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JUDICIAL REVIEW AND DEMOCRATIC ACCOUNTABILITY: A STUDY OF RECENT SUPREME COURT INTERVENTIONS¹

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Abstract

Judicial review plays a pivotal role in maintaining the balance between the powers of the legislature, executive, and the judiciary in a constitutional democracy. In recent years, the Supreme Court has increasingly intervened in matters of public policy, governance, and legislative action, raising critical questions about the limits and legitimacy of judicial power. This research paper examines the evolving role of judicial review in India and its implications for democratic accountability. By analyzing landmark and recent Supreme Court judgments, the study seeks to understand how judicial interventions either enhance or challenge democratic principles and the functioning of elected institutions. The paper also explores the tension between judicial activism and judicial restraint, and its impact on the doctrine of separation of powers. Through a qualitative analysis of case law and scholarly commentary, the study offers insights into whether recent interventions signify a trend toward judicial overreach or necessary checks on arbitrary governance.

Keywords

Judicial Review, Democratic Accountability, Supreme Court of India, Judicial Activism, Judicial Restraint, Separation of Powers, Constitutional Law, Judicial Overreach, Recent Judgments, Rule of Law.

Research Methodology

This research paper adopts a qualitative doctrinal research methodology to analyze the relationship between judicial review and democratic accountability in the context of recent Supreme Court interventions. The study is primarily based on secondary sources, including constitutional provisions, landmark and recent judicial decisions, academic articles, commentaries, and legal reports.

¹ Authored by Shivam Shukla and Adrija Majumdar

A case study approach has been employed to examine specific Supreme Court judgments that reflect the evolving nature of judicial review in India. The analysis focuses on how these decisions have affected democratic processes and the principle of accountability in governance.

The research also incorporates a comparative and critical analysis of scholarly opinions regarding judicial activism and judicial restraint. This approach allows for a comprehensive understanding of the implications of judicial interventions on the doctrine of separation of powers and the functioning of democratic institutions.

The methodology does not include empirical or statistical data collection, as the objective is to evaluate legal and constitutional principles through interpretative analysis rather than quantitative assessment.

Literature Review

The relationship between judicial review and democratic accountability has been extensively explored in constitutional and political scholarship. This literature review synthesizes the major academic perspectives and legal commentaries that form the foundation of the current research.

1. Constitutional Basis and Theoretical Foundations

A.V. Dicey's exposition of the **rule of law** and the **supremacy of the constitution** has been instrumental in shaping the idea that judicial review is essential for ensuring legality in governance. Similarly, Dr. B.R. Ambedkar, in the Constituent Assembly Debates, emphasized the judiciary's role as the guardian of the Constitution, empowered to check the misuse of legislative and executive authority.

2. Judicial Activism and Restraint

Scholars such as Upendra Baxi and Justice P.N. Bhagwati have championed **judicial activism**, especially in the context of Public Interest Litigation (PIL), arguing that it serves as a corrective measure in cases where democratic institutions fail to deliver justice. On the other hand, critics like Arun Shourie and Rajeev Dhavan have cautioned against **judicial overreach**, warning that excessive intervention by courts can dilute the principle of separation of powers.

3. Recent Judicial Interventions

In recent years, studies by legal scholars like Gautam Bhatia and Sujit Choudhry have analyzed key Supreme Court decisions such as *Navtej Singh Johar v. Union of India* (2018), *Kesavananda Bharati v. State of Kerala* (1973), *S.R. Bommai v. Union of India*

(1994), and *Manohar Lal Sharma v. Union of India* (Rafale case, 2019). These cases are often cited to evaluate whether the judiciary is acting as a check on majoritarianism or encroaching into policy domains reserved for the elected branches.

4. Democratic Accountability

Bruce Ackerman and Larry Diamond have written extensively about the need for accountability in a democratic framework, arguing that unelected judges must exercise restraint and justify their interventions with strong constitutional reasoning. These views are echoed in the Indian context by scholars like Pratap Bhanu Mehta, who emphasizes the importance of maintaining a healthy equilibrium between judicial oversight and democratic functioning.

5. Global Perspectives

Comparative constitutional studies, particularly from jurisdictions like the United States, the United Kingdom, and South Africa, provide additional insights into how different democracies reconcile judicial review with democratic accountability. These perspectives help contextualize the Indian experience within a broader global framework.

