

Judicial Review and Democratic Governance: Assessing the Role of the Indian Supreme Court

Dr Vaishali Saxena¹, Faisal Ansari², Aisha Zaheer³

¹Associate Professor, University of Lucknow

^{2,3}Research Scholar, University of Lucknow, Lucknow

Abstract

This paper delves into the intricate relationship between judicial review and democratic governance, with a specific focus on the role of the Indian Supreme Court. Judicial review, as a foundational concept in constitutional democracies, serves as a crucial mechanism for ensuring governmental accountability, upholding the rule of law, and safeguarding fundamental rights. In the context of India, a vibrant and pluralistic democracy, the Supreme Court's authority to scrutinize governmental actions vis-à-vis constitutional principles holds profound significance.

Through a comprehensive analysis of landmark judgments, constitutional provisions, scholarly literature, and comparative perspectives, this study seeks to unravel the multifaceted dynamics inherent in the relationship between judicial review and democratic governance in the Indian context. The paper examines the historical evolution of judicial review in India, tracing its origins from the Constitution and subsequent judicial interpretations.

Key principles underpinning the exercise of judicial review, including the doctrine of basic structure, separation of powers, and protection of fundamental rights, are scrutinized to understand their implications for democratic governance. Landmark judgments of the Indian Supreme Court, such as *Kesavananda Bharati v. State of Kerala* (1973), *Indira Nehru Gandhi v. Raj Narain* (1975), and *S.R. Bommai v. Union of India* (1994), are analysed to elucidate the Court's role in shaping the constitutional ethos of the nation.

However, the paper also engages with critiques of judicial review, including concerns about judicial activism, accountability, and enforceability of court decisions. By critically examining these challenges and exploring potential avenues for reform, this study aims to offer insights into enhancing the efficacy of judicial review as a tool for democratic governance in India.

Keywords: Supreme Court, Judicial review, Democratic Governance, Basic Structure

1. Introduction

In democratic societies, the concept of judicial review stands as a cornerstone of governance, serving as a vital mechanism for upholding the principles of the rule of law, protecting individual rights, and ensuring governmental accountability. Nowhere is this interplay more profound and consequential than in the context of the Indian Supreme Court, which holds a pivotal position within the country's democratic framework.

Since its inception, the Indian Supreme Court has been tasked with the weighty responsibility of interpreting the Constitution and adjudicating disputes that arise between the government, citizens, and

other entities. Through its power of judicial review, the Court scrutinizes legislative and executive actions, ensuring their conformity with constitutional principles and safeguarding the rights and liberties enshrined therein. This authority not only serves as a check on potential governmental overreach but also fosters the evolution of India's constitutional democracy.

However, the exercise of judicial review is not without its complexities and controversies. Critics argue that an overly activist judiciary may encroach upon the domain of the elected branches of government, undermining democratic processes and the principle of separation of powers. Moreover, questions persist regarding the Court's responsiveness to societal changes, its consistency in upholding constitutional values, and the accessibility and efficiency of the judicial system itself.

Against this backdrop, this paper seeks to critically examine the role of the Indian Supreme Court in the context of democratic governance. By delving into the Court's historical development, landmark decisions, and contemporary challenges, we aim to assess both the opportunities and dilemmas presented by judicial review in India. Through this analysis, we endeavor to shed light on the intricate relationship between the judiciary, the legislature, and the executive, and explore avenues for enhancing the effectiveness and legitimacy of judicial oversight in a vibrant and pluralistic democracy like India.

In doing so, we embark on a journey to explore the multifaceted dimensions of judicial review in the Indian context, recognizing its inherent tensions and its potential to shape the trajectory of democratic governance in the world's largest democracy.

2. Judicial Review

Judicial review in the context of the Indian Supreme Court refers to the power vested in the Court to review the constitutionality of legislative and executive actions. This authority allows the Court to strike down laws or governmental actions that are found to be inconsistent with the provisions of the Constitution of India.

In the Indian context, the power of judicial review is not explicitly mentioned in the Constitution but is implied from several provisions. The Indian Constitution provides the framework within which the judiciary, including the Supreme Court, exercises its power of judicial review. Here are the key constitutional provisions relevant to judicial review:

Article 13 (2): This provision states that the State shall not make any law which takes away or abridges the fundamental rights guaranteed under Part III of the Constitution. If any law is found to be inconsistent with the fundamental rights, to the extent of such inconsistency, it shall be void.

Article 32: This article confers the right to constitutional remedies upon citizens for the enforcement of fundamental rights. It empowers individuals to move the Supreme Court directly if their fundamental rights are violated. The Supreme Court, through writs such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari, can enforce fundamental rights and strike down laws that violate them.

Article 131: This article confers exclusive jurisdiction upon the Supreme Court to adjudicate disputes between the Government of India and one or more States or between the Government of India and any State(s) on one side and one or more States on the other.

Article 137: This article empowers the Supreme Court to review any judgment pronounced or order made by it.

Article 142: This article grants the Supreme Court the power to pass any decree or order necessary for doing complete justice in any cause or matter pending before it.

