



Constitutional Growth in India under Judicial Review and its Impact

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Introduction :-

The bedrock of the Indian Constitution lies in its provision for an independent judiciary, tasked with safeguarding constitutional principles and upholding citizens' rights. Central to this role is the concept of judicial review, where the judiciary ensures that legislative and executive actions adhere to constitutional norms. Rooted in the U.S. model but adapted to Indian realities, judicial review serves as a vital safeguard against arbitrary governance, empowering citizens and shaping the country's legal framework. Delving into its origins, breadth, and impact, we uncover the nuanced layers of this cornerstone principle.

Judicial review entails scrutinizing the constitutionality of laws passed by Parliament. If a law is deemed to contravene the Indian Constitution's provisions, the high courts or the Supreme Court of India can render it void, rendering it unenforceable. The concept of judicial review was formulated by John Marshall, an American statesman and lawyer. In India, the principle of the rule of law prevails, with the Indian Constitution regarded as the supreme law. Laws must align with the Constitution's basic structure, as any deviation renders them null and void. While the term "judicial review" isn't explicitly stated in the Indian Constitution, various provisions allude to or implicitly endorse the concept¹

Foundations of Judicial Review in India :-

The seeds of judicial review were sown in the Indian Constitution itself, which vested the judiciary with the authority to interpret and protect its fundamental tenets.

However, it was the watershed moment in 1973, encapsulated in the *Kesavananda Bharati v. State of Kerala*² case, that solidified the doctrine of basic structure. The authority of judicial review was initially affirmed by the Supreme Court in the *Shankari Prasad v. Union of India (1951)*³ case, ruling that the Constitution conferred unrestricted amending authority to Parliament. However, the pivotal *Kesavananda Bharati v. State of Kerala (1973)* case marked a significant shift, as the Supreme Court asserted limitations on Parliament's amending power and declared the inviolability of the Constitution's basic structure. This landmark judgment established the judiciary's power to review and invalidate constitutional amendments that transgress the foundational principles of the Constitution, thereby laying the groundwork for the evolution of judicial review in India.

Evolution of judicial review :-

Since its inception, the Indian Constitution has endowed both the Apex Court and the High Courts with the power of judicial review. Unlike the practice in the United States, where courts generally refrain from reviewing constitutional amendments, the Indian judiciary has consistently asserted its authority to scrutinize such amendments. In the case of *N.B. Khare v. State of Delhi*⁴, the Apex Court emphasized its right to evaluate the reasonableness of limitations imposed by legislation on the exercise of rights.

Over the years, numerous constitutional amendments in India have been contested on substantive grounds. The challenge to the 1st Constitutional Amendment in the *Shankari Prasad* case exemplifies this trend. Despite arguments that amendments cannot alter fundamental rights, the Supreme Court ruled otherwise, highlighting the absence of such restrictions in the Constitution.

The pivotal *Golak Nath*⁵ case further clarified the judiciary's stance on constitutional amendments, affirming its power to review and nullify amendments for unconstitutionality. The Court emphasized that constitutional amendments are subject to judicial review, as they constitute laws under Article 13, and Parliament lacks authority to curtail fundamental rights guaranteed in Part III of the Constitution.

¹ Judicial Review In India: Importance, Landmark Cases And Criticism <https://www.centurylawfirm.in/blog/judicial-review-in-india/>

² *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr* 4 SCC 225; AIR 1973 SC 1461

³ *Sri Sankari Prasad Singh Deo v. Union Of India And State Of Bihar* 1951 AIR 458

⁴ *N.B. Khare v. The State Of Delhi* 1968 AIR 445 1968 SCR (1) 735

⁵ *I.C. Golaknath and Ors. v. State of Punjab and Anrs.* 1967 AIR 1643; 1967 SCR (2) 762

However, the government's reaction to the Golak Nath case led to the passage of the 24th Constitutional Amendment, aimed at superseding the judgment and expanding Parliament's amending power. Subsequently, in Kesavananda Bharati case, the Supreme Court introduced the basic structure doctrine, asserting the judiciary's role in upholding the fundamental principles of the Constitution. This landmark judgment enhanced the Court's capacity for judicial review, reaffirming constitutional interpretation as a function of the judiciary.

