

# The Doctrine of Judicial Review: A Critical Examination

DR. SANJAY AMBEKAR

*Assistant Professor in Law, Dr. Bapuji Salunkhe Law College, Dharashiv (MH)*

**Abstract-** *Judicial review constitutes a foundational pillar of modern constitutional democracies. It empowers the judiciary to scrutinize the constitutionality of legislative and executive actions, thereby ensuring that all organs of the State operate within the constitutional boundaries prescribed for them. Within the Indian constitutional framework, judicial review functions not merely as a procedural device but as an essential component of the Constitution's basic structure. This paper undertakes a critical examination of the origin, scope, evolution, and contemporary challenges associated with the doctrine of judicial review, with particular emphasis on its development and application in India.*

**Keywords:** *Judicial Review, Constitutional Democracies, Executive Actions, Basic Structure Doctrine.*

## I. INTRODUCTION

Judicial review is the power vested in the judiciary to scrutinize, evaluate, and, when necessary, invalidate legislative and executive actions that violate or undermine constitutional principles. It serves as an essential mechanism for ensuring that every organ of the State operates within the defined limits of the Constitution. The concept first emerged prominently in the United States through the landmark judgment in *Marbury v. Madison* (1803), which established the judiciary as the ultimate interpreter of constitutional provisions and empowered it to strike down unconstitutional laws. In India, the doctrine of judicial review evolved with distinctive features owing to the nation's written Constitution, the explicit guarantee of fundamental rights, and the overarching principle of constitutional supremacy. Over time, the Indian judiciary has developed a robust jurisprudence on judicial review, shaping its application through landmark decisions and expanding its scope to protect individual rights and uphold democratic governance.

The doctrine's primary objectives include maintaining the rule of law, curbing arbitrary or excessive governmental power, and safeguarding citizens' liberties against potential abuse by the State. By acting as a constitutional watchdog, judicial

review ensures that government actions remain just, fair, and reasonable. However, its extensive application has also generated significant debate. Critics argue that overuse of judicial review may lead to judicial overreach, potentially disturbing the delicate balance between the judiciary, legislature, and executive. Concerns about separation of powers, democratic accountability, and the possible encroachment of courts into policy-making domains continue to fuel scholarly and political discourse. Despite these challenges, judicial review remains a cornerstone of constitutional governance and a vital safeguard for democratic societies.

## II. HISTORICAL EVOLUTION OF JUDICIAL REVIEW

### *a. Origin in the United States*

The doctrine of judicial review traces its roots to the 1803 U.S. Supreme Court judgment in *Marbury v. Madison*, where Chief Justice John Marshall held that it is the duty of the judiciary to declare void any law that conflicts with the Constitution.<sup>1</sup> This established the judiciary as the final interpreter of constitutional meaning.

### *b. Development in England*

England, unlike the United States, historically rejected judicial review of primary legislation due to the doctrine of parliamentary supremacy. Judicial scrutiny was therefore limited to executive actions. The Human Rights Act, 1998 introduced a partial shift by empowering courts to assess the compatibility of statutes with Convention rights and issue "declarations of incompatibility." Although such declarations do not invalidate legislation, they create a significant impetus for parliamentary reconsideration, marking a moderated form of judicial review within the UK constitutional framework.<sup>2</sup>

### *c. Introduction in India*

India incorporated judicial review directly into its constitutional framework through explicit provisions.

Articles 13, 32, 131–136, 226, and 227 collectively empower the judiciary to scrutinize the validity of legislative and executive actions.<sup>3</sup> Consequently, judicial review in India emerged as a constitutionally entrenched guarantee, rather than a doctrine developed solely through judicial creativity.

### III. CONSTITUTIONAL BASIS OF JUDICIAL REVIEW IN INDIA

#### *a. Article 13 and Fundamental Rights*

Article 13 declares that any law that contravenes fundamental rights is void to the extent of such inconsistency.<sup>4</sup> This provision operates as the cornerstone of judicial review in India, as it confers explicit constitutional authority upon the judiciary to scrutinize and invalidate legislative enactments that infringe upon fundamental rights. By embedding this power within the Constitution itself, Article 13 ensures that the protection of fundamental rights remains central to India's constitutional governance.

