



Judicial Review: A Pillar of Constitutional Governance

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ABSTRACT

Judicial review is a fundamental principle in constitutional governance, empowering the judiciary to assess the constitutionality of legislative and executive actions. This doctrine ensures the supremacy of the Constitution, protects fundamental rights, and maintains the rule of law. In India, judicial review derives its authority from various constitutional provisions, such as Articles 13, 32, and 226, and plays a crucial role in preserving democratic principles. While it serves as a check on arbitrary governmental actions, challenges such as judicial overreach, delays in justice, and conflicts with the legislature and executive persist. A balanced approach to judicial review is essential to uphold democracy while maintaining the separation of powers

Introduction

Judicial review is one of the most significant doctrines in constitutional law, ensuring that governmental actions remain within the framework of the Constitution. It provides the judiciary with the power to examine the legality of laws and executive actions, striking them down if they violate constitutional principles. This concept is crucial in maintaining democracy, preventing the abuse of power, and safeguarding the fundamental rights of citizens.

The doctrine of judicial review was first established in the United States in *Marbury v. Madison* (1803), where Chief Justice John Marshall declared that courts have the authority to review legislative and executive actions and nullify them if they conflict with the Constitution. Since then, judicial review has



become an essential feature of governance in many countries, including India, where the judiciary plays a crucial role in interpreting and protecting the Constitution.

This article explores the concept of judicial review, its historical evolution, its significance in governance, and the challenges it faces in modern legal systems.

Meaning and Definition of Judicial Review

Judicial review refers to the power of courts to examine laws, policies, and government actions to determine their validity under the Constitution. If a law or action is found to be unconstitutional, the court has the authority to declare it null and void.

Definitions of Judicial Review

1. **Black's Law Dictionary** defines judicial review as “the power of courts to examine the actions of legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the Constitution.”
2. **Justice Bhagwati** defined judicial review as “an essential mechanism to ensure that every organ of the state functions within constitutional limits and respects fundamental rights.”

The doctrine of judicial review ensures that laws do not infringe upon fundamental rights, violate constitutional principles, or go beyond the authority granted to the government by the Constitution.

Objectives of Judicial Review

The primary objectives of judicial review include:

1. **Upholding Constitutional Supremacy** – The Constitution is the highest law of the land, and all laws and actions must conform to it. Judicial review ensures that no branch of government violates constitutional principles.
2. **Protecting Fundamental Rights** – Citizens are entitled to fundamental rights, and judicial review prevents the government from infringing upon them.
3. **Maintaining the Rule of Law** – Judicial review ensures that all actions of the government comply with the law and that no authority exercises power arbitrarily.
4. **Preventing Abuse of Power** – It acts as a check on the legislature and executive, ensuring that they do not exceed their constitutional limits.



Types of Judicial Review

Judicial review can be categorized into three main types:

1. Review of Legislative Actions

This involves the examination of laws passed by the legislature to determine their constitutionality. If a law contradicts constitutional provisions, it can be struck down.

- Example: *Kesavananda Bharati v. State of Kerala* (1973) – The Supreme Court ruled that Parliament cannot alter the basic structure of the Constitution through amendments.

2. Review of Executive Actions

Judicial review also applies to administrative and executive decisions to prevent arbitrary or illegal actions by government officials.

- Example: *Maneka Gandhi v. Union of India* (1978) – The Supreme Court ruled that the government's decision to impound a passport without providing a reason was unconstitutional.

3. Review of Constitutional Amendments

The judiciary also reviews amendments to the Constitution to ensure they do not violate its fundamental principles.

- Example: *I.R. Coelho v. State of Tamil Nadu* (2007) – The Supreme Court held that laws placed under the Ninth Schedule of the Constitution are subject to judicial review if they violate fundamental rights.

Judicial Review in India

Judicial review in India is an integral part of the constitutional framework and derives its authority from several provisions of the Constitution. Unlike the United States, where judicial review is an implied power, in India, it is explicitly granted through various articles.

