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The role of the judiciary in upholding fundamental rights in India: A critical analysis of judicial review

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Abstract
In India, the judiciary has an important role to play in protecting fundamental rights as well as sustaining constitutional balance. These rights have been enumerated and judicial review has developed, as a means of protecting them, in landmark Supreme court cases like Kesavananda Bharati, Maneka Gandhi and Minerva Mills. The role of judicial review in protecting the fundamental rights under the Indian Constitution is critically examined in this paper. The research explores the tension between judicial activism and restraint and discuss how it affects the relative influence of legislative, executive and judicial power. Additionally, the paper looks at the connection between judicial review and social justice, i.e. the judiciary's involvement in combating things such as discrimination and inequality. This paper evaluates this model through a review of findings from studied to understand its strengths and weaknesses in the India's context. It also analyze whether the judicial review effectively protects the rights and interests of individuals and at the same time ensuring the principles of democracy and constitutional supremacy. Specifically, key challenges within the judiciary, including its relationship with the other branches of government of the constitutional democracy and the issue of judicial overreach were delegated storylines. The study finds that judicial review has contributed greatly to the protection of fundamental rights but demands further reforms to address its contemporary overreach and the balance question. Policy recommendations that seek to empower the judiciary to safeguard individual rights and dynamic a balance of powers are made.

Keywords: Judicial review, fundamental rights, Indian constitution, judicial activism, constitutional balance, social justice

Introduction
The Indian Constitution that served to be a transformative document in law enables the effective protection of individual liberties and the rule of law, by securing a holistic set of Fundamental Rights in Part III. These are the rights on which basic tenet of governance revolves which ensures some legal shields available to citizens against any arbitrary act of the state. But just because these rights are present in the constitutional text does not mean the government will enforce them. However, it is the judiciary, mainly the higher judiciary, which gives life to these rights by interpreting, applying and protecting the same and this process is built upon judicial review. (Jagde, S. 2025) [3]. The courts thus have a power to go behind the acts of the legislative and executive departments and determine their constitutionality, whether in accordance with the spirit of the Constitution or not. Articles 13, 32 and 226 of the constitution empower the Supreme Court and High Courts to protect the rights of the citizens and to nullify the laws impairing these. From the 1960s to the present, the Indian judiciary has been active in expanding fundamental rights with doctrines such as 'Basic Structure' and liberal interpretation of Article 21. Landmark decisions like Kesavananda Bharati v/s State of Kerala and also Maneka Gandhi v/s Union of India underscore this proactive approach. But at the same time, this assertiveness has also generated controversies on judicial activism, excess and the thin line of separation between three organs of the State. (Pallavi, E. 2021) [6]. This research critically assesses the role of the judiciary in ensuring the safeguards of basic rights through judicial review and studies its strengths and limitations. In the age of an executive domination and complex socio political challenge, a study like this is important to understand the resilient and the pliable feature of India's constitutional democracy.

Research objectives

1. To examine the historical and constitutional development of judicial review in India, with reference to the role of judicial review in protection and enforcement of the fundamental rights.
2. To critically analyze landmark Supreme Court judgments that have enlarged or redefined the limit of fundamental rights with the judicial review process.
3. To evaluate the extent to which the judiciary has kept a balance between its constitutional mandate and the principle of democratic accountability while exercising judicial review.
4. To critique and evaluate the shortcomings of judicial activism and judicial overreach especially in regard to fundamental rights jurisprudence.
5. To address contemporary challenges and to suggest means of improving the efficacy and uniformity of judicial review to support fundamental rights in the context of India's constitutional regime.

Research problem

In this regard, the Indian Constitution offers a broad range of Fundamental Rights meant to ensure individual liberty, equality and justice. Thereafter, they become heavily dependent on the judiciary and most importantly the constitutional doctrine of judicial review to enforce and realize these rights. However, judicial review often can be looked upon as an essential means to protect citizens from the laws unconstitutional and from executive overreach, nevertheless, in India, its use over the decades has attracted attention. Inconsistency in judiciary interpretation of fundamental rights is one of the core issues, whose outcomes are sometimes unpredicted. The expansion of judicial activism, especially through Public Interest Litigations (PILs), has further blurred the distinction between judicial review and overreach, resulting in debates regarding the separation of powers and institutional accountability. Also, at times the judiciary have been accused of invasion into the areas usually of the legislature and the executives and this brings to question the democratic legitimacy. In addition to this, the absence of obviously delineated doctrinal boundaries and the absence of an established mechanism of exercising judicial review makes its performance more complex. Courts have passed a number of progressive judgments though selective use of rights and politicizing judicial decisions go to irk public faith in the legal system. This research seeks to fill in these gaps by critically examining how judicial review has been deployed to protect fundamental rights, its shortcomings and the requirements for reform in India's constitutional jurisprudence.

