



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CONSTITUTIONAL GROWTH IN INDIA UNDER JUDICIAL REVIEW AND ITS IMPACT

AUTHORED BY: ADV JACINTH KAMBLE

Student LLM, Modern Law College | Pune University

Abstract

India's journey since independence has been marked by important developments in the legal system, especially in the field of judiciary. This article examines the evolution of the judiciary in India and its profound impact on the legal field. This article traces the evolution of judicial review through key events and legal reforms, starting from the founding years after independence. It explores how the judiciary, especially the Supreme Court, can expand its role as guardian of the constitution and preserve its authority to interpret and enforce fundamental rights.

Likewise, this article makes sense of the consequences of legal and lawful assurance. The three branches of government are balanced by a disciplined structure like Indian democracy. Kesavananda Bharati v. He talked about important cases like. This principle was bolstered by the Indira Gandhi v. Kerala case. Raj Narain discussed the judiciary's resolve to uphold the rule of law in the face of political turmoil.

This article also looks at the political influence of the judiciary, looking at its role in promoting accountability in government, protecting the nation, and promoting justice. Additionally, it identifies challenges to judicial review, such as concerns regarding judicial interference in the legislative and executive branches. This article argues that the establishment of a judicial-based legal system in India can contribute to the advancement of the rule of law, socioeconomic development, and democratic standards. Nonetheless, it likewise underlines that the effect of the request should be obviously perceived to keep up with the overall influence and answer arising issues in the public arena

.Keywords: Constitutional Growth, Judicial Review, India, Supreme Court, Fundamental Rights, Social Justice, Minority Rights, Judicial Activism, Separation of Powers, Democratic Governance.

Judicial Review

Judicial Review is the power of the Courts to determine the constitutionality of Legislative act in a case instituted by aggrieved person. It is the power of the Court to declare a legislative Act void on the grounds of unconstitutionality. It has been defined by Smith & Zurcher, "The examination or review by the Courts, in cases actually before them, of legislative statutes and executive or administrative acts to determine whether or not they are prohibited by a written Constitution or are in excess of powers granted by it, and if so, to declare them void and of no effect"¹. Edward S. Corwin also says that Judicial Review is the power and duty of the courts to disallow all legislative or executive acts of either the central or the State governments, which in the Court's opinion transgresses the Constitution.²

In this regard, India's constitution is more comparable to the United States. Constitution than the English. In England, the principle of parliamentary matchless quality actually holds products. A parliamentary act cannot be invalidated by a court there. Going against the norm each court is obliged to authorize each arrangement" of the law of parliament. India's constitution does not make parliament the supreme body. Two ways limit its capabilities. The division of powers between the union and the states is the first issue. Only those subjects in which citizens are protected from any form of legislative encroachment are subject to Parliament's authority to pass laws.

The Supreme Court is in a unique position in which it is competent to exercise the power of reviewing legislative enactments from both parliament and state legislatures because it is the guardian of Fundamental Rights and the arbiter of constitutional conflicts between the union and the states regarding the division of powers. This is what makes the court a powerful instrument of judicial review under the constitution. As Dr. M.P. Jain has rightly observed: "The doctrine of judicial review is thus firmly rooted in India, and has the explicit sanction of the constitution."

In the framework of a constitution which guarantees individual Fundamental Rights, divides power between the union and the states and clearly defines and delimits the powers and functions of every organ of the state including the parliament, judiciary plays a very important role under their powers of judicial review.

Significance of Judicial Review

¹ Smith, Edward Conard and Zurcher, Arnold Jhon, Dictionary of America Politics , Barnes and Noble, New York, 1959, p. 212

² Corwin, Edward S., A Constitution of Powers in a Secular State , The Michie Company, USA, 1951, p. 3-4

Judicial review holds immense significance in the Constitution of India, playing a pivotal role in upholding the rule of law, protecting fundamental rights, ensuring the supremacy of the Constitution, and maintaining the balance of power among the different organs of the state. The following points elucidate the significance of judicial review in the Constitution of India

Judicial review serves as a safeguard for fundamental rights enshrined in the Constitution of India. The judiciary has the authority to review laws and government actions, ensuring that they do not violate the fundamental rights of citizens. This has been instrumental in protecting individual liberties and promoting social justice.³

Upholding the Supremacy of the Constitution

Under our Constitution, judicial review can conveniently be classified under three heads⁴ :

(1) **Judicial review of Constitutional amendments.**-This has been the subject-matter of consideration in various cases by the Supreme Court; of them worth mentioning are: Shankari Prasad case , Sajjan Singh case , Golak Nath case , Kesavananda Bharati case⁶ , Minerva Mills case , Sanjeev Coke case⁸ and Indira Gandhi case⁹ . The test of validity of Constitutional amendments is conforming to the basic features of the Constitution.

