

Research Paper on Judicial Review and Its Limitations

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Abstract:

“The Constitution is not a living organism. It is a legal document. It says something and doesn’t say other things¹.”

The Constitution is the supreme legal document that outlines the fundamental principles and framework of a country. It serves as the foundation of the legal system, establishing the structure of government, the powers and responsibilities of different branches, and safeguarding the rights of citizen. The Constitution is designed to ensure justice, liberty, equality, and fraternity among the people.

the Constitution was adopted on January 26, 1950, and it is the longest written constitution in the world. It consists of a preamble, 25 parts, and over 450 articles, along with many amendments. The Indian Constitution not only provides a comprehensive framework for governance fundamental rights and duties, making it a living document that evolves with changing dynamics of society. It embodies the ideals of democracy, secularism, and social justice, ensuring that the rule of law prevails in the country.

Judicial review is a fundamental principle in constitutional democracies that empowers courts to assess whether legislative and executive actions are with the constitution. This essay delves into the origins, scope, and principles of judicial review, and its historical development from significant cases like *Marbury v. Madison* in the United States to the establishment of the Basic Structure Doctrine in India. While judicial review is crucial for safeguarding constitutional rights and ensuring government accountability, it is not without its limitations. These constraints are designed by constitutional provisions, doctrines like judicial restraint, statutory boundaries, and jurisdictional limits. Criticisms of judicial review, particularly regarding judicial overreach, inefficiency, and its potential to undermine democratic processes, are discussed alongside proposed reforms.²

This essay further explores the comparative role of judicial review in different jurisdictions, including India, the USA, and the UK, highlighting how its application varies based on legal³ and political frameworks. It analyses the ongoing debate between judicial activism and judicial restraint, focusing on key cases that illustrate the judiciary role⁴ in balancing oversight with respect for the functions of other branches of government.

Keywords: Judicial Review, Constitutional Law, Basic Structure Doctrine

¹ Justice Antonin Scalia:

² H.M. Seervai, *Constitutional Law of India*

³ Aharon Barak, *The Judge in a Democracy*

⁴ D.D. Basu, *Introduction to the Constitution of India* (22nd ed., LexisNexis, 2015).

“The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It is the law which governs all others.”⁵

Judicial review is the power of courts to examine the constitutionality of legislative and executive actions. This ensures that laws and governmental decisions conform to constitutional principles, safeguarding individual rights and the rule of law. Originating from the U.S. case *Marbury v. Madison* (1803), judicial review is crucial in many democracies, including India, the United States, and the United Kingdom. The judiciary acts as a guardian of constitutional values, checking the potential overreach of the executive and legislature.⁶

Introduction

Judicial review originated with *Marbury v. Madison*, when the United States Supreme Court stated that it was the courts' duty to interpret the Constitution and negate any statute that violated it. In India, judicial review is based on Articles 13, 32, and 226 of the Constitution. These provisions give courts the authority to overturn laws that violate basic rights. Judicial review is essential to maintaining constitutionalism, but it also covers the legislative, executive branch, and court itself. Legislative actions passed by Parliament and state legislatures may be invalidated if they are in conflict with the Constitution, as demonstrated by decisions such as *Minerva Mills Ltd. v. Union of India*. Indian courts are empowered to evaluate legislative actions.

A few fundamental ideas, such as the Doctrine of Basic Structure, the Separation of Powers, and Proportionality, serve as the foundation for judicial review. In India, the *Kesavananda Bharati* Case established the Basic Structure Doctrine, which forbids Parliament from altering the Constitution in a way that modifies its essential structure. The doctrine of separation of powers guarantees the autonomy and non-interference of the executive, legislative, and judicial branches of government. The proportionality principle is also used by courts.

Judicial review has many restrictions even though it is a crucial instrument for defending constitutional rights. In order to respect the functions of the legislature and executive branch, courts must operate within specific bounds. The primary limitations include:⁸

Constitutional and Statutory Limitations: Judicial review cannot extend beyond what is allowed by the Constitution or specific statutes. Article 13 of the Indian Constitution limits judicial review to laws that violate fundamental rights, and courts cannot interfere in purely political questions⁹. Additionally, ouster clauses in statutes can prevent courts from reviewing certain administrative decisions, particularly in specialized areas like taxation or defense. The judiciary often refrains from deciding issues that are best left to the political branches of government. These include matters related to foreign policy, defense, and certain aspects of governance. This doctrine is especially prominent in U.S. jurisprudence, where courts avoid cases involving political decisions.