Review of Literature

1. In this article, the author indulges in a study of the role of judicial review in Indian constitutional democracy. Examining how the judiciary has arisen as an important institution by insulating individual liberty and resolving conflicts as well as acting as a check to the executive and legislative functions to ensure sustainable balance in the constitutional set up. This article discusses the underlying fundamental principles upon which the doctrine of judicial review is rooted like the doctrine of the supremacy of the constitution and the doctrine of separation of powers between the legislative department, the executive department and the judicial department of government. Shekhawat talks about how the judiciary interprets and implements constitutional provisions to keep legislative and executive action within the constitutional provisions. The article however points out the limitations and shortcomings of the judiciary in the exercise of its powers of judicial review. Shekhawat raises the caution regarding judicial overreach, since courts may trespass upon what are by nature provinces of the legislature or the executive, disturbing the equalization of power. As the article continues, it points to the need for judicial restraint and adherence to constitutional bounds for legitimacy and effectiveness of judicial review. Finally, Shekhawat highlights the importance of judicial review in India to act as a bulwark against the constitution of the governance. The article contends there should be an equilibrium between what constitutes court protection of constitutional values and other branches of government's role and function [15].
2. In the article "Constitution of India and Judicial Review" the author presented the analysis of a complex coexistence of the Indian Constitution with the practice of judicial review. Aims to evaluate how the judiciary, especially the Supreme Court of India has understood and used the doctrine of judicial review for the sake of supremacy of the Constitution. Historical evolution of judicial review in India is also discussed by the author and a mention of landmark cases in India that have contributed to the evolution of judicial review in the country is made. The article also considers challenges and criticisms of judicial activism, a situation where courts are deemed to be too power hungry, and the duty to encroach upon legislative and executive domains. The piece also argues how judicial intervention is necessary in cases where personal freedoms are endangered, while at the same time preserving the principle of separation of powers. In that it underscores the critical role played by judicial review in safeguarding fundamental rights and enforcing the constitution while stressing the importance of using the former with restraint to uphold the nation's democracy. Finally, the article favors judicious judicial review because this will ensure the judiciary is the watchdog of the Constitution but not at the expense of other governmental branches [16].
3. In this paper the author points out how the judiciary has broadened the meaning of fundamental rights including under the ambit of Article 21 of the Constitution by taking them to cover a wider gamut of human rights issues. The article speaks about the judiciary's interventions in social justice related matters like environmental protection, prison reforms and rights of marginalized communities. Establishment and functioning of the National Human Right Commission (NHRC) aimed at promoting and protecting human rights with some collaborative role with the Judiciary is discussed by Kamboj. The article admits that judicial activism is criticized because of accusations of the court overstepping its jurisdiction and encroaching its regions of the other branches of government. Yet Kamboj argues that such activism is often required for something that other branches of government have either failed to do or cannot do. The article concludes

that judicial activism has found use in promoting human rights in India and rendered the judiciary an essential protector of the constitutional values and social justice [17].

