



Analyzing the concept of Judicial Review as outlined in the Indian Constitution

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ABSTRACT:

Judicial review is a crucial component in maintaining the separation of powers and checks and balances in a democratic system. It ensures that government actions align with the Constitution and do not exceed their authority. Through *judicial review, the judiciary has the power to review and potentially invalidate laws or actions that are unconstitutional, serving as a safeguard against potential abuses of power.* The process of judicial review begins when a case challenges the constitutionality of a law, executive order, or official decision. The court carefully examines relevant constitutional provisions to determine if the law or action violates constitutional rights or principles. This involves a detailed analysis of the Constitution's intent, past court rulings, and legal precedents. The Supreme Court, as the highest court in the country, has the ultimate authority to exercise judicial review. It can strike down laws or actions that are unconstitutional, ensuring that the Constitution remains the supreme law of the land. This authority extends to both federal and state laws, preventing any branch of government from exceeding its constitutional boundaries. *The concept of judicial review originated in the United States, notably in the landmark case of Marbury v. Madison in 1803.* Despite not being explicitly mentioned in the Constitution, the Supreme Court established its jurisdiction to assess the constitutionality of laws and actions. The court argued that the judiciary must interpret the Constitution and uphold its supremacy.

➤ **KEYWORDS:** Judicial Review, Indian Constitution, Supreme Court, Rights, Authority, Government, Parliament.

➤ **INTRODUCTION:**

The power of judicial review in India is a vital component of the nation's democratic system, as it guarantees that the government operates within the boundaries set by the Indian Constitution. It acts as a check on the other branches of government, preventing them from exceeding their limits and violating the rights of citizens.

The authority of judicial review in the Indian Judiciary has been utilized in numerous landmark cases to safeguard the fundamental rights of individuals and uphold the principles of justice and equality. For instance, in the Kesavananda Bharati v. State of Kerala case, the Supreme Court established the doctrine of basic

structure, which restricts the Parliament's ability to amend the Constitution in a manner that alters its fundamental characteristics.

In general, the power of judicial review in India plays a critical role in upholding the rule of law and ensuring that the government adheres to the Constitution. It acts as a safeguard against potential abuses of power and guarantees the protection of citizens' rights and freedoms.

Unlike the British constitution, the Indian constitution does not grant absolute power to parliament. Instead, power is divided between the central and state governments, with the Supreme Court serving as the guardian of Fundamental Rights and the arbiter of constitutional disputes. The court has the authority to scrutinize legislative actions, making it a potent tool for judicial review. This doctrine is deeply ingrained in India and explicitly supported by the constitution.

➤ **OBJECTIVES:**

Judicial review is essential for ensuring laws comply with the Constitution, maintaining consistency in court decisions, and checking government branches' powers. It safeguards individual rights, balances government powers, and promotes equality. In India, the Supreme Court and High Courts have the authority to conduct judicial review for various purposes, including scrutinizing the legitimacy of laws, ensuring alignment with constitutional values, verifying administrative decisions, safeguarding citizens' rights, preventing abuse of power, and addressing conflicting interpretations of laws.

➤ **THE PLACE OF 'JUDICIAL REVIEW' IN INDIAN CONSTITUTION & HISTORY:**

After India gained independence, the Constitution was amended to include provisions for judicial review to protect individual and group rights. Dr. B.R. Ambedkar considered these provisions the 'heart of the Constitution'. Article 13(2) prohibits laws that violate fundamental rights, making them invalid. The concept of Judicial Review was first established in *Emperor v. Burah*, giving Indian courts the power to review laws within certain limits. Since the adoption of the Constitution in 1950, Judicial Review has become a crucial safeguard for liberty and freedom. While some argue that India's Judicial Review is more limited compared to the US due to the lack of a 'Due Process' clause, it remains essential for upholding rights and ensuring justice. The introduction of Public Interest Litigation and relaxation of locus standi have led to new interpretations of Article 32, such as the use of 'continuing mandamus' to ensure compliance with court orders by government agencies.