Constitutional Provisions for Judicial Review in India

1. **Article 13** – Declares that any law inconsistent with fundamental rights shall be void. This provision empowers courts to strike down unconstitutional laws.



2. **Article 32** and **Article 226** – Grant the Supreme Court and High Courts the power to issue writs for the enforcement of fundamental rights.
3. **Article 141** – States that the law declared by the Supreme Court is binding on all courts, ensuring uniformity in judicial interpretation.
4. **Article 142** – Empowers the Supreme Court to pass orders necessary to ensure complete justice.

Landmark Cases on Judicial Review in India

- **A.K. Gopalan v. State of Madras (1950)** – Initially, the Supreme Court took a narrow view of judicial review, ruling that fundamental rights should be interpreted separately.
- **Golaknath v. State of Punjab (1967)** – The Supreme Court held that Parliament cannot amend fundamental rights.
- **Kesavananda Bharati v. State of Kerala (1973)** – Introduced the doctrine of the basic structure, limiting Parliament's power to amend the Constitution.
- **Minerva Mills v. Union of India (1980)** – Reinforced the principle that the Constitution's basic structure cannot be altered by amendments.

Judicial Review and Judicial Activism

While judicial review is a constitutional power, judicial activism refers to the proactive role of the judiciary in interpreting laws to ensure justice.

Judicial review and judicial activism are closely related but distinct concepts in constitutional law. Judicial review refers to the court's power to assess the constitutionality or legality of legislative and executive actions. It ensures that laws and policies comply with constitutional principles and prevents governmental overreach. Judicial review is typically exercised within the boundaries of constitutional or statutory interpretation and aims to uphold the rule of law without altering legislative intent.

Judicial activism, on the other hand, goes beyond traditional judicial review by allowing courts to take an active role in shaping public policy through broad interpretation of laws. It occurs when judges interpret constitutional provisions expansively to address social, economic, or political issues. Judicial activism often involves courts stepping into the domain of the legislature or executive, influencing policymaking or directing government actions. While judicial activism is sometimes seen as necessary for progressive



legal development, critics argue that it disrupts the separation of powers and undermines democratic governance.

A key difference between the two is that judicial review is a constitutional function of the judiciary, whereas judicial activism is a judicial philosophy or approach. Judicial review is limited to determining legality, while judicial activism may involve reinterpretation or expansion of legal principles. For instance, in *Kesavananda Bharati v. State of Kerala* (1973), the Indian Supreme Court exercised judicial review to establish the basic structure doctrine, while in *Vishaka v. State of Rajasthan* (1997), it engaged in judicial activism by laying down guidelines for workplace harassment in the absence of legislation.

While judicial review is essential for maintaining constitutional supremacy, judicial activism remains controversial due to its potential to blur the lines between lawmaking and judicial interpretation. A balanced approach is necessary to prevent excessive judicial interference while ensuring that the judiciary remains a guardian of constitutional rights and justice.

Judicial Review in USA

Judicial review in the United States is a cornerstone of constitutional governance, enabling courts to assess the constitutionality of legislative and executive actions. This doctrine was established in *Marbury v. Madison* (1803), where Chief Justice John Marshall asserted that it is the duty of the judiciary to interpret the law and determine whether governmental actions adhere to the Constitution. The U.S. Constitution does not explicitly grant the judiciary this power, but it has been inferred from Article III, which vests judicial power in the Supreme Court and lower federal courts.

The scope of judicial review in the U.S. includes reviewing federal and state laws, executive actions, and administrative regulations to ensure compliance with constitutional provisions. This power extends to both the Supreme Court and lower courts, reinforcing the principle of checks and balances by preventing the legislative and executive branches from exceeding their constitutional authority. Judicial review plays a crucial role in protecting fundamental rights, as seen in landmark cases such as *Brown v. Board of Education* (1954), which struck down racial segregation in public schools, and *Roe v. Wade* (1973), which recognized a woman's right to abortion under the right to privacy.

