



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## JUDICIAL REVIEW: CONSTITUTIONAL SAFEGUARD AND PROTECTOR OF FUNDAMENTAL RIGHTS

*- Ramnath. S*

### **Abstract:**

Judicial review is one of the most significant features of constitutional governance and democratic administration. It acts as a mechanism through which the judiciary examines the constitutionality and legality of legislative enactments and executive actions. In democratic societies, judicial review preserves constitutional supremacy, safeguards individual liberties, and ensures that governmental authorities function within the limits prescribed by the Constitution. In India, judicial review has evolved into a powerful constitutional tool that enables courts to protect Fundamental Rights and maintain the basic structure of the Constitution.

The doctrine of judicial review originated in the United States through the landmark case of *Marbury v. Madison* and later influenced constitutional systems across the world. The Indian Constitution expressly incorporates judicial review under Articles 13, 32, 131–136, 143, 226, and 227. The judiciary, especially the Supreme Court of India, has interpreted these provisions expansively to preserve constitutional morality and democratic values. Judicial review in India has undergone remarkable transformation through landmark judgments such as *Kesavananda Bharati v. State of Kerala*, *Minerva Mills v. Union of India*, and *I.R. Coelho v. State of Tamil Nadu*.

This research paper examines the meaning, concept, constitutional basis, historical evolution, and importance of judicial review with special reference to India. It further analyses the relationship between judicial review and Fundamental Rights, the doctrine of basic structure, landmark judicial pronouncements, and comparative perspectives from different countries. The paper concludes that judicial review remains indispensable for maintaining constitutional balance, rule of law, and democratic governance.

Keywords: Judicial Review, Constitution, Fundamental Rights, Rule of Law, Basic Structure Doctrine, Separation of Powers, Constitutional Supremacy, Supreme Court of India, Democracy, Judicial Activism.

### **Introduction:**

Judicial review is a fundamental principle of constitutional law that empowers courts to review the actions of the legislature and executive and determine whether such actions conform to constitutional provisions. It acts as a check on arbitrary exercise of power and ensures that all organs of government function within constitutional limitations. In modern democratic societies, judicial review has become an essential instrument for protecting civil liberties, preserving constitutional values, and maintaining the balance of power among governmental institutions.

In India, the Constitution is supreme, and all authorities derive their powers from it. The judiciary acts as the guardian and interpreter of the Constitution. Judicial review enables courts to invalidate laws or executive actions that violate constitutional principles or Fundamental Rights. The framers of the Indian Constitution adopted this mechanism to ensure constitutional supremacy and prevent abuse of governmental authority.

The concept of judicial review has acquired immense importance due to increasing governmental intervention in social, political, and economic affairs. Courts today not only interpret laws but also protect citizens against executive excesses and legislative arbitrariness. Judicial review has contributed significantly to the evolution of constitutional jurisprudence in India by promoting accountability, transparency, and justice.

The significance of judicial review became particularly visible during constitutional crises and periods of political instability. The judiciary has repeatedly intervened to preserve democratic institutions and constitutional morality. Through progressive interpretation, Indian courts have expanded the scope of Fundamental Rights and strengthened constitutional governance.

This paper seeks to analyse the concept, evolution, constitutional basis, and significance of judicial review in India and across the world. It also examines important judicial decisions and the relationship between judicial review and the doctrine of basic structure.

### **Objectives of the Research:**

The major objectives of this research paper are:

- To understand the meaning and concept of judicial review.
- To examine the historical development of judicial review.
- To analyse the constitutional provisions relating to judicial review in India.
- To study the relationship between judicial review and Fundamental Rights

### **Literature Review:**

Several constitutional scholars, jurists, and legal academicians have extensively discussed judicial review and its role in constitutional governance.

A.V. Dicey emphasised the importance of rule of law and constitutional limitations on governmental powers. According to Dicey, judicial control is essential to prevent arbitrary exercise of authority.

