

Tracing The Trajectory of Judicial Review

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Abstract- This paper analyzes the expansion of judicial review from the ancient era to the era of technology, social and political responses, in order to protect fundamental rights, uphold the rule of law, and guarantee accountability within governance structures, the paper also examines how judicial review evolve through landmark judgments, doctrinal debates, exploring how courts have the delicate balance between activism and innovation. Comparative insights from various countries such as India, United Kingdom, and other various democracies. Moreover, the paper discusses how the judicial review lies in capacity to face new challenges while upholding the principles of constitutionalism, individual liberties and quest of justice. In technologically advanced democracies, judicial review must ultimately be dynamic preserving constitutionalism, individual liberty, and universal justice while striking a balance between innovation and restraint. The study emphasises how judicial review protects fundamental rights and preserves constitutional balance. It examines how judicial review intersects with new issues like digital governance, algorithmic decision-making, and climate justice, challenges opposing ideas of judicial activism and restraint, and assesses how it affects democratic legitimacy and the separation of powers.

I. INTRODUCTION

Judicial review is the power authorized to the Supreme Court and High Court to determine if the executive actions, administrative actions, and legislative enactments are legal and constitutional. If they find that they are not or there is something which is not in the favour of public health, they can overturn them. It serves as the framework that protects fundamental rights, upholds the rule of law, maintains constitutional supremacy and protects the public from arbitrary governance. Judicial review arises as an implied but essential feature derived from doctrines like separation of powers and the protection of fundamental rights,

even though it is not always explicitly stated in constitutional texts such as in India.

The Superior Courts act as the constitutional custodians and guarantors of citizens liberties. Through judicial review these supreme courts make sure that there should be no power that supersedes the authority of the constitution. It establishes restrictions by preserving balance between the legislative, executive, and judicial branches. Therefore, judicial review maintains to be the foundation of constitutional democracy, protecting individual liberties and institutional integrity in the changing socio-political landscape. This foundation of justice preserves the power of rule of law and fundamental rights.

Concept And Definition of Judicial Review

Constitutional governance and the rule of law gave rise to the fundamental idea of judicial review. It provides the judiciary the authority to verify that executive actions, administrative decisions, and legislative enactments are constitutional and in accordance with law. Through this mechanism, courts serve as the final interpreters of constitutional provisions and guaranteeing that all branches of government operate within their constitutional limits and preventing any abuse of power by the executive or legislature. The judicial review protects the supremacy of the Constitution, a constitutional control mechanism.

It provides the supreme power to the highest authority court of justice of India to rule the laws that are unconstitutional or if they are against the basic structure or harm to public welfare. The phrase “judicial review” is not defined in the Indian Constitution, though its powers are inferred in some of the prominent case laws, remarkable precedents and notable sections and clauses of Articles 13, 32, 131-136, 226, and 227¹, which provides power to the

Supreme Court and the High Courts to examine legislative and executive actions and defend the rights of the citizens.

This theory guarantees constitutional supremacy over parliamentary sovereignty and upholds the fundamental checks and balances which ensures democratic stability. In a wider sense, judicial review keeps a check over accountability, transparency, and legality in governance. It established the idea that there is no authority that is above the law. It protects the rule of law and citizens fundamental rights, it is a constitutional need in democratic states that values liberty, justice, and institutional integrity.

Research Scope and Methodology

This research paper comprises a thorough examination of the doctrine of judicial review as a fundamental element of constitutional democracies with a focus on its development, scope, significance and current applicability in India and other comparative jurisdictions like the US, UK, Germany, France, and South Africa. In order to examine its contribution to safeguard its constitutional supremacy, maintaining fundamental rights, and preserving the balance of power among the three branches of government. This paper examines judicial review from both conceptual and practical angles.

This study works on philosophical ideas, historical development, legal development and growth of judicial review. It also reviews how it adapts to modern challenges like environmental governance, global constitutionalism, and technological changes and much more. The function of judicial review in democratic frameworks as a tool of accountability of government and to prevent misuse of power is focused.