Article 226: This article confers power upon High Courts to issue writs for enforcement of fundamental rights as well as for any other purpose.

Article 246: This article distributes legislative powers between the Union and the States. The distribution of powers helps in determining whether a particular law falls within the competence of the legislature that enacted it.

Article 368: This article deals with the procedure for amending the Constitution. While Parliament has the power to amend the Constitution, the Supreme Court has interpreted this power in cases such as *Kesavananda Bharati v. State of Kerala (1973)*, where it held that certain basic features of the Constitution cannot be amended.

These constitutional provisions, along with judicial interpretations by the Supreme Court, provide the basis for the exercise of judicial review in India. They empower the judiciary to strike down laws inconsistent with the Constitution, protect fundamental rights, and ensure the supremacy of the Constitution.

3. Objectives

1. To examine the concept of judicial review and its significance in democratic governance, both theoretically and within the Indian context.
2. To identify and evaluate landmark judgments of the Indian Supreme Court that has shaped the

4. Methodology

This is empirical study exploratory in nature . in this study I have analysed the major verdict of supreme court and various articles of constitutional experts .this paper totally based on secondary data .

5. Discussions

Democracy, Separation of Powers and the Judiciary

In a democracy, the Constitution reigns supreme, with the Judiciary serving as its guardian. Democracy allows people to participate in decision-making through elected representatives or direct involvement. The separation of powers divides governance into three branches: the Legislature makes laws, representing public interests; the Executive enforces laws, led by a President or Prime Minister; and the Judiciary interprets and applies laws, ensuring constitutional compliance and safeguarding rights. This separation prevents the concentration of power. In parliamentary systems like India, the Executive and Legislature are interdependent. The Judiciary acts as a vital check, upholding the Rule of Law and protecting against power abuses, ensuring a balanced democratic system.

Role of an Independent Judiciary in Democracy

India is the largest democracy in the world and any healthy democracy cannot thrive without an independent Judiciary. As a safeguard against potential violations of the **Rule of Law**, an independent Judiciary provides the guarantee that justice is carried out impartially. As Dr. B.B. Chawdhry writes, "Justice which is the soul of the state must be administered without fear or favour."

Various provisions have been included in the Indian Constitution to ensure an independent Judiciary. This includes the appointment of judges, salary and allowances, procedures on removal and even the power to penalise in case of violation of law.

The importance of an independent Judiciary is highlighted for various reasons. Firstly, the Judiciary serves as the first line of defence against any excessive or unauthorised power of the Executive or the

Legislative branch, providing a system of checks and balances. Furthermore, the Judiciary examines and if needed, invalidates any law that violates the Indian Constitution by declaring it null & void. This prevents any centralisation of power. An impartial judicial system is essential for defending the rights of minorities & other marginalised groups in a multicultural and diversified nation like India. In addition, a strong independent Judiciary is essential to maintaining the Rule of Law. It ensures that everyone is governed by the same set of laws, irrespective of their position or power.

The Judiciary has the power to review any law or executive action that it considers violating the provisions of the Constitution. This power is exercised through the process of judicial review, which is the power of the Judiciary to declare a law or executive action unconstitutional. This power of judicial review has been instrumental in shaping the Constitution of India and ensuring that the provisions of the Constitution are implemented effectively. Judicial review is adopted by the Constitution of India from the Constitution of the USA.

In India, judicial review is broad in scope and deals with a variety of issues. The Supreme Court has the power of Judicial Review in various ways, including when there is a conflict between the Centre and States, or when there is a violation of the jurisdiction exercised by the Legislature and Executive. Most importantly, the Supreme Court is the guardian of Fundamental Rights. It protects the fundamental rights of Indian citizens, through issuing various writs provided under Article 32.

Some landmark cases **are as follows;**

Keshavananda Bharati vs. State of Kerala (1973)

An important turning point in Indian constitutional history was highlighted by this landmark case when the Supreme Court established the "**basic structure doctrine.**" The Court ruled that although Parliament has the authority to amend the Constitution, it cannot change its basic structure. This historic decision outlined basic principles that serve as the cornerstone of Indian constitutionalism.

Indira Gandhi vs. Raj Narain (1975)

In this instance, the Supreme Court rendered a significant decision that made the proclamation of an emergency in India unlawful. The Court's ruling upheld the fundamental idea that nobody- not even the Prime Minister is above the law and the Constitution.

By emphasising that any law denying a person their life or personal liberty must be just, fair, and reasonable, this case broadened the definition of personal liberty. It developed the idea of "procedure established by law" under Article 21, to ensure that any procedure established by law must be fair and just.

Vishakha vs. State of Rajasthan (1997)

This significant case involved workplace sexual harassment and prompted the creation of guidelines (known as the Vishaka guidelines) to address and avoid it. Through this ruling, the Court closed a gap in the law and set the stage for legislation to deal with workplace harassment.

Union of India v. Navtej Singh Johar (2018)

By invalidating Section 377 of the Indian Penal Code, which classified homosexuality as a crime and described it as 'carnal intercourse against the order of nature', the Supreme Court in this case decriminalised homosexuality. The ruling marked a key turning point in the acceptance of the LGBTQ+ community's rights.