(2) **Judicial review of legislation of Parliament, State Legislatures as well as subordinate legislation.**-Judicial review in this category is in respect of legislative competence and violation of fundamental rights or any other Constitutional or legislative limitations;

(3) **Judicial review of administrative action of the Union of India as well as the State Governments and authorities falling within the meaning of State.** The researcher's emphasis is in this direction.

The supremacy of the Constitution as the supreme law of the land is bolstered by judicial review. The judiciary ensures that all laws and decisions made by the government are in accordance with the Constitution by deciding whether or not they are constitutional. In India, judicial review aids in the upholding of the rule of law. It ensures that the government is held accountable for its actions and operates within the bounds of its authority. Through judicial review, the judiciary maintains the delicate balance of power between the legislature, executive, and judiciary. This prevents the arbitrary exercise of power and encourages accountability in governance. It prevents any one branch from becoming supreme by acting as a check on the legislative and executive branches' potential for overreach.. Judicial review provides a mechanism to challenge arbitrary and unconstitutional actions of the government. It acts as a shield against abuse of power,

³ M.P. Jain and S.N. Jain, Principles of Administrative Law: An Exhaustive Commentary on the Subject containing case-law reference (Indian & Foreign), 6th Ed., Wadhwa and Company Nagpur, New Delhi, 2007, p. 1779.

⁴ Justice Syed Shah Mohammed Quadri, Judicial Review of Administrative Action, (2001) 6 SCC (Jour) 1.

ensuring that government actions are reasonable, fair, and in accordance with constitutional provisions.⁵

Judicial review has led to the evolution of constitutional principles in India. Landmark judgments have expanded the interpretation of constitutional provisions, adapting them to contemporary societal needs and ensuring the progressive realization of rights. It is an essential mechanism for upholding the rule of law, protecting fundamental rights, and ensuring that the Constitution remains the supreme law of the land. Judicial review serves as a cornerstone of India's democratic framework, fostering accountability, transparency, and the protection of individual liberties.⁶

Landmark cases on Judicial Review

The concept of judicial review in India can be traced back to the landmark case of *Keshavananda Bharati v. State of Kerala* in 1973, where the Supreme Court asserted its power to review amendments to the Constitution.

This case established the doctrine of Basic Structure, which holds that while the Parliament has the power to amend the Constitution, it cannot alter its basic structure.

The Indian judiciary has played a crucial role in upholding the fundamental rights guaranteed by the Constitution. Landmark cases such as *Maneka Gandhi v. Union of India* (1978) expanded the scope of personal liberty under Article 21.⁷

The legal executive has additionally mediated to safeguard the privileges of minimized networks through cases like *Indira Sawhney v. Reservations* in public employment were addressed by the Union of India in 1992.

In *Shankari Prasad versus The Union of India* First Amendment Act of 1951 was challenged before the Supreme Court on the grounds that it restricted the right to property and that this could not be done because Article 13(2) prohibited amendments to fundamental rights. The argument was rejected by the Supreme Court and upheld unanimously. "The provisions of Article 368 are extremely broad and grant parliament the authority to amend the constitution without reservation." With regards to Article 13 regulation should be interpreted as meaning guidelines or guidelines made in exercise of standard administrative power and changes to the constitution made in exercise of constituent power, with the outcome that Article 13 (2) doesn't influence revisions made under Article 368.