This study worked with a qualitative and doctrinal research approach as its methodology. It includes a thorough analysis of important court precedents, legislative developments, commentary of well-educated scholars, and constitutional provisions. To identify the parallels and differences between judicial review models in various jurisdictions, a comparative legal analysis is utilised. Arguments and

interpretations have been supported by other sources, including books, research journals, case law, and reputable reports.

In order to study the judicial thought process and provide insights into the changing outlines of judicial review as a living part of the constitution, the research is mainly analytical and descriptive. The approach helps us to provide a clear understanding of how judicial review works and provide a perfect balance between legislature, executive and judiciary.

II. HISTORICAL ORIGINS OF JUDICIAL REVIEW

Judicial review has its roots since the early philosophical of political philosophy and natural law theory. According to the thinkers like Thomas Aquinas and John Locke the foundation of justice and legitimate power is found in higher moral or legal principles that are drawn from nature and reason.

The theory of separation given by Montesquieu promoted a system in which morality and the law are above all authorities. It established an independent judiciary to act as a check on legislature and executive authorities. The idea of being an intellectual foundation for a legal system where the constitution serves as a supreme authority and guarantees that powers of the state are used within established boundaries and according to the moral standards.

Thomas Aquinas focussed on natural law by combining Aristotle with Christian philosophy which is based on basic moral values that exist naturally in the world. John Locke focussed on inalienable rights like life, liberty, property, and argued that citizens have the right to oppose unlawful authority that the government established with the consent of the people must protect these rights.

Montesquieu promoted a fair division of government power for judicial independence by promoting a fair distribution of powers among the government authority. It helps us to maintain a check on abuse of power of any government authority. These

philosophical ideas established the foundation for modern judicial review, highlighting the judicial functions in protecting individual rights, maintaining the rule of law, and upholding constitutional supremacy in democracies.

American foundation: *Marbury v. Madison* (1803)²

The principle of judicial review plays an important role in American Constitutional law. It was established by the Supreme Court of the United States in the famous case of *Marbury v. Madison* (1803). The Hon'ble Chief Justice John Marshall upheld that American courts have the authority to examine legislative and executive actions and declare those that are unconstitutional. This case made it clear that no law or government action can override constitutional principles while making the U.S. Constitution the highest law of the land and authorise the judiciary with power to interpret and enforce it.

The case started when William Marbury, a political person of former President John Adams, asked the Supreme Court for a writ of mandamus to force James Madison the newly appointed Secretary of State to deliver his commission as a justice of the peace. The Court agreed that although Marbury was entitled to his commission the statute that gave the Supreme Court the authority to grant such a writ went beyond the Court's original power and was thus held unconstitutional.

Comparative beginnings in other jurisdictions (France, Germany, South Africa)

Comparative beginnings of criminal law in France, Germany, and South Africa reflect different historical, legal, and social backgrounds. Each country developed its own legal system influenced by customs, philosophies, culture and the need for legal certainty.

France

The development of French criminal law traced back to the Penal Code of 1791 was influenced by the ideals of the French Revolution. It aimed to abolish arbitrary punishment and introduce fixed and specific penalties for crimes. However, this strict distributive role for judges was changed with the Penal Code of

1810, introduced under Napoleon Bonaparte established a certain range of punishments allowing for more judicial opinion. The code omitted religious crimes such as heresy and blasphemy, thereby legalizing them by omission, while making abortion illegal and retaining some gender- based inequalities in family matters. The code underwent further revisions in 1832 and 1863 and was changed significantly in 1994, introducing the concept of criminal responsibility for legal entities and modernizing the approach to crimes and punishments.

Germany

The evolution of criminal law in Germany began with the Penal Code of the North German Confederation in 1870 and was finalized in the *Reichsstrafgesetzbuch* (Imperial Penal Code) of 1871. This code established the legal foundation for criminal law, coordinating and harmonising rules throughout the newly unified German Empire. Many amendments were introduced which reflected evolving moral values, constitutional development and the incorporation of new offences such as money laundering or computer related crimes. After World War II, new provisions were added to deal with war crimes and crimes against humanity. The German system also introduced the criminal registry in 1882 it was adapted from the French system intended to monitor repeat offenders and support the rise of criminology.