Despite these developments, the Parliament attempted to curtail the judiciary's power of judicial review through the 42nd Amendment in 1976. However, in *Minerva Mills*⁶ case, the Supreme Court struck down clauses of the 42nd Amendment inconsistent with the Constitution's basic structure. It reiterated the principle that every organ derives its power from the Constitution and must operate within its limits, with the judiciary entrusted with the crucial function of judicial review to ensure legality and adherence to constitutional principles.

Judicial Review and its Role in India :-

Judicial review serves as a crucial safeguard when the executive, judiciary, and legislature deviate from Constitutional values and infringe upon rights. It is widely regarded as an indispensable aspect of the country's legal framework. India, being a parliamentary democracy, ensures the participation of all segments of society in decision-making and policy formulation processes. It is incumbent upon the courts to uphold the rule of law, which forms the bedrock of social equality. Even with the Parliament exercising new powers, the court's duty to apply the rule of law remains unchanged. Those engaged in public service are accountable and bound to operate within the democratic framework outlined by the Constitution of India. Judicial review, rooted in the concepts of separation of powers and the rule of law, underscores the importance of judicial assessment. The authority of judicial review is enshrined in Articles 226 and 227 for the High Courts, and Articles 32 and 136 of the Constitution of India for the review process.

- **Federalism :-**

In the case of *S. R. Bommai v. Union of India*, a nine-judge Bench of the Supreme Court addressed the misuse of Article 356 and reaffirmed the principle of judicial review as a fundamental aspect of the Constitution. The Court held that the imposition of President's Rule in a State is subject to judicial review.

- **Fundamental Rights :-**

As can be seen in *A. K. Gopalan v. State of Madras* (1950), a case decided by a Six-judge bench, there are some Fundamental Rights mentioned in the constitution like Right to Life, Right to Liberty etc., which are on exclusive basis. This interpretation reigned for around 20 years until it was overturned by the divisible Bench of eleven judges' ruling in *R.C. Cooper v. Union of India* (1970) which stated that fundamental rights are not in conflict with others.

- **Expansion :-**

The judgment in *R.C. Cooper v. Union of India* (1970)⁷ marked a significant shift in the interpretation of Fundamental Rights by the Courts. Subsequently, in *Maneka Gandhi v. Union of India* (1978)⁸, a seven-judge Bench of the Supreme Court expanded the interpretation of Article 21, which safeguards life and personal liberty. By aligning Articles 14 and 19 with Article 21, the Court determined that laws must be reasonable and procedures must be just, fair, and reasonable.

In *Sunil Batra v. Delhi Administration* (1978)⁹, a five-judge Bench of the Supreme Court observed that despite the absence of a Due Process Clause in the Indian Constitution, the decisions in *R.C. Cooper v. Union of India* (1970) and *Maneka Gandhi v. Union of India* (1978) had similar consequences. Building on this, in *Bachan Singh v. State Of Punjab* (1980)¹⁰, another five-judge Bench held that Article 21 now guarantees protection against deprivation of life or personal liberty unless following a fair, just, and reasonable procedure established by valid law.

In *Mohd Arif v. The Registrar* (2014)¹¹, a five-judge Bench of the Supreme Court relied on the precedents set in *Maneka Gandhi v. Union of India* (1978), *Sunil Batra v. Delhi Administration* (1978), and *Bachan Singh v. State Of Punjab* (1980), applying substantive due process to the Fundamental Right to life and liberty

Constitutional Provision for judicial Review :-

The Constitution does not explicitly grant courts the authority to invalidate laws, but it imposes specific limitations on each organ, violation of which renders a law void. The court is tasked with determining whether these constitutional limitations have been exceeded. Several constitutional provisions support the process of judicial review:

Article 372(1) named judicial review of the pre-constitution of the determination.

⁶ *Minerva Mills Ltd. and Ors. v. Union Of India and Ors.* AIR 1980 SC 1789

⁷ *Rustom Cavasjee Cooper v. Union Of India*, 1970 AIR 564

⁸ *Maneka Gandhi v. Union Of India*, 1978 AIR 597

⁹ *Sunil Batra v. Delhi Administration*, 1980 AIR 1579

¹⁰ *Bachan Singh v. State Of Punjab*, AIR 1980 SC 898, 1980

¹¹ *Arif alias Ashfaq v. Registrar*, Supreme Court of India, (2014) 9 SCC 737

Article 13 makes it clear that any law that violates the rights granted in the further part the charter will be considered null and void. The actions of both the executive and the legislative authorities shall not encompass the infringement of the part of the Constitution which is called "Part3". If they are not successful, the Courts can nullify part of the action taken by the legislature or the executive which it deems as unconstitutional.