4. In the article the author expanding role of Indian judiciary as far as judicial review and judicial activism is concerned is critically looked into. The judiciary also came to the forefront in dealing with issues relating to fundamental rights, environment, public accountability, etc. The article admits the practical successes of such interventions but alarms over the possibility of judicial overreach to areas which constitutionally lie within the prerogative of the legislative and executive branches. This highlights the need to maintain a balance between judicial assertiveness and restraint in protecting the foundational principles of separation of powers and democratic governance. The article argues for a cautious approach and argues that although the judiciary is an important player in preserving constitutional values, its boundaries have to be respected in order not to compromise the power and functionality of other governmental institutions. In a nutshell, the article advocates for a judicious activism and judicial review, that the judiciary behaves as a shield of the constitution without penetrating the roles of legislature and executive [18].
5. In this paper the author examines the possibility of India's Indian judiciary doing judicial review of the legislative process. Using the lawful development of anti-sedition policy as an example, Sengupta considers whether the courts in India are empowered to scrutinize not just the content of law that comes before them but also the procedures through which laws are legislated. At the theoretical level, the article examines the similarities and differences between JRLP and comparative constitutional practices, particularly those associated with the US and the UK. Instances in which procedural lapses in the legislative process may under certain conditions produce unconstitutional effects for which there is justification for judicial intervention are discussed. The Indian Constitution, however, does not strictly prescribe JRLP and the author further argues for a limited form of such review to be introduced because of the principles of constitutional supremacy and the rule of law, to ensure effective or vital legislative accountability. But Sengupta warns against too much judicial intervention leading to instability of the practice of the balance of power among the three branches of government. The final argument in the article is for the judiciary to exercise restraint, but to be vigilant of respecting procedural integrity in the legislative process [19].
6. In the article P. Sharan traces the origins of judicial review in India's constitutional regime. He said the judiciary, especially Supreme Court and High Courts work as custodian of the Constitution which has the power to invalidate laws or decision of executive with regard to any constitutional provision. This power is not merely implied, but reading the Constitution would reveal it as clearly provided for, and one which is meant to be paramount to ordinary legislation. Sharan also addresses that balance of power among Legislative, Executive and Judiciary branches and concludes the judiciary's role of checking the wings of legislative and executive branches in the event of their excessive extension. This analysis, the article also confirms, is necessary to guarantee the rule of law, safeguard individual rights and ensure that democratic governance takes place under constitutional compass [20].

Research gap

The existing literature offers a comprehensive understanding of judicial review and the role of judiciary in India in upholding fundamental rights; there are some important gaps in the literature which have not been discussed. While most scholarly work has thus focused very extensively on the activism of the judiciary and its interventions to protect constitutional values and individual liberties, there has been no attempt to link these activities with the specific economic forces operating within India. But there appears to be a lack of detailed exploration of the doctrinal consistency and institutional accountability of judicial review. As an example, there are many articles in which judicial activism being a necessary tool to legislate or execute when the legislative or executive bodies fail to do the work, yet nothing is said of the long term consequences of such actions, to democratic truce, and institutional integrity. In addition, these discussions do not talk about how the judicial overreach can weaken the separation of powers principle or the absence of a regulatory mechanism for judicial discretion erodes the credibility of judicial review. The analysis of procedural limitations in the review of legislative processes and the judiciary's capacity to judge the constitutional validity of laws by their mode of enactment is also inadequate. The comparative study of judicial review practices across jurisdictions is another underexplored area and in that context the Indian experience helps in illustrating how the official reasoning may be calibrating the functioning of important institutions. The aim of this research is attempting to plug these gaps by critically reviewing the successes, as well as the limitations and consequences of judicial review in India. The goal is to put forward a more balanced, transparent and accountable framework for judicial review that reinforces its constitutional mandate without intruding upon democratic governance or institutional harmony.

Research questions

Q-1: How has the evolution of judicial review taken place in India to secure and protect fundamental rights?

Q-2: What are landmark Supreme Court judgments that have greatly affected the interpretation and application of fundamental rights through judicial review?

Q-3: How does the Indian judiciary find the correct balance in protecting the fundamental rights while at the same time respecting the legislature and executive's sovereignty?

Q-4: What are main issues with judicial activism and judicial overextension in judicial review, and what has public view towards role of judiciary?

Q-5: What reforms, if any, are required to guarantee that judicial review is an effective check to protect fundamental rights while safeguarding democratic principles and preventing judicial overreach?

Research methodology

The methodology employed in this study is a doctrinal legal research methodology involving the study of legal principles, case law and constitutional provisions. The

constitution of India is another prime source, this constitutes Article 13, 32 and 226 which empower judicial review as parts of part III. More information about judicial review is found in the secondary sources such as in books, scholarly articles, research papers, etc. Secondly, the research will adopt a comparative approach and compare India's judicial review system with that of other constitutional democracies such as the United States and Germany. In this study, a critical-analytical method will be used with a view of analyzing the capacities and limitations of judicial review and its effect on the protection of basic civil liberties. The main part of the research will be on post-independence jurisprudence and investigating how judicial review has facilitated rights protection in India.