Hypothesis

This research is guided by the central hypothesis that:

"While judicial review by the Supreme Court of India serves as a vital mechanism for upholding constitutional values and protecting fundamental rights, its increasing intervention in matters traditionally reserved for the legislature and executive poses challenges to democratic accountability and the principle of separation of powers."

This hypothesis is grounded in the observation that although judicial oversight is essential for checking arbitrary governance, a pattern of judicial overreach may undermine the legitimacy of democratically elected institutions. The study aims to test this hypothesis by critically analyzing recent Supreme Court judgments to assess whether such interventions strengthen or weaken democratic accountability.

Introduction

In a constitutional democracy, judicial review acts as a safeguard against arbitrary and unconstitutional actions by the legislative and executive branches. It enables the judiciary, particularly the Supreme Court, to assess the validity of laws and government actions against

the fundamental norms enshrined in the Constitution. In India, judicial review is not only a basic structure of the Constitution but also a key mechanism to enforce democratic accountability and protect the rights of citizens.²

The concept of judicial review was originally borrowed from the American model and incorporated into Indian constitutional jurisprudence to ensure that all state actions remain within constitutional limits.³ Over the decades, the Indian Supreme Court has interpreted its powers expansively, especially under Articles 32 and 226, evolving doctrines such as basic structure, public interest litigation, and constitutional morality.⁴ These developments have enabled the judiciary to become a dynamic and sometimes assertive actor in the Indian polity. While such activism has often led to the protection of civil liberties and the curbing of executive excesses, it has also attracted criticism for allegedly undermining the principle of separation of powers. In recent years, landmark judgments like *Navtej Singh Johar v. Union of India*,⁵ *Indian Young Lawyers Association v. State of Kerala* (Sabarimala case)⁶, and the judgment in the *Electoral Bonds case* have reignited the debate on judicial overreach versus judicial accountability.

This paper seeks to explore how the Supreme Court's recent interventions through judicial review influence the fabric of Indian democracy. It questions whether such actions enhance democratic accountability by checking executive power or, conversely, weaken it by overriding the political process. Through an in-depth analysis of select case laws and legal commentary, the paper aims to provide a balanced assessment of the judiciary's evolving role in a functioning democracy.

1. Conceptual Framework: Judicial Review and Democratic Accountability

1.1 Judicial Review: Origins and Evolution in India

Judicial review is the power of courts to assess the constitutionality of legislative and executive actions. In India, this power is enshrined in the Constitution and has evolved through a series of judicial interpretations and landmark decisions. While the concept traces its roots to the

²Kesavananda Bharati v State of Kerala (1973) 4 SCC 225.

³Marbury v Madison, 5 US (1 Cranch) 137 (1803); see also Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006).

⁴S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2nd edn, OUP 2003) 35–40.

⁵*Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

⁶*Indian Young Lawyers Association v State of Kerala* (2018) 10 SCC 689.

American precedent in *Marbury v Madison* (1803),⁷ the framers of the Indian Constitution consciously incorporated it as a mechanism to safeguard the supremacy of the Constitution.

The Indian judiciary was vested with this function to ensure that all laws conform to the Constitution, especially in regard to fundamental rights. Article 13 explicitly states that laws inconsistent with or in derogation of fundamental rights shall be void.⁸ Articles 32 and 226 further empower the Supreme Court and High Courts, respectively, to issue writs for the enforcement of fundamental rights. Over time, the judiciary's power of review has expanded beyond rights-based scrutiny to encompass policy and administrative actions under the doctrine of *arbitrariness*.

The expansion of judicial review was most significantly marked by the Supreme Court's verdict in *Kesavananda Bharati v State of Kerala*, where the doctrine of the "basic structure" of the Constitution was laid down.⁹ This decision empowered the judiciary to strike down constitutional amendments that violate core constitutional principles, further solidifying its supervisory role over all branches of government.

1.2 Democratic Accountability: Scope and Significance

Democratic accountability refers to the obligation of elected officials and public institutions to answer to the people and be held responsible for their actions. It operates on the principle that sovereignty resides with the people, and those who exercise power on their behalf must do so transparently and responsibly.

