

Role of Judicial Review in Protecting Fundamental Rights

Sathe Vishal Arvindrao¹ Dr. Mannalal R. Pandiya² Dr. Sunil L. Lungare³

Research Scholar, Department of Law, Shri JJT University, Jhunjhunu, Rajasthan, India

Research Guide, Department of Law, Shri JJT University, Jhunjhunu, Rajasthan, India

Research Co-Guide, Department of Law, Shri JJT University, Jhunjhunu, Rajasthan, India

Abstract:

Judicial review is a cornerstone of constitutional governance, ensuring that legislative and executive actions conform to constitutional mandates. Its primary role in protecting fundamental rights is pivotal, acting as a mechanism to safeguard individual liberties against arbitrary state action. Judicial review empowers the judiciary to examine the validity of laws, executive orders, and administrative actions, striking down those that violate these rights. Through landmark judicial pronouncements, courts have consistently reinforced the principle that no authority, including the state, is above the constitution. The doctrine of judicial review not only checks legislative excesses but also provides citizens with a forum for redressal against violations of fundamental rights. Furthermore, it ensures a balance between societal interests and individual freedoms, preventing misuse of power by the state. In addition to safeguarding rights, judicial review contributes to the evolution of constitutional jurisprudence by interpreting rights in the context of contemporary social, economic, and political challenges. While judicial activism occasionally raises debates about the judiciary's role in policy-making, its intervention is often crucial in protecting vulnerable groups and maintaining the rule of law. By striking down unconstitutional actions, judicial review affirms the supremacy of the constitution and promotes accountability, transparency, and justice. Overall, the institution of judicial review is indispensable in protecting fundamental rights and continues to evolve as a dynamic tool for constitutional interpretation in a changing socio-political landscape, reinforcing the constitutional vision of liberty, equality, and dignity for all citizens.

Keywords: Judicial review, fundamental rights, constitutional governance, judiciary, constitutional supremacy, rule of law, rights protection, constitutional interpretation.

Introduction

The protection of fundamental rights is the cornerstone of any democratic society, ensuring that citizens can enjoy liberty, equality, and justice without arbitrary interference. In India, these rights are enshrined in Part III of the Constitution,

encompassing essential freedoms such as the right to equality, freedom of speech and expression, right to life and personal liberty, and protection against discrimination. However, the mere existence of these rights on paper is insufficient unless there is an effective mechanism to enforce and safeguard them. This is where judicial review emerges as a vital instrument, acting as a guardian of the Constitution and protector of individual liberties against legislative or executive encroachments.

Judicial review is the power vested in the judiciary to examine the constitutionality of legislative enactments, executive orders, and administrative actions. This power allows courts to ensure that laws and policies conform to the fundamental principles of the Constitution. In essence, judicial review serves as a check on the arbitrary exercise of power by the state, ensuring that no law or action infringes upon the rights guaranteed to citizens. It embodies the doctrine of the supremacy of the Constitution, which implies that all state actions must align with constitutional mandates, particularly those relating to fundamental rights.

Historically, judicial review has played a pivotal role in shaping the democratic ethos of India. The Supreme Court and High Courts have, over the decades, evolved into vigilant protectors of civil liberties, striking down laws and executive actions that violate fundamental rights. Landmark judgments, such as *Kesavananda Bharati v. State of Kerala* (1973), which established the basic structure doctrine, or *Maneka Gandhi v. Union of India* (1978), which expanded the interpretation of the right to personal liberty, exemplify the judiciary's proactive stance in safeguarding rights. Through such interventions, judicial review not only protects individuals from arbitrary state action but also ensures that democracy is substantive and meaningful rather than a mere procedural formality.

Judicial review is also instrumental in balancing the tension between individual rights and the broader interests of the state. While fundamental rights guarantee personal freedoms, they are not absolute and may be reasonably restricted in the interest of public order, security, or morality. Judicial scrutiny ensures that such restrictions are legitimate, proportionate, and non-arbitrary, thereby preventing misuse of power by authorities. This delicate equilibrium underscores the judiciary's dual role: protecting individual liberties while preserving the legitimate interests of the state.