Articles 32 and 226 assign the roles of protector and guarantor of fundamental rights to the Supreme and High Courts, respectively.

Articles 251 and 254 stipulate that in cases of inconsistency between Union and State laws, the State law shall be void.

Article 246(3) ensures the State legislature's exclusive authority over matters listed in the State List.

Article 245 specifies that the powers of both Parliament and State legislatures are subject to constitutional provisions

Articles 131-136 empower the courts to adjudicate disputes between individuals, individuals and the state, and between states and the Union. The Supreme Court's interpretation of constitutional provisions becomes law upheld by all courts.

Article 137 grants the Supreme Court the special power to review any judgment or order it has pronounced. In criminal cases, an order can only be reviewed and set aside if there are evident errors on the record.

Types of Judicial Review :-

- Reviews of Legislative Actions: Through this, the mandate to the judiciary is to ensure that all the laws made by the legislature are in harmony with the Constitution.
- Review of Administrative Actions: This is a tool for taking care of the constitutional authority of the regulatory organ while exercising their powers.
- Review of Judicial Decisions: This new version serves the aim to amend or adjust the previous judgments issued by the court by itself.

What is the Current Scenario of judicial Review in India :-

The ongoing series of cases appearing before Indian courts, wherein they are tasked with exercising judicial review, has demonstrated a tendency among the courts to exercise caution and refrain from excessive intervention, aiming to avoid encroachment upon other domains. The Himachal Pradesh High Court, in its ruling on *Santosh Nanta vs State of H.P. & Ors. (2023)*¹², remarked that judicial review, if employed to scrutinize decisions made by expert bodies such as selection committees in a reasoned selection process, would risk stepping onto precarious ground, necessitating restraint from judicial interference.

Similarly, the Andhra Pradesh High Court, in its judgment on *Nallacheruvu Obulesu v. State of Andhra Pradesh & ors (2023)*¹³, noted that the courts' authority to exercise judicial review in disputes arising from tender invitation terms is circumscribed. Since the terms of the tender are formulated by the government with due diligence and consideration, the entity issuing the tender is deemed best suited to adjudicate on its terms. Thus, it is not within the purview of the courts to pass judgment on the merits of the tender conditions.

These rulings underscore the judiciary's self-awareness in wielding its discretionary power of judicial review, thereby averting overreach and upholding the principle of judicial restraint.

Impacts of judicial review in India :-

The impacts of judicial review in India are wide-ranging and profound, influencing governance, rights protection, and the overall functioning of democracy. Here are some key impacts:

1. Protection of Fundamental Rights: Judicial review ensures the protection and enforcement of fundamental rights guaranteed by the Constitution. Through landmark judgments, the judiciary has expanded the scope of individual liberties, ensured equality before the law, and safeguarded against discrimination.
2. Checks and Balances: Judicial review acts as a crucial check on the powers of the executive and legislative branches of government. By scrutinizing government actions and legislation for constitutionality, the judiciary prevents the arbitrary exercise of power, fostering transparency, accountability, and adherence to constitutional norms
3. Strengthening Democracy: Judicial review reinforces the principles of democracy by upholding the rule of law and ensuring that government actions are in line with constitutional principles. It promotes good governance, accountability, and responsiveness to the needs and rights of citizens.

¹² Santosh Nanta v. State Of H.P. & Ors, CWPOA No.450 of 2019 Decided on: 13th April, 2023 .

¹³ Nallacheruvu Obulesu v. State of Andhra Pradesh & ors Writ petition No.7985 of 2023

4. **Promotion of Social Justice:** Judicial review has been instrumental in promoting social justice and inclusivity. Through progressive rulings, the judiciary has addressed historical injustices and inequalities, advancing the rights and interests of marginalized communities and vulnerable groups.
5. **Environmental Protection:** The judiciary has played a crucial role in environmental conservation and sustainability through judicial review. Landmark judgments have set precedent for environmental protection laws, holding governments and corporations accountable for environmental degradation and ensuring the preservation of natural resources for future generations.
6. **Economic Development:** Judicial review has a significant impact on economic development by fostering a conducive legal environment for investment, entrepreneurship, and business growth. Certainty and predictability in the legal system, ensured through judicial review, promote investor confidence and contribute to economic stability and growth.
7. **Institutional Integrity:** Judicial review strengthens the integrity and independence of institutions by ensuring adherence to constitutional principles and preventing the concentration of power in any single branch of government. It reinforces the separation of powers doctrine, thereby preserving the integrity of democratic governance¹⁴.