In a representative democracy like India, accountability mechanisms include periodic elections, legislative oversight, media scrutiny, and, significantly, judicial intervention. However, accountability also requires that institutions respect their constitutional boundaries. While the legislature and executive are directly answerable to the electorate, the judiciary's role is to ensure that these institutions function within the confines of law and constitutional morality.

The judiciary, though unelected, contributes to accountability by acting as a constitutional watchdog. However, excessive judicial interference may dilute democratic accountability by

⁷*Marbury v Madison*, 5 US (1 Cranch) 137 (1803).

⁸Constitution of India, art 13.

⁹*Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

undermining the legitimacy of elected representatives.¹⁰ This balance is crucial—while courts must act against unconstitutional governance, they must also respect the autonomy of political institutions.

1.3 Tension between Judicial Review and Democratic Principles

A persistent tension exists between judicial review and democratic accountability. On the one hand, judicial review serves to protect minority rights, uphold constitutional values, and prevent abuse of power. On the other hand, when courts intervene too frequently or aggressively in policy matters, they risk substituting judicial wisdom for democratic will.

This tension is most pronounced when courts adjudicate on contentious issues involving religion, electoral reforms, economic policy, or legislative priorities. Scholars argue that while judicial review is essential for a functioning democracy, it must be exercised with restraint, humility, and deference to the representative branches of government.¹¹

The balance between review and overreach is central to the legitimacy of judicial power in a democracy. As this paper will further examine through case studies, the Indian Supreme Court has sometimes walked this fine line with care and at other times with controversy.

2. Supreme Court Interventions and Their Impact on Democracy

The Indian Supreme Court has, over the years, played a pivotal role in interpreting and applying the Constitution to uphold democratic norms, civil liberties, and institutional accountability. While its interventions have often been celebrated for advancing social justice and reinforcing constitutionalism, they have also prompted concerns about judicial overreach into legislative and executive domains. This section examines three landmark cases that reflect this dynamic interplay.

2.1 Navtej Singh Johar v Union of India (2018): Decriminalizing Homosexuality

In this landmark judgment, the Supreme Court read down Section 377 of the Indian Penal Code, decriminalizing consensual homosexual relationships between adults.¹² The Court held that Section 377 violated Articles 14, 15, 19, and 21 of the Constitution and was inconsistent with

¹⁰Bruce Ackerman, *The Future of Liberal Revolution* (Yale University Press 1992).

¹¹Larry Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (OUP 2004).

¹²*Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

the values of dignity, privacy, and equality. It affirmed that constitutional morality must prevail over societal morality when the two conflict.¹³

This intervention was hailed as a progressive step towards individual freedom and inclusiveness. The judiciary, in this instance, filled a void left by the legislature, which had repeatedly failed to address the issue despite growing public discourse and recommendations by legal and rights commissions.

However, critics raised questions about whether the Court had overstepped by making a policy-laden determination traditionally reserved for Parliament.¹⁴ The case underscores the judiciary's dual role—as a guardian of rights and as an institution that must tread carefully when adjudicating socially contested issues.

2.2 Indian Young Lawyers Association v State of Kerala (2018): *The Sabarimala Verdict*

In the Sabarimala temple entry case, the Supreme Court declared unconstitutional the ban on the entry of women of menstruating age (10–50 years) into the temple.¹⁵ The majority held that the practice violated Articles 14, 15, 17, and 25, reinforcing the notion that exclusion based on biology and gender is discriminatory.

The verdict sparked massive protests across Kerala and other parts of India. Many devotees and religious groups perceived the judgment as an intrusion into religious autonomy and community customs. Justice Indu Malhotra's dissent highlighted that in matters of deep religious faith, courts should refrain from interfering unless there is a clear constitutional violation.¹⁶

While the judgment advanced gender justice, it also revealed the limits of judicial enforcement in the absence of social consensus. The Court's ability to implement its decision was significantly undermined by widespread non-compliance, leading to a re-examination of the issue by a larger bench.¹⁷

¹³ibid [Justice Chandrachud, concurring].

¹⁴Suhrith Parthasarathy, 'Judicial Activism and the Limits of Constitutional Morality' (2019) 8(2) NUJS L Rev 120.

¹⁵*Indian Young Lawyers Association v State of Kerala* (2018) 10 SCC 689.

¹⁶ibid [Indu Malhotra J, dissenting].

¹⁷*Kantaru Rajeevaru v Indian Young Lawyers Association* (2020) 2 SCC 1.