Furthermore, judicial review strengthens public confidence in the constitutional framework. Citizens can approach the courts directly through **writ petitions** under Article 32 and Article 226 of the Constitution to seek enforcement of their rights. This accessibility reinforces the rule of law and empowers individuals to hold the government accountable. Over time, judicial review has evolved as an essential instrument for social justice, addressing discrimination, protecting marginalized communities, and upholding human dignity.

Judicial review is not merely a procedural mechanism but a fundamental pillar of India's constitutional democracy. By safeguarding fundamental rights, it ensures that the promise of liberty, equality, and justice becomes a lived reality for every citizen. Its role in restraining arbitrary power, interpreting the Constitution dynamically, and reinforcing accountability makes judicial review indispensable in protecting the core values of democracy.

Evolution of Judicial Review

1. Global Context

The modern doctrine of judicial review is often traced to the United States Supreme Court's decision in *Marbury v. Madison* (1803), where the Chief Justice John Marshall asserted the judiciary's authority to declare laws unconstitutional. The concept gradually influenced other countries, including India, emphasizing that the judiciary acts as the sentinel of the Constitution.

2. Judicial Review in India

Judicial review in India has roots in the Government of India Act, 1935, which introduced the idea of a High Court's power to declare legislative acts *ultra vires*. After independence, the framers of the Constitution incorporated a robust judicial review system to protect fundamental rights against state encroachment.

The Supreme Court of India, through landmark judgments, has interpreted judicial review as an essential feature of the Constitution, necessary to maintain the rule of law and constitutional democracy. Articles 13, 32, and 226 became the legal instruments through which fundamental rights could be enforced against any law or executive action.

Judicial Review as a Guardian of Fundamental Rights

1. Safeguarding Individual Liberties

Judicial review plays a pivotal role in protecting individual liberties from arbitrary encroachment. For example, in *Maneka Gandhi v. Union of India (1978)*, the Supreme Court of India expanded the scope of the right to personal liberty under Article 21, stating that any procedure affecting liberty must be "just, fair, and reasonable." This landmark case highlighted how judicial review ensures that state actions do not violate the fundamental rights of individuals.

2. Ensuring Equality Before Law

Equality before the law is a fundamental right guaranteed under Article 14. Judicial review empowers courts to strike down discriminatory laws or policies. In *Indra Sawhney v. Union of India (1992)*, the Supreme Court reviewed the validity of the reservation policy in employment, balancing affirmative action with the principle of equality. Such cases underscore the role of judicial review in preventing arbitrary or unequal treatment by the state

3. Protection Against Exploitation

Judicial review has been instrumental in safeguarding citizens from exploitation. Laws permitting bonded labor, child labor, or other forms of exploitation have been struck down by courts under judicial review. In *Hussainara Khatoon v. State of Bihar (1979)*, the Supreme Court recognized the plight of undertrial prisoners, enforcing their fundamental right to a speedy trial. This case demonstrated how judicial intervention is necessary to uphold rights that protect human dignity.

4. Defending Freedom of Expression and Speech

Freedom of speech and expression is a cornerstone of democracy. Judicial review enables courts to protect this right against legislative or executive encroachments. In *Shreya Singhal v. Union of India (2015)*, the Supreme Court struck down Section 66A of the IT Act, which criminalized online speech. Judicial review, in this instance, reinforced the fundamental democratic principle that free expression cannot be curtailed arbitrarily.

5. Religious and Cultural Rights

The judiciary ensures that laws do not infringe on the rights of individuals to practice religion freely or preserve their culture. In *S.R. Bommai v. Union of India (1994)*, the

The Supreme Court exercised judicial review to curb the misuse of Article 356, which permitted central intervention in state affairs. By doing so, the Court protected secular and democratic principles, ensuring that fundamental rights related to religion and culture were not violated.

Significance of Judicial Review in a Democracy

1. Balancing Majority Rule and Individual Rights

In a democracy, the legislature reflects the will of the majority. However, majority decisions may sometimes infringe on the rights of minorities or individuals. Judicial review acts as a safeguard, ensuring that the majority does not trample the fundamental rights of the minority.