In the case of *Sajjan Singh*, the legitimacy of parliament's decision to enact the 17th amendment

⁵ . *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

⁶*Kesavananda Bharti v Union of India* AIR 1973 SC 1461

⁷ *Minerva Mills v. Union of India*, AIR 1980 SC 1789; *Waman Rao v. Union of India*, AIR 1981 SC 781

was challenged in front of the constitution. a bench of five judges on the grounds that it violated Article 31 (A)'s Fundamental Rights. High court emphasized its previous stand taken in Shankari miserable's case and held, "when article 368 presents on parliament the option to revise the constitution the power being referred to can be practiced over every one of the arrangements of the constitution, it would be hysteria going to hold that the word regulation' in article 13 (2) takes in alteration Acts passed under article 368. Thus, until 1967 the Supreme Court held that the Amendment Acts were not ordinary laws, and could not be struck down by the application of article 13 (2).

The historic case of *Golak Nath vs. The state of Punjab*²⁴ was heard by a special bench of 11 judges as the validity of three constitutional amendments (1st, 4th and 17th) was challenged.

Impact of Judicial Review

- **Governance**

The judicial review's scope, application, and effectiveness are significantly influenced by governance, which has a profound impact on the relationship between governance and judicial review. This effect is obvious in more ways than one, impacting the idea of regulations, the working of government establishments, and the generally just structure of a country Legislative and executive actions subject to judicial review are directly influenced by governance. The constitutionality of laws and government is influenced by the quality of governance, which includes respect for the rule of law, openness, and accountability of decisions.⁸

Good governance practices, such as participatory decision-making, respect for human rights, and adherence to legal procedures, can lead to the enactment of laws and policies that are less susceptible to judicial review. Effective governance plays a crucial role in upholding the rule of law, which forms the basis for meaningful judicial review. Sound governance practices, including an independent judiciary, transparent legal processes, and respect for judicial decisions, create an environment conducive to robust judicial review.⁹

Conversely, weak governance, political interference in the judiciary, or inadequate legal infrastructure can undermine the independence and effectiveness of judicial review, limiting its ability to check the constitutionality of government actions

The governance framework significantly influences public policy formulation and implementation. Judicial review often intersects with public policies, especially those related to

⁸ Venkatesh Nayak, *The Basic Structure of the Indian Constitution*, 2006, available at http://www.humanrightsinitiative.org/publications/const/the_basic_structure_of_the_indian_constitution.pdf

⁹ Wade, *Administrative Law*, (1994), pp. 39-41.

socio-economic rights, environmental protection, and equitable development.¹⁰

Viable administration, portrayed by comprehensive arrangement making, proof based direction, and responsiveness to cultural requirements, can add to the formation of strategies more averse to be tested effectively through legal audit. The effect of legal survey on administration is appeared in the domain of resident admittance to equity. Citizens now have the ability to challenge government actions that violate their rights thanks to judicial review. This has cultivated a culture of legitimate responsibility and has guaranteed that residents have an instrument to consider the public authority responsible for its choices, consequently adding to good governance practices.¹¹

- **Protection of Fundamental Rights**

One of the primary functions of judicial review is to safeguard fundamental rights guaranteed by the Constitution. Through its scrutiny of laws and governmental actions, the judiciary ensures that individual liberties such as the right to freedom of speech, equality before the law, and protection against discrimination are upheld. By striking down laws that infringe upon these rights and providing remedies to aggrieved individuals, judicial review reinforces the foundational principle of protecting human dignity and individual autonomy.¹²

- **Rule of Law**

Judicial review acts as a bulwark in upholding the rule of law within the constitutional framework. By subjecting legislative and executive actions to legal scrutiny, the judiciary ensures that governmental powers are exercised within the bounds of the Constitution and legal norms. This promotes accountability, transparency, and adherence to legal principles, thereby reinforcing the principle that no one is above the law, including the government.

- **Constitutional Democracy**

Judicial review contributes to the preservation of constitutional democracy by checking the abuse of power and preventing unconstitutional actions. Through its oversight role, the judiciary ensures that governmental actions are consistent with democratic principles such as popular sovereignty, separation of powers, and respect for minority rights. By upholding democratic norms and institutions, judicial review fosters a political system based on the consent of the governed and the protection of individual liberties.¹³

- **Promotion of Social Justice:**

¹⁰ AIR 1973 SC 1461

¹¹ Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458.

¹² Indira Gandhi v. Raj Narain, Supra n.29.