H.M. Seervai analysed judicial review in the Indian constitutional framework and argued that the judiciary acts as the ultimate protector of constitutional supremacy.

Granville Austin described the Indian Constitution as a social document and highlighted the judiciary's role in preserving constitutional balance and protecting Fundamental Rights.

M.P. Jain examined the evolution of judicial review in India and observed that judicial interpretation has transformed constitutional law over time.

Upendra Baxi discussed judicial activism and public interest litigation as extensions of judicial review in India. He viewed judicial review as a dynamic tool for social transformation and protection of human rights.

The existing literature reveals that judicial review is not merely a legal doctrine but also a mechanism for maintaining constitutional democracy and accountability. However, debates continue regarding judicial activism, judicial overreach, and the limits of judicial intervention.

### **Meaning and Concept of Judicial Review:**

Judicial review refers to the power of courts to examine the validity of legislative enactments and executive actions and determine whether they are consistent with constitutional provisions. If any law or governmental action violates the Constitution, the judiciary has the authority to declare it unconstitutional and void.

The concept of judicial review is based on the doctrine of constitutional supremacy. In countries with written constitutions, the Constitution is regarded as the supreme law of the land, and all governmental authorities must act within its framework. Courts act as guardians of the Constitution by ensuring that no organ of government exceeds its constitutional authority.

Judicial review serves several important purposes:

- Protection of Fundamental Rights.
- Maintenance of constitutional supremacy.
- Prevention of abuse of power.
- Preservation of federal balance.
- Enforcement of rule of law.
- Protection of democratic principles.

Judicial review can be classified into three categories:

1. Review of Legislative Actions: Courts examine whether laws passed by the legislature are constitutionally valid.
2. Review of Executive Actions: Courts assess whether executive authorities have acted within legal and constitutional boundaries.
3. Review of Judicial Decisions: Higher courts may review decisions of lower courts to ensure legality and fairness.

In India, judicial review is considered part of the basic structure of the Constitution and therefore cannot be abolished even through constitutional amendment.

### **Historical Development of Judicial Review:**

The doctrine of judicial review originated in the United States. Although the U.S. Constitution did not expressly mention judicial review, the power was established by the U.S. Supreme Court in the landmark case of *Marbury v. Madison* decided by Chief Justice John Marshall. In this case, the Court held that it is the duty of the judiciary to interpret the Constitution and invalidate laws inconsistent with it. This judgment laid the foundation for judicial review in constitutional democracies.

In Britain, the concept of judicial review developed differently because of parliamentary sovereignty. British courts traditionally lacked authority to invalidate parliamentary legislation.

However, judicial review of administrative actions gradually evolved to ensure fairness and legality.

India adopted judicial review from the American constitutional model while also incorporating British principles of parliamentary governance. The Government of India Act, 1935 introduced limited judicial review, which later expanded under the Indian Constitution.

After independence, the Indian judiciary gradually strengthened judicial review through constitutional interpretation. Early cases focused on property rights and legislative competence, while later decisions expanded judicial protection of Fundamental Rights and constitutional values.

Judicial review gained tremendous significance during the Emergency period (1975–1977), when questions regarding constitutional amendments, executive power, and civil liberties became central to Indian constitutional law. The judiciary emerged stronger after the development of the basic structure doctrine.

### **Constitutional Provisions of Judicial Review in India:**

The Indian Constitution expressly provides for judicial review through various provisions. The framers intentionally incorporated these provisions to maintain constitutional supremacy and protect citizens against arbitrary state action.

- Article 13

Article 13: Laws inconsistent with Fundamental Rights are void

Article 13 declares that laws inconsistent with Fundamental Rights are void to the extent of inconsistency. It forms the constitutional foundation of judicial review in India.

- Article 32

Article 32→Right to Constitutional Remedies

Article 32 empowers citizens to approach the Supreme Court directly for enforcement of Fundamental Rights. Dr. B. R. Ambedkar described it as the “heart and soul” of the Constitution.