South Africa

The development of South African criminal law has different roots, emerging from a mixture of Roman-Dutch law and English common law. Unlike other countries it had a single codification and most of the criminal law was developed through case law and statutes with acts of Parliament slowly defining specific crimes and legal procedures. During the colonial era, efforts to codify the law were influenced by British colonial policy with codes largely derived from English law introduced to colonies between the Sahara and Zambezi to replace uncoded legal practices.

III. EVOLUTION OF JUDICIAL REVIEW IN DIFFERENT LEGAL SYSTEM

The development of judicial review in France, Germany, and South Africa highlights the important changes in legal philosophy, the balance of power, and constitutional structure. Each country has developed resulting in a different system of law which suited each historical and social background.

United States: Constitutional Supremacy and Judicial Authority

The United States is defined by the principle of constitutional supremacy in which the Constitution is the supreme law of the land and the judiciary specially the Supreme Court has the final authority to interpret its meaning and enforce its provisions. This idea were established in the case of *Marbury v. Madison* (1803) which confirms the judiciary's power of judicial review. There are few landmark cases that shaped the meaning of constitutional rights:

- *Brown v. Board of Education* (1954)³: It was held that racial segregation in public schools was unconstitutional; it promoted the idea that every person is equal before the eyes of law and equal protection under law should be given.
- *Roe v. Wade* (1973)⁴: It was held that the Constitution should protect a woman's right to seek an abortion, based on the concept of personal liberty under the due process of law.
- *Obergefell v. Hodges* (2015)⁵: Recognized same-sex marriage as a constitutional right, expanding the interpretation of freedom and equality.

These cases held that judicial supremacy in America where the Supreme Court's decisions are final and its rulings must be followed. Even on controversial social issues it is considered to be the supreme law of the land.

United Kingdom: Parliamentary Sovereignty and Limited Judicial Review

Parliament is the supreme authority and courts cannot declare the laws unconstitutional. Judicial review thus has limited power; courts can examine executive

actions and subordinate legislation against legal standards but not the validity of acts is under Parliament.

- Impact of European Union Law: Membership in the European Union brought supremacy of European Union law allowing UK courts to set aside their domestic laws that conflict with European Union treaties and regulations. Since Brexit, this no longer applies.
- Human Rights Act, 1998: This act added ECHR rights into domestic law that enabled courts to issue a 'declaration of incompatibility' if UK legislation breaches human rights. However, Parliament retains power to decide whether to amend those laws and courts cannot invalidate any law⁶.

Overall, under the Human Rights Act judiciary power remains limited by Parliamentary, making UK judicial review procedural and advisory rather and not absolute.

India: Constitutional Supremacy and Basic Structure Doctrine

India's constitution declares itself as supreme over all other laws including acts of Parliament. Judicial review has become central to constitutional governance, explained by two doctrines and case laws:

- Basic Structure Doctrine: *Kesavananda Bharati v. State of Kerala* (1973)⁷, the Supreme Court held that Parliament's power of amendment does not extend to altering the "basic structure" of the Constitution such as democracy, rule of law, and judicial review.
- Public Interest Litigation: The scope of judicial review has grown through PILs allowing individuals and civil society groups to challenge actions of the government for the constitutional violations.
- *Indira Gandhi v. Raj Narain* (1975): The Supreme Court held that constitutional supremacy that Parliament cannot amend the Constitution to eliminate judicial review or arbitrary power even during the emergencies.

Indian judiciary's activism and interpretation serve as vital checks, protecting core constitutional principles while ensuring rights and access to justice for all.

IV. JUDICIAL REVIEW AND RIGHTS PROTECTION

Judicial Review as Guardian of Rights

Judicial review allows the courts to examine the constitutionality of legislative and executive actions ensuring that all the state power remains subordinate to the Constitution. In India, Articles 13, 32, and 226 empower courts to strike down laws that are contradictory to fundamental rights or the basic structure of the constitution. The Supreme Court has thus been described as the guardian of fundamental rights and the rule of law accessible directly by citizens under Article 32 to enforce their rights.