Judicial Activism and PIL

Judicial Activism, born in the United States, empowers the judiciary to proactively protect citizens' rights by going beyond rigid interpretations of laws or the Constitution. It bridges legislative gaps,

ensuring the safeguarding of fundamental rights when the legislature falls short. It adapts legal principles to evolving societal needs and acts as a check on executive authority, preventing overreach. This activism defends democracy, minorities, and marginalized groups while promoting equality, social justice, and good governance.

Public Interest Litigation (PIL) in India empowers citizens to address issues affecting the public at large, not just individually. The judiciary has actively used PILs to champion environmental protection, sustainable development, and wildlife preservation. It has been instrumental in upholding individual liberties, including the right to privacy, freedom of speech, and combating discrimination. Landmark judgments have also advanced education, women's rights, and decriminalized homosexuality, leading to significant social change.

6. Challenges

Executive and Legislative Pushback: The Indian judiciary often faces resistance from the executive and legislative branches of government when it exercises judicial review. This can lead to tensions between the judiciary and other branches of government, challenging the independence of the judiciary and the separation of powers.

Backlog of Cases: India's judicial system is burdened with a large backlog of cases, leading to delays in the resolution of disputes. This backlog affects the effectiveness of judicial review, as cases involving constitutional matters may take years to be heard and decided, undermining the timely protection of individual rights.

Access to Justice: Access to justice remains a significant challenge in India, particularly for marginalized and vulnerable communities. The high costs of litigation, procedural complexities, and geographical barriers hinder individuals' ability to seek judicial review, limiting the inclusivity and effectiveness of the process.

Public Perception and Trust: Public perception of the judiciary's role in judicial review can impact its legitimacy and effectiveness. Challenges such as perceptions of judicial activism, delay in the delivery of justice, and corruption within the judiciary can erode public trust in the judicial system, undermining the authority of judicial review.

Enforcement of Judgments: Even when the judiciary issues rulings through judicial review, ensuring effective enforcement of those judgments can be challenging in India. Non-compliance by government agencies, lack of resources for implementation, and delays in execution undermine the impact of judicial decisions, limiting their efficacy in upholding constitutional principles.

Interpretation of Constitutional Provisions: The interpretation of constitutional provisions by the judiciary can be contentious, leading to divergent opinions among judges and conflicting judgments. This interpretive challenge affects the consistency and predictability of judicial review outcomes, raising questions about the coherence of constitutional jurisprudence.

Overburdened Judiciary: India's judiciary faces resource constraints, including a shortage of judges, court infrastructure, and support staff. This overburdened judicial system hampers the efficient adjudication of cases, including those involving judicial review, and impedes the timely protection of constitutional rights.

Political Interference and Influence: Political interference in the functioning of the judiciary poses a threat to the independence of the judiciary and the integrity of judicial review. Attempts to influence

judicial appointments transfer of judges, and administrative decisions can undermine the judiciary's ability to act as a check on executive and legislative actions.

Addressing these challenges requires comprehensive reforms aimed at enhancing the efficiency, independence, and accessibility of the judiciary, strengthening the rule of law, and promoting public trust in the judicial system. These reforms may include measures to reduce case backlog, improve judicial infrastructure, enhance judicial accountability, and safeguard judicial independence.

7. Conclusion

In conclusion, the examination of "Judicial Review and Democratic Governance: Assessing the Role of the Indian Supreme Court" reveals the pivotal significance of the judiciary in safeguarding democratic principles and upholding the rule of law in India. Through a multifaceted analysis encompassing legal, constitutional, and empirical perspectives, this study has shed light on the complex interplay between judicial review and democratic governance in the Indian context.

The Indian Supreme Court, as the guardian of the Constitution, plays a crucial role in ensuring that legislative and executive actions are consistent with constitutional principles. By exercising its power of judicial review, the Court acts as a check on government overreach, protects fundamental rights, and promotes the accountability of public authorities. Landmark judgments, such as those expanding the scope of individual liberties or striking down unconstitutional laws, exemplify the Court's proactive stance in upholding democratic values.

However, the analysis also underscores several challenges and areas for improvement. The backlog of cases, limited access to justice, and concerns about judicial accountability and transparency remain significant hurdles to effective judicial review. Moreover, the judiciary must navigate political pressures and maintain public trust and confidence in its impartiality and integrity.

Addressing these challenges requires a concerted effort from all stakeholders, including the judiciary, the executive, the legislature, civil society, and the public. Reforms aimed at enhancing judicial efficiency, promoting access to justice, ensuring judicial independence, and fostering transparency and accountability are essential to strengthen the role of the Indian Supreme Court in democratic governance.

Moving forward, it is imperative to continue fostering interdisciplinary dialogue, promoting civic education, and engaging in international cooperation to strengthen judicial review mechanisms and uphold democratic governance in India. By working collaboratively to address these challenges, India can ensure that its judiciary remains a steadfast guardian of democracy, justice, and constitutional values for generations to come.

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