

VI. Judicial Review and Public Interest Litigation

The evolution of Public Interest Litigation has significantly strengthened judicial review as a tool for protecting fundamental rights, especially for marginalized and vulnerable sections of society. By relaxing the traditional rules of locus standi, courts have allowed public-spirited individuals and organizations to approach the judiciary on behalf of those who cannot do so themselves.

Through PILs, courts have addressed issues such as custodial violence, bonded labor, prison conditions, child labor, and access to basic amenities. Judicial review in PIL cases goes beyond individual grievances and addresses systemic violations of fundamental rights, thereby advancing substantive justice.

However, courts have also cautioned against the misuse of PILs, emphasizing that judicial review must not transform into judicial overreach or governance by judiciary.

VII. Limits and Challenges of Judicial Review

While judicial review is a powerful tool, it is not without limitations. Excessive judicial intervention in policy matters may undermine the separation of powers. Courts have repeatedly acknowledged that judicial review is concerned with the decision-making process rather than the merits of the decision.

In matters involving economic policy, national security, and legislative wisdom, courts generally exercise restraint, intervening only when there is a clear violation of fundamental rights or constitutional principles. This balance is necessary to preserve institutional legitimacy and democratic accountability.

Another challenge lies in judicial delays and access to justice. Despite the constitutional guarantee of remedies, practical barriers such as pendency of cases and procedural complexities sometimes dilute the effectiveness of judicial review in protecting fundamental rights.

VIII. Judicial Review as a Basic Structure

The recognition of judicial review as part of the basic structure doctrine underscores its indispensability. In *L. Chandra Kumar v. Union of India*, the Supreme Court held that the power of judicial review vested in the High Courts and Supreme Court cannot be ousted or excluded, even by constitutional amendment.

This decision reaffirms that judicial review is not merely a procedural mechanism but a substantive constitutional guarantee essential for safeguarding fundamental rights and maintaining constitutional balance.

IX. Conclusion

Judicial review stands as a cornerstone of Indian constitutional democracy and a vital instrument for the protection of fundamental rights. Through constitutional interpretation, striking down unconstitutional laws, expanding the scope of rights, and providing remedies against State excesses, the judiciary has ensured that fundamental rights remain meaningful and dynamic.

While judicial review must be exercised with restraint to respect democratic principles and separation of powers, its absence would leave fundamental rights vulnerable to legislative and executive arbitrariness. In an evolving society marked by technological advancement, security concerns, and governance challenges, judicial review continues to play a crucial role in adapting constitutional values to contemporary realities.

Ultimately, judicial review embodies the promise of the Constitution—that liberty, dignity, and equality shall not remain mere ideals but enforceable rights protected by an independent and vigilant judiciary.

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