Courts practice judicial restraint by avoiding interference in matters that do not clearly involve a violation of rights or constitutional principles. This approach ensures that the judiciary respects the roles of the

⁵ Alexander Hamilton (Federalist No. 78):

⁶ . *Constitutional Law of India*

⁷ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁸ Barak, Aharon. *The Judge in a Democracy*. Princeton University Press, 2006.

⁹ Bhagwati, P.N. "Judicial Activism and Judicial Restraint." *Indian Journal of Constitutional Law*, vol. 2, no. 1, 2006, pp. 1-25.

legislative and executive branches. Judicial restraint is often invoked to avoid the perception of judicial overreach, where courts are seen as overstepping their mandate by making policy decisions. The role and limitations of judicial review vary across countries. In India, judicial review is constitutionally guaranteed under Articles 32 and 226, with the Supreme Court and High Courts playing a central role in reviewing the constitutionality of laws and executive actions. The Basic Structure Doctrine, unique to India, further limits the power of Parliament to alter fundamental constitutional principles. By contrast, in the United States, judicial review, though well-established since *Marbury v. Madison*¹⁰, is not explicitly mentioned in the U.S. Constitution but has become a vital judicial function. Judicial review is not without its critics. One of the primary criticisms is that it allows unelected judges to overturn laws passed by democratically elected representatives, leading to concerns about the judiciary's influence on governance¹¹. Critics also point to the delays and inefficiencies associated with judicial review, where cases can take years to resolve. Additionally, there are concerns about judicial overreach, where courts are seen as encroaching on the policy making functions of the legislature and executive. Judicial review has been a powerful tool in constitutional democracies, enabling courts to strike down laws and executive actions that violate constitutional principles. Below are landmark cases from India and the United States where judicial review played a pivotal role, showcasing its impact on governance and individual rights.

Kesavananda Bharati v. State of Kerala (1973)

This case is one of the most important in Indian constitutional history. It established the Basic Structure Doctrine¹², which limits Parliament's power to amend the Constitution. The Supreme Court held that while Parliament can amend any part of the Constitution, it cannot alter its basic structure. This doctrine has been invoked in multiple cases to prevent significant changes to the Constitution that might erode democratic principles, fundamental rights, or the rule of law.

Vineet Narain v. Union of India (1996)

This case¹³ involved the investigation of political corruption. The Supreme Court used its power of judicial review to direct investigative agencies like the CBI (Central Bureau of Investigation) to carry out their functions independently, without interference from political or executive authorities.

Judicial review in this case ensured that investigative agencies acted without bias, safeguarding the rule of law accountability in government functioning.

Certain matters are considered non-justiciable because they are inherently unsuitable for legal decision-making. Courts exercise judicial self-restraint in these cases to avoid overstepping their constitutional role. Example Courts often refuse to entertain petitions involving religious beliefs, economic policies, or administrative discretion unless there is a violation of legal rights.

Case: In *Balco Employees' Union v. Union of India*¹⁴ (2002), the Supreme Court held that economic policies and decisions regarding disinvestment are matters of executive discretion and are not subject to judicial review

¹⁰ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

¹¹ Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford University Press, 2004).

¹² *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

¹³ *Vineet Narain v. Union of India*, (1998) 1 SCC 226.

¹⁴ *Balco Employees' Union v. Union of India* (2002)

Conclusion

Judicial review remains a cornerstone of constitutional democracies, providing an essential check on governmental power and ensuring that laws adhere to constitutional principles. It is important that courts strike a balance between judicial activism and restraint, avoiding the dangers of overreach while still protecting individual rights. As judicial review continues to evolve, reforms may be needed to ensure its efficiency and respect for democratic processes, particularly in areas where courts risk overstepping their bounds. The principles of judicial power highlight the need for a balanced approach, preventing the judiciary from encroaching on matters best left to elected representatives.

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