➤ **PROVISIONS RELATED TO JUDICIAL REVIEW IN INDIAN CONSTITUTION:**

The Indian Constitution does not explicitly mention judicial review, but several articles uphold its principles. See the table below for details.

- 1) Article 13:** The Supreme Court has the authority to challenge any law that infringes upon Fundamental Rights and contradicts the constitutional framework.
- 2) Article 32:** Citizens are permitted to seek recourse at the Supreme Court in cases where their Fundamental Rights have been violated.

- 3) **Articles 131-137:** The Supreme Court shall have the power to review any judgment passed by the Parliament or by the states.
- 4) **Article 143:** The President has the power to seek the intervention of the Supreme Court.
- 5) **Articles 226 & 227:** It authorizes the High Courts with the power of judicial review in relevant cases.
- 6) **Articles 245 and 246:** The judiciary is granted the authority to review and question the constitutionality of legislation enacted by the Parliament and state legislatures.
- 7) **Articles 251 & 254:** In case of contradictions between state and union laws, the union laws would be upheld.
- 8) **Article 372 (1):** The provisions of judicial review are expanded to encompass pre-constitutional laws.

➤ **EXPANDING JUDICIAL REVIEW THROUGH JUDICIAL ACTIVISM:**

After the Emergency, the public's expectations of the courts increased, leading to a surge in requests for legal guidance. The judiciary, starting with the Ratlam Municipality case, actively addressed various issues through Social Action Litigation (SAL). Cases like Menaka Gandhi expanded constitutional provisions to protect human rights and align Indian law with global trends. Procedural advancements made the legal system more accessible, resulting in the rise of Social Action Litigation. During the 1980s and 1990s, the Court went beyond its traditional role, making decisions with significant social, political, and economic implications. It consistently instructed the executive branch to comply with constitutional provisions and objectives.

➤ **INSTANCES OF JUDICIAL REVIEW IN INDIA:**

Important cases in India have provided valuable insights on judicial review:

- 1) **A. K. Gopalan vs State of Madras(1950):** The court held that judicial review should follow the principle of “procedure established by law”.
- 2) **Shankari Prasad vs Union of India(1951):** he petitioner contested the constitutionality of the Constitution (First Amendment) Act, 1951. The court ruled that modifications carried out under Article 368 are not subject to being considered as law under Article 13(3) of the Constitution. Therefore, the First Amendment Act of 1951 was deemed constitutionally sound.
- 3) **Sajjan Singh vs State of Rajasthan(1965):** The constitutionality of the Constitution (Seventeenth Amendment) Act, of 1964 was challenged. The court upheld the decision of Shankari Prasad vs Union of India.
- 4) **Golaknath vs State of Punjab (1967):** In this case, the Supreme Court made a significant ruling stating that the Parliament does not possess the authority to amend Fundamental Rights.
- 5) **Kesavananda Bharati vs State of Kerala(1973):** In this pivotal case, the Supreme Court ruled that the Parliament has the authority to modify a provision of the Constitution, provided it does not infringe upon the fundamental framework of the Constitution.

- 6) **Minerva Mills vs Union of India(1980):** In this case, the Supreme Court emphasized that the Parliament cannot possess absolute and unrestricted power to amend the principles and doctrines of the Constitution.
- 7) **Waman Rao vs Union of India (1981):** The Supreme Court, in this case, raised concerns regarding the constitutional validity of Articles 31A, 31B, and 31C, which are related to the acquisition of property. As a result, these laws were amended to prevent future discrepancies.
- 8) **S. R. Bommai vs Union of India(1994):** The Supreme Court upheld the judicial review of a Presidential Proclamation dissolving a State Legislative Assembly. If the proclamation is invalidated, the court can reinstate the dismissed State Government. This case shows the government overstepping its constitutional authority, deviating from democratic and republican principles. The lack of clarity on judicial review in India is evident, as it is not explicitly defined in the Indian Constitution.