Historical development and constitutional foundations of judicial review in India

The constitutional grounding for judicial review in India finds its basis in Article 13, 32 and 226 of the Constitution. Article 13 states that any law that goes against the basic rights is declared void and it could be struck down by the judiciary. Article 32 guarantees that individuals who have had their rights violated may themselves approach the Supreme Court for enforcement of their fundamental rights and does so by further strengthening the judicial power as a constitutional guardian. Similarly, Article 226 confers upon High Courts equivalent power covering their areas. Together, they confirm the role of the judiciary in ensuring supremacy of the Constitution. (Chauhan, K. 2023) [1]. The story of development of judicial review in India begins from the colonial times when courts were monitoring the executive actions very little. On independence, the framers of the constitution allocated the judiciary as the interpreting and defending of the constitution with the concept of checks and balances in all other arms of government. However, early post independence jurisprudence seems to indicate caution and deference of Indian courts, on the other hand, with regard to Parliament. Yet with the changing socio political conditions over time however, the judiciary became more proactive. However, this transformation was furthered in landmark cases that expanded the scope and functionality of judicial review and, with it, increasingly assertive judicial participation in constitutional governance. Given this foundation, the judiciary became strong enough for them to challenge executive and legislative excesses and protect civil liberties. (Singh, H., Kumar, V., Samadhiya, P., & Rohira, K, 2023) [12].

Landmark judgments expanding fundamental rights through judicial review

However, judicial review has played an important role in the development of fundamental rights in India by expanding the meaning of the said rights. The doctrine of judicial activism has been one of the most transformative tools for this expansion. Starting in the 1970s, the judiciary set up landmark judgments that symbolized its readiness to understand and adopt the spirit of the Constitution and not limit the interpretation of the law in a traditional way. Judicial review has been a defining outcome of the doctrine of the 'Basic Structure', Parliament can amend the Constitution, but not its basic structure. (Sankar, S. V. M. 2020) [9] The protection of fundamental rights is assured by this principle, as a safeguard against legislative overreach. Secondly, fundamental rights acquired a new significance through judicial interpretations of Article 21, the right to life and personal liberty where 'life' was understood to include dignity, education, clean environment etc., as well as speedy trial. By these judgments, the judiciary gave clear indication that the concept of fundamental rights is not static but a dynamic and an evolving concept that has to respond to the changing societal needs. (Roy, C. 2012) [8]. That such judicial interpretations have taken such a form at all is indicative of the general commitment of courts to make constitutional rights real and available. Yet, through their ruling on the Constitution as a living document, the courts have facilitated a guarantee that justice, liberty and equality would not be unattainable notions, but something that was practiced, and something that was imposed.

Judicial activism and the balance between judicial review and separation of powers

The judicial activism in India came in response to institutional apathy and lack of response by legislative and executive branches of government to address certain immediate and important socio-economic and human rights issues. During the 1980s and 1990s the courts also came to adopt an activist role through the mechanism of Public Interest Litigation (PIL). Through this, availability to justice was extended to individuals and groups that could not afford to do so, to seek redress in court against public wrongs. However, the expansion of judicial function brought with it a new tension and complexity for judicial review in relation to the doctrine of separation of powers. Nevertheless, while judicial activism is applauded for restoring the balance of power and interests in delivering society's welfare, its potential is similarly criticized for crossing the line of unchecked, impermissible judicial intrusion into political and other areas. Sometimes, the courts have guided administration as to root appointment processes, administrative policies, environmental regulations and sometimes even educational curricula and so they have seemed tiptoe over the destinies ascribed neither to the legislature nor the executive. (Khan, K. 2024) [4]. In this section, we critically examine whether such activism strengthens democratic governance or if it can disrupt and unbalance the equilibrium of institutions. Although judicial engagement has brought environmental protection and prisoner rights, its critics of judicial overreach grew. This is why all the more needs to be done to preserve the equilibrium between the judiciary which should safeguard the Constitution yet not enter the society to freedom of other organs. It is vital for the understanding of the credibility of judicial review based on the extent to which the judiciary can work both effectively as well as within its defined constitutional limits.