Socio-Economic Rights Enforcement: South Africa vs. India

South Africa is one of the leading examples where socio-economic rights are part of the constitution and can be protected and legally enforced with courts that are empowered to demand government action to realise rights related to housing, health care, water, and education. Key cases like *Government of the Republic of South Africa v. Grootboom* and *Minister of Health v. Treatment Action Campaign* established that the state must take reasonable steps for the progressive realisation of these rights though courts and often exercise judicial restraint, recognizing separation of powers. Most scholars however noted that remedial actions are sometimes weak, with effective transformation obstructed by judicial restraint or unwilling to prescribe specific policy steps.

In India, the Supreme Court while not making socio-economic rights are directly justiciable, has read such rights into Article 21's protection of the "right to life" expanding it to cover livelihood, shelter, health, and environmental protections through creative constitutional interpretation.

Cases like:

Olga Tellis v. Bombay Municipal Corporation and *Bandhua Mukti Morcha v. Union of India*. These cases establish the expansion of judicial review to

require the government to take action or avoid actions that refrain from action affecting socio-economic entitlements. This expansion has led to the debates about judicial activism and the courts proper institutional role in shaping policy.

V. CONTEMPORARY DEVELOPMENTS AND CHALLENGES

Contemporary judicial review faces many challenges including the tension between activism and showing restraint and oversight of emergency powers in times of crisis. The impact of technological changes and the growing prominence of environmental and climate justice. Courts around the world are continuously adjusting their constitutional roles to respond to these changing dynamics.

Judicial Activism vs. Judicial Restraint

Judicial activism happens when courts actively interpret laws to social or political goals. This can expand individual rights or fill gaps in policies. Judicial restraint focuses on following the text of law and respecting legislative intent while promoting stability and separation of powers. In recent years, activism has helped to address issues like gender equality, privacy and environmental protection while restraint has limited judicial intervention in contested policy areas.

Review of Emergency Powers

The Judicial review during emergencies such as India's Emergency (1975–77) and the COVID- 19 pandemic has tested constitutional limits and civil liberties internationally. The Indian Emergency many rights were violated which led to the constitutional changes adding safeguards to prevent it from future misuse and strengthening judicial checks on executive discretion. In the U.S. and other democracies, courts examined emergency actions to ensure legality, fairness, and respect for fundamental rights, challenging uncontrolled surveillance and arbitrary detention. The COVID-19 pandemic highlighted due process while recognizing public health imperatives.

Technological Disruptions: Artificial Intelligence, Surveillance, Algorithms

The major problems in this digital era are caused by Artificial Intelligence, digital surveillance, and algorithmic governance. Courts have begun to assess the constitutional fairness of facial recognition, predictive policing, and automated administrative decision-making. Concerns have arisen about bias, privacy violations, and the loss of human judgements, demanding legal frameworks and administrative oversight. Regulations like the European Union, Artificial Intelligence Act and General Data Protection Regulation offer partial solutions but struggle to keep a balance with innovation raising alarms for international coordination and rights-based legislation to safeguard civil liberties.

Environmental and Climate Justice

The Judicial review has become an important way to promote environmental and climate justice. Courts in India and other jurisdictions have recognized rights to a clean environment and protection against climate change impacts with broad instructions to governments. Important landmark cases like *Urgenda v. Netherlands*⁸ and orders from the Indian Supreme Court. These cases show courts enforcing environmental policies and whether governments follow rules and regulations. However, courts often try to balance environmental protection with developmental needs which can sometimes lead to inconsistencies in environmental rulings.

VI. CRITICISMS OF JUDICIAL REVIEW

Judicial review is often praised for being the guardian of constitutional rights. Though it faces several criticisms and challenges concerning democratic legitimacy, judicial overreach, and the fragmentation of authority in transnational constitutionalism etc.

Democratic legitimacy: Judicial review authorises significant power in the hands of unelected judges who can overturn or reinterpret laws made by elected legislative bodies, which some people argue weakens the democratic process.

Judicial overreach: Courts may sometimes interfere into the work of legislative or executive functions, risking an imbalance in the separation of powers and leading to possible “judicial supremacy” or judicial dominance.