➤ **JUDICIAL REVIEW AS A PART OF THE BASIC STRUCTURE:**

The Supreme Court of India, in *Keshavanda Bharathi v. State of Kerala*, established the basic structure doctrine, which asserts that the Constitution's fundamental framework cannot be altered. ***Chief Justice S.M. Sikri identified five essential elements of this framework: the Constitution's supremacy, republican and democratic government, secularism, separation of powers, and federalism.*** These principles guide the boundaries of amending the Constitution. In *Indira Nehru Gandhi v. Raj Narain*, the Court clarified that Judicial Review in election disputes is not an indispensable component of the basic structure.

Chief Justice P.N. Bhagwati emphasized the vital role of judicial review in protecting the Constitution in the case of *S.P. Sampath Kumar v. Union of India*. The Court warned that removing judicial review would undermine the essence of the Constitution and stated that excluding the High Court's jurisdiction without providing an alternative for judicial review would violate the fundamental structure of the Constitution and exceed Parliament's powers.

In *L. Chandra Kumar v. Union of India*, a larger Bench upheld the importance of judicial review over legislative actions in both High Courts and the Supreme Court as a fundamental element of the Constitution. While recognizing its significance, it is crucial to prevent unchecked power accumulation. The Indian judiciary has reshaped the concept of Checks and Balances by acknowledging judicial review as a key component of the constitution, giving the judiciary unlimited authority to review legislative actions.

➤ **GROUND OF JUDICIAL REVIEW:**

There are four grounds on which Judicial Review can be exercised.

- ✓ Illegality
- ✓ Irrationality
- ✓ Procedural Impropriety
- ✓ Proportionality

- ❖ **Illegality:** The body's actions may be considered ultra vires or indicative of a lack of jurisdiction if it goes beyond its designated powers, such as making decisions for improper purposes that could potentially be unlawful.
- ❖ **Irrationality:** The Wednesbury principle, established in the Wednesbury Corporation case, requires authorities to consider all relevant facts, ignore irrelevant ones, and make decisions that a reasonable person would reach.
- ❖ **Procedural Impropriety:** Different refinements of natural justice fall under procedural impropriety, including violation of fair hearing, bias, adherence to specific procedures outlined in statutes, and implied requirement to follow natural justice principles.
- ❖ **Proportionality:** Proportionality requires government action to be limited to what is necessary to achieve a public goal, without being overly harsh. It ensures that authorities must balance community interests with individual rights and avoid imposing unnecessary burdens.

➤ **SIGNIFICANCE OF JUDICIAL REVIEW:**

- 1) The Judiciary plays a crucial role in upholding the principles of the Constitution and acting as its custodian.
- 2) By doing so, it acts as a check on the abuse of power by the Legislative, Executive, and Administrative branches of the government.
- 3) Additionally, the Judiciary safeguards the Fundamental Rights of citizens, ensuring their protection.
- 4) It also serves as a mechanism for addressing grievances related to unfair decisions made by the law.
- 5) Furthermore, the Judiciary ensures the sustenance of a "living constitution" by allowing periodic amendments for the betterment of society.

➤ **DRAWBACKS OF JUDICIAL REVIEW IN INDIA:**

- 1) The implementation of policies could be delayed.
- 2) Judicial review serves to prompt authorities to review their decisions, but does not ensure those decisions will be overturned.
- 3) The public's trust in the government's ability to perform effectively is diminished.
- 4) The lengthy process involved can make the entire procedure burdensome.

➤ **LIMITATIONS ON THE SUPREME COURT IN RESPECT OF JUDICIAL REVIEW:**

- 1) The Supreme Court refrains from conducting judicial review on matters about politics.
- 2) In the event of declaring a law as unconstitutional, the Court is obligated to provide justifications and identify the specific constitutional provisions that have been violated.
- 3) Judicial review by the Supreme Court is limited to cases that have been presented before it; the Court cannot initiate the process independently.

- 4) Once a law is deemed invalid, it no longer remains in effect for future application. However, any actions or decisions made based on that law prior to its invalidation remain valid.
- 5) The Court is required to clearly demonstrate the unconstitutionality of a law that is being challenged for invalidation.

➤ **CONCLUSION:**

The judiciary's role in interpreting the Constitution is crucial for protecting marginalized groups, but excessive legislative power within the judiciary may threaten state constitutionalism. The court must exercise authority carefully and avoid arbitrary decisions.

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