2.3 Association for Democratic Reforms v Union of India (2024): Electoral Bonds and Political Transparency

In a recent landmark ruling, the Supreme Court struck down the electoral bonds scheme as unconstitutional for violating the right to information and promoting anonymous political donations.¹⁸ The Court emphasized that transparency in political funding is essential to democratic accountability and that voters have a right to know who is financing political parties.

This judgment reaffirmed the Court's commitment to cleansing the political process and preventing corruption. It was widely regarded as a victory for democratic ethics, transparency, and the integrity of the electoral process.

Yet again, this decision illustrates the fine balance the judiciary must strike—intervening to uphold constitutional values while being cautious of intruding into the legislative domain. In this instance, the Court's intervention was necessitated by the executive's opacity and the legislature's failure to act, reaffirming the Court's role as a constitutional check.

Assessment

These three cases reflect the complex nature of judicial review in a democracy. The Supreme Court has often acted as a vital counter-majoritarian institution, ensuring that constitutional rights are not subject to the tyranny of the majority. At the same time, these interventions raise questions about how far the judiciary can go without undermining democratic institutions and processes.

The broader impact of these decisions depends not only on their constitutional reasoning but also on public reception, institutional cooperation, and societal readiness. In this light, the Court's role must be both principled and prudent.

3. Judicial Activism vs. Judicial Overreach

3.1 The Rise of Judicial Activism in India

Judicial activism in India emerged prominently in the 1970s and 1980s, largely as a response to the perceived failures of the executive and legislature to protect citizens' rights and ensure

¹⁸Association for Democratic Reforms v Union of India (2024) SCC Online SC 169.

good governance. The Supreme Court began adopting a proactive stance, expanding access to justice through Public Interest Litigation (PIL) and interpreting fundamental rights broadly.¹⁹ Pioneering judges such as Justice P N Bhagwati and Justice V R Krishna Iyer played a vital role in this transformation, emphasizing that the judiciary should act as the voice of the voiceless and hold the government accountable.²⁰ PILs enabled social groups, NGOs, and concerned citizens to bring issues of public concern before the Court, thereby enhancing judicial responsiveness.

Judicial activism has led to landmark rulings on environmental protection, human rights, corruption, and social welfare, pushing the judiciary beyond traditional adjudication into the realm of policy intervention.²¹

3.2 Criticism and the Fear of Overreach

Despite these achievements, judicial activism has faced significant criticism. Opponents argue that the judiciary sometimes encroaches upon the functions of the legislature and executive, upsetting the delicate balance of power and democratic accountability.²² Such judicial overreach may result in decisions based on judicial preferences rather than democratic mandate.

Critics point to instances where courts have issued binding directions on policy matters, administrative appointments, or economic decisions, which arguably fall outside judicial competence.²³ This trend has raised concerns about the legitimacy of unelected judges effectively shaping public policy without electoral accountability.

The tension between activism and restraint becomes especially acute in politically sensitive cases or where cultural and social norms are involved. The judiciary's lack of resources and expertise in policymaking is also cited as a reason for limiting judicial intervention.

¹⁹Upendra Baxi, 'The Avatars of Indian Judicial Activism: Explorations in the Geographies of Injustice' in S K Verma and Kusum (eds), *Fifty Years of the Supreme Court of India: Its Grasp and Reach* (OUP 2000) 156.

²⁰S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2nd edn, OUP 2003) 45–48.

²¹Rajeev Dhavan, 'Judges and the Constitution: The Reign of Justice' (1992) 4 SCC (Jour) 1.

²²Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1999) 223.

²³Madhav Khosla, 'Judicial Overreach in India' (2013) 5 J Indian L & Soc 45.

3.3 Striking a Balance: The Way Forward

The challenge for the Indian judiciary is to strike a balance between activism that protects rights and promotes justice, and restraint that respects democratic processes and institutional roles. Courts must carefully assess whether an issue genuinely warrants judicial intervention or if it is better left to the political branches.

Judicial self-restraint, respect for institutional competence, and adherence to procedural fairness are critical for maintaining public confidence in the judiciary.²⁴ Additionally, clear and reasoned judgments that acknowledge the limits of judicial power can help mitigate accusations of overreach.