#### *b. Article 32: The Heart and Soul*

Article 32 guarantees citizens the right to constitutional remedies, a provision Dr. B.R. Ambedkar famously characterized as the “heart and soul of the Constitution.”<sup>5</sup> This Article empowers individuals to directly approach the Supreme Court for the enforcement of fundamental rights, thereby positioning the Court as the ultimate guardian of rights and the custodian of constitutional values. Through this mechanism, judicial review becomes an accessible and effective tool for safeguarding individual liberties against legislative or executive infringement.

#### *c. Article 226 and 227: Wider Powers of High Courts*

Under Article 226, High Courts are vested with wider jurisdiction than the Supreme Court, as they may issue writs not only for the enforcement of fundamental rights but also for “any other purpose.” This expansive authority enables High Courts to review a broader range of administrative and quasi-judicial actions, thereby strengthening the overall framework of judicial oversight within the constitutional system.<sup>6</sup>

### IV. JUDICIAL REVIEW AND THE BASIC STRUCTURE DOCTRINE

In *Kesavananda Bharati v. State of Kerala* (1973), the Supreme Court held that judicial review forms an integral component of the Constitution's basic structure.<sup>7</sup> This position was subsequently reaffirmed in *Minerva Mills v. Union of India*, wherein the Court emphasized that, in the absence of judicial review, the Constitution would cease to retain its supremacy.<sup>8</sup> Together, these judgments underscore that judicial review is indispensable for preserving the separation of powers, ensuring constitutional governance, and safeguarding individual liberties against potential state excesses.

### V. TYPES OF JUDICIAL REVIEW

#### *a. Judicial Review of Legislation*

Courts scrutinize legislative enactments to ensure their consistency with constitutional mandates and to prevent any transgression of constitutional limits. This judicial oversight encompasses the review of:

- *Constitutional amendments*: to determine whether they violate the basic structure of the Constitution;
- *Parliamentary laws*: to ensure they fall within the legislative competence of Parliament and do not infringe fundamental rights; and
- *State legislation*: to verify compliance with constitutional provisions, federal distribution of powers, and rights-based limitations.

#### *b. Judicial Review of Administrative Action*

This dimension of judicial review encompasses the scrutiny of executive actions on the established grounds of illegality, irrationality, procedural impropriety, and, increasingly, proportionality.<sup>9</sup> Judicial supervision of administrative discretion is regarded as essential to preventing arbitrariness and ensuring that executive authorities act within the limits of law, adhere to fair procedures, and exercise their powers in a reasoned and justifiable manner.

#### *c. Judicial Review of Constitutional Amendments*

Although Parliament possesses broad amending powers under Article 368, any amendment that infringes or destroys the basic structure of the Constitution is rendered invalid.<sup>10</sup> This principle has been applied in several landmark decisions, including:

- the striking down of portions of the 42<sup>nd</sup> Amendment in *Minerva Mills*, and
- the invalidation of the NJAC Act in Supreme Court *Advocates-on-Record Association v. Union of India*.

## VI. JUDICIAL REVIEW AND SEPARATION OF POWERS

### *a. Judicial Activism vs. Judicial Restraint*

Judicial review frequently attracts criticism when courts are perceived to encroach upon policy-making domains traditionally reserved for the legislature and executive. Judicial activism has been commended for promoting social justice and strengthening rights-based governance, yet it has also been criticized for potentially undermining democratic accountability by side-lining elected representatives.<sup>11</sup> In contrast, the doctrine of judicial restraint emphasizes deference to legislative and executive judgment, requiring courts to intervene only when clear and demonstrable constitutional violations occur. Together, these perspectives highlight the ongoing tension between judicial intervention and democratic governance.

### *b. Public Interest Litigation (PIL)*

Public Interest Litigation (PIL) significantly expanded the scope of judicial review by liberalizing the rules of locus standi and allowing public-spirited individuals to seek judicial intervention on behalf of disadvantaged or affected groups. This development enabled courts to address a wide range of issues, including environmental protection, human rights violations, and corruption. However, the proliferation of excessive or frivolous PILs has raised concerns about judicial overreach and the potential misuse of this remedial mechanism.<sup>12</sup>

## VII. CONTEMPORARY CHALLENGES

### *a. Growing Executive Power*

The increasing centralization and expansion of executive authority in recent decades has posed significant challenges to the efficacy of judicial review in maintaining constitutional checks and balances. As the executive's influence over governance, policymaking, and administrative structures grows, the judiciary is often required to intervene to ensure that executive action remains within constitutional limits.