Despite its importance, judicial review in the U.S. has faced criticism. Some argue that it grants unelected judges excessive power over democratic decision-making, leading to judicial activism. Others contend that it ensures constitutional integrity by preventing majoritarian rule from infringing upon individual



rights. Over time, the doctrine has evolved through cases like *Citizens United v. FEC* (2010), which expanded corporate free speech rights, and *Shelby County v. Holder* (2013), which invalidated key provisions of the Voting Rights Act.

Judicial review remains a defining feature of American constitutional law, balancing governmental authority while upholding the supremacy of the Constitution. By allowing courts to strike down unconstitutional laws and executive actions, it continues to shape the legal and political landscape of the United States.

Judicial Review in UK

Judicial review in the United Kingdom is a fundamental mechanism for ensuring that public authorities act lawfully, fairly, and reasonably. Unlike in the United States, where judicial review assesses the constitutionality of laws, in the UK, it primarily focuses on the legality of executive and administrative decisions. The UK follows the principle of parliamentary sovereignty, meaning that courts cannot strike down primary legislation passed by Parliament but can review the actions of public bodies to ensure they comply with legal standards.

Judicial review in the UK developed through common law and was significantly shaped by cases such as *Council of Civil Service Unions v. Minister for the Civil Service* (1985), which established the grounds of illegality, irrationality, and procedural impropriety. Courts assess whether a decision-making body has exceeded its legal powers (*ultra vires*), acted unreasonably, or failed to follow proper procedures. The Human Rights Act 1998 further expanded judicial review by allowing courts to assess whether legislation is compatible with the European Convention on Human Rights. While they cannot strike down parliamentary laws, courts can issue a "declaration of incompatibility," prompting Parliament to reconsider the legislation.

Recent developments, including Brexit, have influenced judicial review in the UK. The Supreme Court's rulings in *R (Miller) v. Secretary of State for Exiting the European Union* (2017) and *R (Miller) v. The Prime Minister* (2019) underscored the judiciary's role in ensuring executive accountability. However, judicial review has faced political scrutiny, with calls for reform, arguing that it allows courts to overstep their role and interfere in political matters.



Despite debates, judicial review remains a crucial tool in the UK legal system, ensuring that government actions are lawful and subject to judicial oversight. It upholds the rule of law by holding public authorities accountable and protecting individual rights against arbitrary decisions.

Significance of Judicial Review

Judicial review plays a crucial role in maintaining democracy and constitutional governance. Its significance includes:

- 1. Ensuring Constitutional Supremacy** – Prevents the legislature and executive from violating constitutional provisions.
- 2. Protection of Fundamental Rights** – Safeguards citizens against arbitrary government actions.
- 3. Maintaining Federalism** – Helps resolve disputes between central and state governments.
- 4. Preventing Tyranny of the Majority** – Protects minority rights from being overridden by legislative majorities.
- 5. Promoting Good Governance** – Ensures transparency, accountability, and the rule of law.

Challenges to Judicial Review

Despite its importance, judicial review faces several challenges:

- 1. Judicial Overreach** – Courts may exceed their constitutional mandate, interfering in policy matters.
- 2. Delays in the Judicial Process** – The backlog of cases often leads to delays in the review process.
- 3. Lack of Clear Guidelines** – Judicial interpretation varies, sometimes leading to inconsistencies in rulings.
- 4. Conflict with Legislative and Executive Authority** – Judicial review may create tensions between the judiciary and other branches of government.

Conclusion

Judicial review is an indispensable feature of constitutional governance, ensuring that laws and executive actions comply with the Constitution. It acts as a safeguard against arbitrary rule and protects fundamental rights. However, its effectiveness depends on the judiciary's ability to exercise it judiciously without overstepping its constitutional boundaries.



A balanced approach to judicial review is necessary, where the courts act as the guardians of the Constitution while respecting the separation of powers. By doing so, judicial review can continue to uphold democracy, protect individual freedoms, and ensure justice in society.

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