¹³ Justice Syed Shah Mohammed Quadri, Judicial Review of Administrative Action, (2001) 6 SCC (Jour) 1.

Judicial review serves as a mechanism for promoting social justice and equality within society. By adjudicating cases involving socio-economic rights, access to resources, and affirmative action policies, the judiciary addresses systemic inequalities and ensures equitable outcomes for all citizens. Through its interventions, the judiciary seeks to rectify historical injustices, empower marginalized communities, and promote inclusivity and social cohesion.¹⁴

- **Interpretation and Development of Constitutional Law:**

Legal survey adds to the translation and advancement of protected regulation, in this way forming the development of established values over the long run. The judiciary clarifies the meaning and scope of constitutional provisions, establishes legal precedents, and adapts constitutional principles to contemporary societal realities through its judgments and rulings. This powerful course of translation guarantees that protected qualities stay important and receptive to evolving social, political, and legitimate settings.

A Comparative Analysis of India's and the United States' Judicial Reviews Compared to the United States,

India has a fairly more modest degree for legal review. Limitations on key freedoms are not as broad in India as they are in the US of America. It is stated in the constitution itself that this duty is not the responsibility of the courts. This strategy was employed by the framers of the constitution because they believed that the courts could challenge restrictions on fundamental rights that ought to be outlined in the constitution itself. In addition, the drafters of the constitution believed that the judiciary should not be elevated to the status of a "Super legislature." Regardless of the rationale for the methods they used, this has unavoidably limited the scope of judicial review in India. It must, notwithstanding, be surrendered that the American High Court has consumed its ability to decipher the constitution generously and has made so intensive a utilization of the fair treatment of regulation statement that it has become in excess of a more translator of regulation. Indeed, it has assumed the role of a lawmaker and has been appropriately referred to as a "super legislature," or "third chamber of the legislature." Naturally, the United States High Court has accepted this position; it has not been explicitly presented upon it by the constitution. Like the American High Court, the High Court of India partakes in the force of Legal Audit' and this power has been explicitly perceived by the constitution. However, compared to the American Supreme Court, its authority regarding "judicial review of legislation" is more

¹⁴ Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

limited. The Indian constitution's drafters took great care not to include a clause about due process of law. In contrast, it is referred to as "procedure established by law" in the Indian constitution. It may invalidate laws if they violate constitutional provisions, but not because they are bad laws. To put it another way, the Indian judiciary, which includes the Supreme Court, does not claim to be a Third Chamber with the authority to rule on the policy embodied in the legislation passed by the legislature.¹⁵

Conclusion

All in all, the excursion of established development in India under legal audit has been extraordinary, molding the country's lawful, political, and social texture in significant ways. Through landmark decisions and judicial activism, the judiciary has expanded the scope of fundamental rights, established the doctrine of basic structure, and asserted its authority as the guardian of the Constitution from the foundational years post-independence to the present day. The judiciary, particularly the Supreme Court, has played a pivotal role in interpreting, protecting, and advancing the principles enshrined in the Indian Constitution. This has prompted the security of individual freedoms, advancement of civil rights, and safeguarding of majority rule values within the country.¹⁶

Moreover, judicial review has served as a check on the powers of the legislature and the executive, ensuring that governmental actions remain within the confines of the Constitution and the rule of law. By upholding constitutional principles and holding the government accountable, the judiciary has fostered a culture of transparency, accountability, and respect for the rule of law within the country's governance framework. Despite its achievements, challenges remain, including concerns about judicial overreach, delays in justice delivery, and the need for judicial reforms to enhance efficiency and accessibility. However, the overarching impact of judicial review on constitutional growth in India cannot be overstated. It has contributed to the consolidation of democratic governance, protection of fundamental rights, promotion of social justice, and preservation of constitutional values, thus ensuring that India continues to march forward as a vibrant democracy guided by the principles of justice, equality, and liberty.

¹⁵ M.P. Jain and S.N. Jain, *Principles of Administrative Law: An Exhaustive Commentary on the Subject containing case-law reference (Indian & Foreign)*, 6th Ed., Wadhwa and Company Nagpur, New Delhi, 2007, p. 1779

¹⁶ Justice K.S. Puttaswamy (Retd.) & Another v Union of India & Others (2018) SC.