Indian courts have addressed this concern in several landmark cases. In *ADM Jabalpur v. Shivakant Shukla* (1976), the Supreme Court was widely criticized for upholding excessive executive power during the Emergency, a decision later acknowledged as a failure of judicial oversight. Conversely, in *Maneka Gandhi v. Union of India* (1978), the Court adopted a rights-expansive approach, holding that executive restrictions on personal liberty must meet standards of fairness, reasonableness, and due process. More recently, in *Central Vista Project Case* (2021) and *Anuradha Bhasin v. Union of India* (2020), the Court was called upon to scrutinize major executive decisions involving large-scale public projects and restrictions on civil liberties, reflecting the ongoing tension between judicial scrutiny and executive discretion.

These cases illustrate that in an era of expanding executive dominance, judicial review remains essential for preserving constitutional governance, protecting individual rights, and preventing the concentration of power in the executive branch.

### *b. Legislative Pushback*

At times, Parliament has expressed concern over what it perceives as excessive judicial intervention in legislative and policy matters. In response, certain constitutional amendments and executive ordinances have been enacted with the apparent objective of limiting judicial scrutiny. Notable examples include attempts to curtail judicial review of constitutional amendments, such as provisions in the 42<sup>nd</sup> Amendment, and legislative measures affecting the composition and functioning of judicial bodies, exemplified by the NJAC Act.<sup>13</sup>

### *c. Backlog and Delays*

The effectiveness of judicial review is significantly undermined by the persistent backlog of cases before Indian courts. Prolonged pendency leads to delayed adjudication, thereby weakening the timely enforcement of constitutional rights and diluting the remedial purpose of judicial review.

### *Technological and Digital Age Challenges*

The advent of the technological and digital era has introduced novel constitutional and legal questions, including data protection, surveillance, digital governance, and regulation of artificial intelligence. These developments necessitate the evolution of judicial standards and a re-examination of traditional

principles of constitutional interpretation to ensure that fundamental rights are adequately protected in the rapidly changing socio-technical landscape.

### VIII. CONCLUSION

Judicial review remains an indispensable component of constitutional governance, serving as a vital mechanism to ensure the supremacy of the Constitution. By empowering the judiciary to scrutinize legislative and executive actions, it safeguards fundamental rights, upholds the principles of justice, and prevents the arbitrary or excessive exercise of power by the State. Its role is not only corrective but also preventive, ensuring that all organs of government operate within the framework established by the Constitution.

However, the effectiveness of judicial review hinges on maintaining a careful equilibrium between judicial activism and judicial restraint. Excessive intervention may disrupt the balance of powers and encroach upon the domains of the legislature and executive, while excessive restraint could undermine the protection of constitutional rights and weaken the rule of law. Therefore, a nuanced and prudent approach is essential to preserve both constitutional supremacy and the democratic ethos of governance.

#### *Recommendation:*

- The judiciary should exercise review powers cautiously, guided by proportionality, precedent, and constitutional morality.
- Legislative and executive organs must align policies with constitutional mandates.
- Mutual respect among State organs is essential to maintain checks and balances.
- Collaborative adherence strengthens judicial review as a safeguard of constitutional supremacy.
- This ensures a vibrant, accountable, and rights-based democratic system.

### REFERENCES

- [1] *Marbury v. Madison*, 5 U.S. 137 (1803).
- [2] Human Rights Act, 1998 (UK).
- [3] Constitution of India, Articles 13, 32, 131–136, 226, 227.
- [4] Constitution of India, Article 13(2).

- [5] Constituent Assembly Debates, Vol. VII, 1950.
- [6] Constitution of India, Article 226.
- [7] *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.
- [8] *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.
- [9] *Council of Civil Service Unions v. Minister for the Civil Service* (GCHQ case), [1985] AC 374.
- [10] Constitution of India, Article 368.
- [11] S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, Oxford University Press.
- [12] *S.P. Gupta v. Union of India*, AIR 1982 SC 149.
- [13] See *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225; *Supreme Court Advocates-on-Record Association v. Union of India* (2015) 5 SCC 1.