- Article 226

Article 226 empowers High Courts to issue writs for enforcement of Fundamental Rights and other legal rights.

- Articles 131–136

These provisions confer jurisdiction upon the Supreme Court in constitutional matters and disputes involving interpretation of the Constitution.

- Article 13

It empowers the Supreme Court to review its own judgments.

- Article 141

It provides that the law declared by the Supreme Court shall be binding on all courts in India.

- Article 368

Although Parliament has power to amend the Constitution under Article 368, such amendments are subject to judicial review under the basic structure doctrine.

Together, these provisions establish a strong framework for judicial review in India.

### **Judicial Review and Fundamental Rights:**

Fundamental Rights are essential for protection of individual liberty and human dignity. Judicial review ensures effective enforcement of these rights by empowering courts to invalidate unconstitutional laws and executive actions.

Part III of the Constitution guarantees several Fundamental Rights, including:

- Right to Equality
- Right to Freedom
- Right against Exploitation
- Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Judicial review acts as a shield against violation of these rights. Courts have interpreted Fundamental Rights broadly to ensure substantive justice and social welfare.

For example, Article 21 originally guaranteed protection of life and personal liberty in a narrow sense. However, through judicial interpretation, the Supreme Court expanded its scope to include rights such as:

- Right to privacy
- Right to education
- Right to clean environment
- Right to livelihood
- Right to dignity

The landmark case of *Maneka Gandhi v. Union of India* transformed Indian constitutional jurisprudence by establishing that laws affecting personal liberty must be just, fair, and reasonable.

Similarly, in *Justice K. S. Puttaswamy v. Union of India*, the Supreme Court recognised the right to privacy as a Fundamental Right under Article 21. Judicial review has therefore become indispensable for effective protection of civil liberties and constitutional rights in India.

### **Doctrine of Basic Structure and Judicial Review:**

The doctrine of basic structure is one of the most important contributions of Indian constitutional jurisprudence. According to this doctrine, Parliament cannot amend or destroy the basic features of the Constitution even under Article 368.

The doctrine emerged from the landmark judgment in *Kesavananda Bharati v. State of Kerala*. In this case, the Supreme Court held that while Parliament possesses wide powers to amend the Constitution, it cannot alter its basic structure.

Some elements recognised as part of the basic structure include:

- Supremacy of the Constitution
- Rule of law
- Separation of powers
- Federalism
- Judicial review
- Secularism
- Democracy
- Independence of judiciary

- **Fundamental Rights**

Judicial review itself was declared part of the basic structure in later cases such as *Minerva Mills v. Union of India* and *L. Chandra Kumar v. Union of India*.

The doctrine prevents authoritarianism and ensures that constitutional identity remains intact despite political changes. It acts as a safeguard against misuse of constitutional amendment powers.

### **Landmark Cases on Judicial Review:**

#### **1. Marbury v. Madison**

This American case established the doctrine of judicial review. Chief Justice John Marshall held that courts possess authority to invalidate unconstitutional laws.

#### **2. A.K. Gopalan v. State of Madras**

The Supreme Court adopted a narrow interpretation of personal liberty under Article 21. This approach was later overruled in *Maneka Gandhi*.

#### **3. Golaknath v. State of Punjab**

The Court held that Parliament could not amend Fundamental Rights. This judgment intensified the debate regarding constitutional amendment powers.

#### **4. Kesavananda Bharati v. State of Kerala**

The Supreme Court evolved the doctrine of basic structure and limited Parliament's amending power.

#### **5. Indira Nehru Gandhi v. Raj Narain**

The Court invalidated provisions that attempted to exclude judicial review of election disputes involving the Prime Minister.

#### **6. ADM Jabalpur v. Shivkant Shukla**

During the Emergency, the Court controversially restricted judicial protection of personal liberty. The judgment was later criticised and effectively overruled.

#### **7. Maneka Gandhi v. Union of India**

The Court expanded Article 21 and established substantive due process in India.

### **8. Minerva Mills v. Union of India**

The Supreme Court reaffirmed that limited amending power and judicial review are part of the basic structure.