In the final analysis, judicial activism remains a double-edged sword: indispensable for safeguarding democracy but potentially disruptive if exercised without prudence.

4. Separation of Powers and Institutional Integrity

4.1 The Doctrine of Separation of Powers in India

The doctrine of separation of powers, though not explicitly mentioned in the Indian Constitution, is an underlying principle that shapes the functioning of the Indian democracy.²⁵ It divides governmental power among the legislature, the executive, and the judiciary to prevent the concentration of power and to provide a system of checks and balances.

In India, the Constitution assigns distinct functions to each branch. The legislature is responsible for making laws, the executive for implementing them, and the judiciary for interpreting the laws and ensuring their compliance with constitutional norms.²⁶ However, the branches are not completely independent; rather, they operate in a system of interdependence and mutual accountability.

4.2 Role of the Judiciary in Upholding Institutional Integrity

The judiciary's role is pivotal in preserving the balance among branches. It ensures that laws passed by the legislature and actions by the executive conform to constitutional

²⁴V R Krishna Iyer, *Law and the Poor: Essays* (Eastern Book Company 1982).

²⁵Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1999) 122.

²⁶Constitution of India, arts 79–122 (Parliament), arts 123–148 (President and Executive), arts 124–147 (Judiciary).

mandates.²⁷Judicial review is a key mechanism in this regard, enabling the courts to invalidate unconstitutional laws or executive orders.

Supreme Court decisions, such as *Kesavananda Bharati*, have reinforced the judiciary's responsibility to protect the Constitution's "basic structure" against amendments or actions that threaten democratic governance. Additionally, the judiciary often steps in to uphold fundamental rights when legislative or executive actions infringe upon them.

4.3 Recent Trends and Challenges

In recent years, the Supreme Court has shown increased willingness to intervene in matters traditionally viewed as the preserve of the executive or legislature. Examples include inquiries into government policies, administrative decisions, and human rights issues.²⁸While such interventions have sometimes enhanced accountability, they also raise concerns about judicial overreach.

Cases like the *Manipur Internet Shutdown* judgment, where the Court ruled against prolonged internet blackouts, exemplify judicial efforts to uphold citizens' rights and demand executive accountability. Similarly, in the *Pegasus spyware* case, the Court took suo motu cognizance, underscoring the importance of privacy and government transparency.

Nonetheless, critics caution that judicial intrusion into policy or administrative domains may undermine the autonomy and effectiveness of elected institutions, ultimately affecting democratic governance. Therefore, the judiciary must exercise caution, balancing the need for intervention against respect for institutional roles.

4.4 Maintaining the Balance: The Path Forward

Maintaining institutional integrity requires a healthy respect for the separation of powers, where each branch recognizes its limits and functions cooperatively. The judiciary must remain vigilant in protecting constitutional principles without usurping the roles of other branches.²⁹

²⁷*Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

²⁸Suhrith Parthasarathy, 'Judicial Activism in India: The Recent Trend' (2021) 9(1) J Indian L & Soc 34

²⁹A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 225.

Judicial pronouncements that clarify the boundaries of power, emphasize procedural fairness, and promote dialogue among institutions contribute to strengthening democratic governance. Ultimately, a robust democracy depends on the mutual respect and accountability of all branches of government.

Conclusion

The relationship between judicial review and democratic accountability in India is complex and multifaceted. The Supreme Court, as the guardian of the Constitution, plays an indispensable role in upholding constitutional values, protecting fundamental rights, and ensuring governmental accountability. Its interventions have often acted as crucial correctives to legislative or executive excesses, especially when other democratic mechanisms falter.

However, judicial review is not without challenges. The delicate balance between judicial activism and judicial overreach remains a contentious issue, requiring the judiciary to exercise its powers with prudence, restraint, and respect for the separation of powers. Overstepping into policy-making or encroaching upon the functions of elected bodies risks undermining democratic legitimacy and accountability.

Recent Supreme Court interventions demonstrate both the potential and limitations of judicial review in advancing democratic governance. While the judiciary must continue to defend constitutionalism and fundamental rights, it must also remain sensitive to the democratic mandate and the autonomy of political institutions.

In conclusion, judicial review in India must be understood as a vital, yet bounded, instrument of democratic accountability—one that complements, rather than supplants, the political process. Sustaining this balance is essential for the health and vibrancy of India's constitutional democracy.