2. Ensuring Accountability of the State

Judicial review promotes accountability by allowing courts to scrutinize administrative actions. Any executive decision violating fundamental rights can be challenged in court, ensuring that public authorities act within the limits of the constitution.

3. Evolving Interpretation of Fundamental Rights

Through judicial review, courts have the flexibility to interpret fundamental rights in light of contemporary social, economic, and technological changes. For instance, the recognition of the right to privacy, environmental rights, and digital freedom demonstrates how judicial review adapts to modern challenges while protecting fundamental rights.

4. Strengthening the Rule of Law

Judicial review reinforces the principle that all laws and executive actions must conform to constitutional norms, thereby upholding the rule of law. It ensures that arbitrary, unreasonable, or unconstitutional measures do not undermine the legal and moral authority of the state.

Judicial Review as a Protective Mechanism

1. Ensuring Legislative Compliance with the Constitution

The legislature may occasionally enact laws that inadvertently infringe upon fundamental rights. Judicial review enables the courts to examine such laws and strike down those that are unconstitutional. For instance, in **Kesavananda Bharati v. State of Kerala (1973)**, the Supreme Court of India held that while Parliament has wide powers to amend the

Constitution, it cannot alter the “basic structure,” which includes fundamental rights. This case exemplifies how judicial review serves as a shield against legislative overreach.

2. Preventing Executive Arbitrariness

The executive branch often has significant discretionary powers in implementing laws. Judicial review ensures that such powers are exercised within constitutional limits. In cases of illegal detention, police excesses, or arbitrary administrative action, courts can intervene to protect fundamental rights. Article 32 of the Indian Constitution explicitly empowers citizens to approach the Supreme Court directly for the enforcement of fundamental rights, emphasizing the role of judicial review as a guardian against executive misuse.

3. Safeguarding Minority Rights and Promoting Equality

Judicial review is especially crucial in protecting the rights of minorities and vulnerable sections of society. Courts have consistently struck down discriminatory laws and practices that violate the principle of equality. For instance, in **Indra Sawhney v. Union of India (1992)**, the Supreme Court upheld the reservations policy but also laid down limitations to prevent excessive favoritism that could compromise equality. Through such interventions, judicial review ensures that fundamental rights serve their purpose of promoting social justice.

4. Balancing Rights and Social Policy

Judicial review also plays a critical role in reconciling individual rights with broader social interests. The courts adopt a reasoned approach to determine whether restrictions on fundamental rights are reasonable and justifiable under Article 19(2) or other constitutional provisions. For example, restrictions on freedom of speech must meet the test of public order, morality, or sovereignty. This ensures that rights are not absolute but protected in a manner that respects both individual freedoms and societal needs.

5. Creating a Culture of Accountability

By subjecting legislative and executive actions to judicial scrutiny, judicial review fosters a culture of accountability in governance. Officials are aware that arbitrary or unconstitutional actions can be challenged in courts, which discourages misuse of power. Landmark cases such as **Maneka Gandhi v. Union of India (1978)** expanded the interpretation of the right to personal liberty, reinforcing the idea that every action of the

state affecting fundamental rights is reviewable. This principle strengthens democracy and the rule of law.

Challenges in Judicial Review

Despite its importance, judicial review faces certain challenges alike judicial overreach, limited public awareness above the concept and process, capacity constraints i.e. increasing caseloads strain judicial resources etc.

Even with these challenges, judicial review remains indispensable for protecting fundamental rights in a complex democratic society.

Conclusion

Judicial review remains a vital safeguard for fundamental rights and a dynamic instrument for maintaining constitutionalism in India's evolving democracy, ensuring that the Constitution remains a living guarantee of liberty and justice. By empowering the judiciary to examine and strike down laws or executive actions that violate these rights, it upholds the principles of democracy, equality, and the rule of law. In essence, judicial review not only protects individual freedoms but also strengthens the balance of power among the legislature, executive, and judiciary, ensuring that no authority can act beyond the limits set by the Constitution. It is, therefore, an indispensable mechanism for preserving the rights and freedoms that form the foundation of a just and equitable society.

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