Challenges to the judicial review mechanism and issues of accountability and transparency

However, the manner in which judicial review operates in India has its own problems which are likely to undermine its legitimacy and effectiveness. Above all, lack of accountability in judicial functioning is amongst all of them. Close to the executive or legislature, the judiciary runs on a much thinner accountability review cord that barely tugs. The absence of checks on this process may lead to the arbitrary or inconsistent application of judicial principles. Ambiguity has crept in to how rights are interpreted and enforced in PILs by way of the varying verdicts, especially

in ramshackle PILs. (Rajput, P. K. 2018) [7]. Although PILs have been significant in upholding marginalized communities, a selective intervention by courts in some issues while ignoring others has led to perceptions of bias or unpredictability. Additionally, the lack of transparency in judges' appointment and absence of well-reasoned judgments reduce public confidence in the institution. The second issue is the delayed judicial processes where pending litigations create hindrance towards the timely enforcement of rights. Further, the impact and reach of the judicial review itself is impacted by the procedural inefficiencies within the judicial machinery. Consequently, there is a pressing need to reform investment in institutional reforms which would make the judiciary accountable, transparent and consistent for effectiveness of the judicial review. It involves clearer judicial reasoning, reforms to both appointment and promotion of judges and ways to review judicial conduct without diminishing judicial independence. (Sindhu, Jahnavi. 2023) [11].

5. Comparative analysis: Judicial review in India vs. other constitutional democracies

The use of a comparative perspective provides deeper insight into India's model of judicial review. Judicial review is based on Marbury v/s Madison (1803) in the United States. It established the judiciary's role in invalidating laws that are inconsistent from the Constitution. American courts have a strong tradition of constitutional supremacy where courts have been preservers of constitutional order, maintaining the balance between judicial power and restraint and due process. Although both Indian and American systems share the notions of written constitutions and independent judiciaries, the passive voice of the Indian judiciary, including PILs, has few equivalents in the American context. On the contrary, Germany utilizes a highly structured model through its Federal Constitutional Court. In the German system, the Supreme Court can entertain a person's constitutional complaint and it must formally review legislation. (G, R. 2024) [14] In Germany, judicial review is more institutionalized and less interventionist in a day-to-day governance sense. Unlike India's flexible, case-by-case approach, this is a structured one. The most distinguishing feature of India is the country's proactive judicial culture that is developed because historically it was needed to and as people expect. The comparison, however, also points out how procedural regularity and institutional discipline are necessary for Indian circumstances. Transparency and predictability in the judicial review process, according to lessons from other democracies, are good for strengthening both public trust and democratic governance. India can play round off its judicial review framework so as to be both robust and restrained by adapting some of the global best practices while retaining its unique constitutional ethos.

Research findings

The study thus shows how judicial review in India has safeguarded and widened fundamental rights especially through the famous landmark cases of Kesavananda Bharati v/s State of Kerala (1973) and Maneka Gandhi v/s Union of India (1978) where the judiciary interpreted the constitutional provisions and upheld individual liberties. Public Interest Litigation (PIL) through judicial review has made significant contributions toward issues related to social justice, granting the marginalized communities its rights. However, the study also finds a source of judicial overreach. The expansion of the rights protection through activism has raised fears that the judiciary has trespassed into the legislative and executive domains, jeopardizing the separation of powers. Furthermore, PIL cases are not exempted from this shortage of consistency in judicial review application because sometimes decisions are perceived to be inconsistent or unclear. The lack of an overall system of accountability within the judiciary, coupled with this inconsistency, calls into question the transparency of the judicial system. In comparative terms, the analysis also indicates that although India's judicial review system is distinctive, Indian judicial review model has certain features in common with that of the United States, but the Indian version being more flexible and more activist in orientation. To conclude, the findings suggest that the process of judicial review needs to be reformed to ensure greater transparency, consistency and accountability, all while maintaining the judiciary's position as a bulwark against the state and its breaches to fundamental rights without stepping into areas that are beyond its constitutional remit.

Conclusion

At the end this paper declares the judiciary as whose duty it is to act as the guardian of fundamental rights in India with the instrument of judicial review. In addition to its unique position of government by consent, judicial review principally through the Public Interest Litigation (PIL) tool has installed the judiciary to deal with matters of social justice and in the absence of action from the legislative or executive arms of government, protection of the vulnerable communities. Although, the study also finds great challenges in excessive jurisdiction by the judiciary whereby the judiciary tramples on the responsibility of the other arms of government, legislature and the executive and may result in challenges of separation of power. In addition, the inconsistency of judicial decisions and the absence of effective and transparent accountability mechanisms within the judiciary may pose risks in ensuring the credibility and effectiveness of judicial review. However, such challenges necessitate that the study concludes that judicial review has served as a useful check in defending the fundamental rights but the process is in dire need of reform. By increasing transparency, consistency and accountability in judicial decision making, the judiciary's role can be strengthened and so that the role of judicial review as a mechanism for protecting rights is effective in a manner that does not undermine democratic principles or separation of powers.

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