Overall, the impact of judicial review in India extends beyond the legal realm, shaping the social, economic, and political fabric of the nation. It upholds the values enshrined in the Constitution and contributes to the advancement of democracy, rights protection, and inclusive development.¹⁵

Criticism :-

Though judicial review is a fundamental component of the Indian Constitution, it has encountered criticism from different sectors. Some common critiques of judicial review in India include:

1. **Judicial Unaccountability:** Critics contend that judicial review grants unelected judges the authority to nullify laws passed by elected representatives, undermining the democratic process and allowing a small group of judges to override decisions made by elected officials.
2. **Judicial Overreach:** Another critique is that judicial review may lead to judicial overreach, where the judiciary intrudes into the legislative and executive domains. This can upset the balance of powers and result in an overly powerful judiciary.
3. **Delay and Expense:** Detractors argue that the judicial review process can be lengthy and costly, causing delays in justice delivery, especially in cases requiring urgent policy measures.
4. **Lack of Accountability:** The appointment of judges through a collegium system, according to critics, renders them unaccountable to the public. Unlike elected representatives, judges are not easily held accountable for their decisions.
5. **Limited Expertise:** Critics assert that judges may lack expertise in certain complex policy areas, such as economics or science, which could lead to suboptimal policy outcomes and hinder effective governance.

In summary, although judicial review holds significant importance within the Indian Constitution, it has not escaped criticism from various angles. Detractors contend that it jeopardizes democracy, risks judicial overstep and may prove cumbersome and costly. Conversely, proponents assert its indispensable role in safeguarding citizens' fundamental rights and ensuring governmental compliance with constitutional boundaries. The equilibrium between these contrasting views hinges on the judiciary's adeptness in balancing constitutional protection with democratic principles.

Conclusion:

In summary, judicial review stands as a vital component of the Indian Constitution, ensuring alignment between legislative enactments, executive actions, and constitutional provisions. Courts wield authority to invalidate laws breaching constitutional tenets and can issue writs safeguarding citizens' fundamental rights. While judicial review's ambit is extensive, constraints exist to uphold equilibrium among the legislative, executive, and judicial branches. This function empowers the judiciary to check governmental branches, ensuring adherence to constitutional boundaries and safeguarding citizen rights. While its scope is broad, limitations are imperative for maintaining a balanced governance structure. Judicial review has played a pivotal role in shaping India's legal landscape and safeguarding citizen rights.

The journey of constitutional growth under judicial review in India represents a remarkable saga of evolution, resilience, and progress. Through the mechanism of judicial review, the Indian judiciary has emerged as a guardian of constitutional values, ensuring adherence to the principles enshrined in the Constitution. Landmark judgments have not only expanded the scope of fundamental rights but have also upheld the principles of democracy, separation of powers, and federalism.

The process of constitutional growth under judicial review has been characterized by a delicate balance between judicial activism and judicial restraint, with the judiciary playing a crucial role in striking this balance. While there have been instances of criticism and debate surrounding the

¹⁴ Judicial Review Cases in India: Safeguarding Constitutional Rights <https://www.linkedin.com/pulse/judicial-review-cases-india-safeguarding-rights-advocate-naresh-kumar>

¹⁵ Judicial Review in India: Evolution, Significance, and Contemporary Challenges <https://lawctopus.com/clatalogue/clat-pg-power-of-judicial-review-in-india/>

judiciary's role in governance, it cannot be denied that judicial review has been instrumental in addressing societal injustices, promoting social welfare, and upholding the rights of marginalized communities.

Looking ahead, the journey of constitutional growth under judicial review in India is likely to continue, guided by the principles of justice, equality, and the rule of law. As India confronts new challenges and opportunities in the 21st century, the judiciary's commitment to upholding the constitutional ethos will remain essential in ensuring that the nation's democratic fabric remains robust and resilient

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