### **9. I.R. Coelho v. State of Tamil Nadu**

The Court held that laws placed under the Ninth Schedule are also subject to judicial review if they violate the basic structure.

### **10. Justice K. S. Puttaswamy v. Union of India**

The Supreme Court recognised privacy as a Fundamental Right and reinforced constitutional liberties.

## **Comparative Study of Judicial Review in Different Countries Including India:**

- **Judicial Review in India:**

India follows a balanced model combining parliamentary sovereignty with constitutional supremacy. Judicial review is expressly provided in the Constitution and has evolved significantly through judicial interpretation. Indian courts possess wide powers to invalidate unconstitutional laws and executive actions. The Indian judiciary has also developed Public Interest Litigation (PIL), enabling greater access to justice and expansion of constitutional rights.

- **Judicial Review in the United States**

The United States follows a strong model of judicial review. The U.S. Supreme Court possesses extensive authority to strike down unconstitutional laws. Judicial review was established through *Marbury v. Madison*. American judges often interpret constitutional provisions broadly, leading to significant judicial influence over public policy.

- **Judicial Review in the United Kingdom**

Traditionally, Britain followed parliamentary sovereignty, meaning courts could not invalidate parliamentary laws. However, judicial review of administrative actions developed strongly. After the Human Rights Act 1998, British courts gained authority to issue declarations of incompatibility regarding legislation inconsistent with human rights principles.

- **Judicial Review in Canada**

Canada follows constitutional supremacy under the Canadian Charter of Rights and Freedoms. Courts possess authority to invalidate unconstitutional laws. However, the “notwithstanding clause” allows legislatures to override certain judicial decisions temporarily.

- **Judicial Review in Germany**

Germany has a specialised Constitutional Court known as the Federal Constitutional Court of Germany. It exercises strong constitutional review and protects democratic constitutional order.

- **Judicial Review in France**

France traditionally followed limited judicial review. Constitutional review is exercised by the Constitutional Council, which examines laws before promulgation.

### **Conclusion:**

Judicial review is one of the most essential features of modern constitutional democracies. It preserves constitutional supremacy, protects Fundamental Rights, and ensures accountability of governmental institutions. In India, judicial review has emerged as a powerful mechanism for maintaining democratic governance and constitutional morality.

The Indian judiciary, especially the Supreme Court, has played a transformative role in expanding civil liberties and protecting citizens against arbitrary state action. Through progressive interpretation, courts have strengthened constitutional values such as equality, liberty, secularism, and rule of law.

The doctrine of basic structure represents a historic contribution of Indian constitutional jurisprudence. By declaring judicial review part of the basic structure, the judiciary ensured that constitutional identity cannot be destroyed through political majorities.

At the same time, debates regarding judicial activism and judicial overreach continue. Critics argue that excessive judicial intervention may disturb the balance among governmental organs. Nevertheless, judicial review remains indispensable in preventing authoritarianism and protecting constitutional democracy.

The comparative study reveals that although different countries adopt varying approaches toward judicial review, the central objective remains the same: preservation of constitutional governance and protection of individual rights.

In conclusion, judicial review is not merely a legal doctrine but a constitutional necessity. It acts as the guardian of democracy, protector of Fundamental Rights, and defender of constitutional supremacy. The future of democratic governance largely depends upon maintaining an independent judiciary capable of exercising judicial review fairly, responsibly, and effectively.

**References:**

- Constitution of India – Government of India
- Supreme Court of India Official Website
- Indian Kanoon Legal Database
- Library of Congress – Judicial Review
- United States Supreme Court
- Constitutional Court of Germany
- Parliament of the United Kingdom
- M.P. Jain, Indian Constitutional Law
- H.M. Seervai, Constitutional Law of India
- Granville Austin, The Indian Constitution: Cornerstone of a Nation
- Upendra Baxi, The Indian Supreme Court and Politics
- V.N. Shukla, Constitution of India