Frequent interference: Excessive judicial interference in policymaking can create uncertainty and instability in governance as courts might interfere in administrative or legislative matters beyond their expertise.

Fragmentation and transnational issues: The rise of international law and international courts sometimes split the legal authority and reduces accountability, transferring power from national institutions to supranational or transnational bodies.

Delay and expense: The process of judicial review can be time consuming and costly and may lead to delays in policy implementation.

Lack of accountability: Judges are not directly answerable to the public and their decisions sometimes influenced by personal or ideological views that can raise concerns about transparency, impartiality and fairness.

Limited subject-matter: Courts may not have the technical expertise or knowledge required to deal with complex policy issues such as economic or scientific policy which sometimes result in impractical outcomes.

Risk of arbitrariness: Judicial review decisions can be influenced by personal, political, or social biases of judges, leading to inconsistency and sometimes arbitrary outcomes detrimental to public interest.

These points represent the most frequently raised criticisms in scholarly debate and public discourse about judicial review in democratic and transnational contexts.

VII. JOURNEY TOWARDS EXCELLENCE

Need for Judicial Accountability and Transparency

- Establish independent judicial bodies with impartial composition to investigate misconduct and ensure fair disciplinary processes.
- Mandate public disclosure of judges assets and liabilities annually to foster transparency and reduce corruption.

- Reform impeachment and disciplinary procedures to be more transparent, efficient, and accessible, preventing political interference.
- Implement a National Judicial Conduct Code with clear ethical standards and guidelines to ensure consistent judicial behavior.
- Enhance judicial performance evaluations and public reporting on court efficiency, quality of judgments, and adherence to standards.
- Provide whistleblower protections within the judiciary to encourage reporting of misconduct without fear of retaliation.
- Enhance e-court infrastructure and real-time case management data accessible to the public to improve transparency of judicial processes.

Harmonizing Judicial Review with Democratic Governance

- Judicial review must respect the separation of powers, exercising restraint where appropriate to avoid overreach into legislative or executive functions while vigilantly protecting constitutional rights.
- Foster dialogue and cooperation between judiciary and legislature to reconcile judicial interpretations with democratic mandates.
- Maintain a balance where courts serve as checks on majoritarian excesses without substituting policy democratically decided by elected representatives.
- Encourage transparency in judicial reasoning to enhance public understanding and acceptance of court decisions, thereby strengthening legitimacy.

Prospects for Judicial Review in the Digital and Globalized Era

- Develop legal frameworks to address emerging challenges from artificial intelligence, digital surveillance, and algorithmic governance ensuring rights to privacy, fairness, and due process.
- Strengthen judicial capacity through technological tools and training to handle complex digital and transnational issues effectively.
- Adapt judicial doctrines to the realities of globalized legal challenges, fostering cooperative constitutionalism and managing fragmentation in international jurisprudence.

- Promote access to justice through digital platforms, ensuring inclusivity and transparency in judicial proceedings worldwide.

This way forward encourages a robust, transparent, and democratically responsive judicial review system adapted to contemporary complexities and technological advancements.

VIII. CONCLUSION

Judicial review has evolved as important part of the modern constitutional doctrine rooted through centuries of legal history. It was originating from English common law principles and later shaped by the landmark U.S. Supreme Court decision in *Marbury v. Madison* (1803), judicial review established the judiciary's authority to declare legislative and executive actions unconstitutional. In Indian, constitutional framework adopted and adapted this principle, expanded the safeguard of constitutional supremacy and fundamental rights, as shown in landmark cases like *Kesavananda Bharati* and *Maneka Gandhi*.

Overtime, judicial review has changed the legal, political, and social system. It balances the preservation of core constitutional values with evolving democratic and societal norms. Judicial review serves not only as a check on government power but also promotes the rights, equity, and justice in modern states.

Overall the future of judicial review coordinates tradition with contemporary constitutional needs. Courts must uphold constitutional supremacy while evolving methods to engage with digital governance, globalized legal challenges, and participatory democratic values. This balance is essential for judicial review to remain legitimate, effective, and responsive to citizens rights in a changing and interconnected world. Thus, judicial review stands as an pillar of constitutional democracy with the flexibility to meet future challenges.